

AIRPORT CONCESSION AGREEMENT

AND

**Annexes of the Concession Agreement
For the
CATICLAN AIRPORT PROJECT**

CATICLAN AIRPORT CONCESSION AGREEMENT

This Agreement entered into this 22nd day of June 2009 at Mandaluyong City, Philippines, by and between:

The **GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES**, acting through the **Department of Transportation and Communications** ("DOTC"), a department of the Executive Branch reorganized under Executive Order No. 125 as amended, with offices at the Columbia Tower Building, Ortigas Avenue, Mandaluyong City, Metro Manila and Civil Aviation Authority of the Philippines (CAAP), with offices at Pasay City, Metro Manila, represented herein by its Honorable Secretary and Chairman Ex Officio, respectively, **LEANDRO R. MENDOZA**, hereinafter referred to as "the ROP";

- and -

CATICLAN INTERNATIONAL AIRPORT AND DEVELOPMENT CORPORATION, a corporation organized and existing under the laws of the Republic of the Philippines, with principal offices at 6/F F&M Building, 109 Carlos Palanca Street, Legaspi Village, Makati City, represented herein by its President, **MR. LINO A. BARTE**, authorized pursuant to a Board Resolution dated 08 June 2009 hereinafter referred to as "the Concessionaire".

WITNESSETH:

WHEREAS, it is the declared State policy contained in Section 20, Article II of the Constitution, and more specifically in Republic Act No. 6957, as amended by Republic Act No. 7718, to recognize the indispensable role of the private sector as the main engine for growth and development, and to provide the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects;

WHEREAS, it is likewise the declared State policy contained in Executive Order No. 125, as amended, to maintain and expand a viable, efficient and dependable transportation and communications system as an effective instrument for national recovery and economic progress;

WHEREAS, the rapid growth of Boracay Island not only as domestic tourist attraction but also as an international tourist destination requires the improvement and expansion of current airport facilities and services of the Caticlan Airport in order to cater to the needs of a foreseen increase in passenger and cargo traffic and to maximize its economic benefits;

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WHEREAS, the Concessionaire has submitted an unsolicited proposal, through DOTC, to upgrade, expand and redevelop the existing Caticlan Domestic Airport into a regional international airport with all the adjunct amenities and facilities under a Contract, Add, Operate and Transfer scheme pursuant to the BOT Law;

NOW, THEREFORE, for and in consideration of the foregoing premises, the ROP and the Concessionaire agree as follows:

SECTION 1 DEFINITION OF TERMS

Section 1.1 Whenever used in this Agreement or in the recitals hereof, the following terms shall have the meaning ascribed to them as follows:

"Agreement" refers to this Concession Agreement for the Contract-Add-Operate-and-Transfer arrangement of the Caticlan Airport and all annexes hereto.

"Airport Development Plan" refers to the plan attached herewith as Annex "A".

"Applicable Law" means all laws, treaties, statutes, acts, codes, judgements, decrees, injunctions, writs and orders of any Competent Authority including rules, regulations, orders, directives, licenses, approvals, consents, waivers and permits applicable with respect to this Agreement.

"BOT Law" refers to Republic Act No. 6957, as amended by Republic Act No. 7718, including its implementing rules and regulations.

"Caticlan Airport" refers to the Godofredo Ramos Airport located in Caticlan, Province of Aklan, Philippines as indicated in the Lot Plan attached as Annex "B", which shall include all its appurtenants and equipments, such as, but not limited to, the runway, apron, terminal and all other areas, existing as of the date hereof or as will be rehabilitated, constructed, built, and expanded under this Agreement.

"Certificate of Final Completion" refers to the certificate in the form attached as Annex "C", issued by or deemed issued by the ROP certifying to the full completion of the Works, in accordance with Section 13.3 of this Agreement.

"Certificate of Partial Completion" refers to the certificate in the form attached as Annex "C-1", issued or deemed issued by the ROP certifying to the presence of Minor Outstanding Items identified by the Independent Certification Engineer in accordance with Section 13.3 of this Agreement.

"Clean Possession" refers to physical possession of the Site in its entirety by the Concessionaire, free and clear of all possessors, occupants, tenants and/or squatters, clear of existing improvements, Utilities (whenever such removal is necessary), or waste materials, free and clear of any and all liens, encumbrances and/or legal impediments, and in a condition suitable

and ready for the commencement of Works and the continuing implementation of the Project.

"Commencement Date" means the date on which the Concessionaire shall commence the Works which shall not be later than Fifteen (15) Days from receipt of the Notice to Proceed.

"Commissioning Test" means the tests to be conducted on the Caticlan Airport in accordance with Annex "D" of the Agreement to be agreed upon by the Parties.

"Competent Authority" means the ROP, the DOTC, its agencies, government corporations, municipal and regional government authorities and more generally any person or entity having lawful jurisdiction over the Project or any part thereof or capable of exercising a power with respect to the Project.

"Concession" refers to the rights, obligations, and privileges granted to the Concessionaire under this Agreement, which includes the right to finance, design, construct, operate and maintain the Project during the Concession Period.

"Concession Period" refers to the period of twenty five (25) years commencing from the Financial Closing, as the same may from time to time be adjusted by reason of a suspension of the running of the period as provided herein, during which the Concessionaire shall operate the Caticlan Airport.

"Concessionaire" refers to Caticlan International Airport and Development Corporation including its successors and assigns as may be permitted under this Agreement.

"Contractor" refers to a licensed contractor accredited by the Philippine Contractors Accreditation Board that has no derogatory record that would adversely reflect on its capability to undertake the Works in accordance with performance standards. A derogatory record which may result in the non-acceptability of a contractor includes the contractor having been blacklisted by the ROP, or, upon verification of its performance in an ongoing government or private project, having been found to deliver unsatisfactory quality of work or unsatisfactory performance of its obligations due to its own fault or negligence.

"Consent" refers to any permit, license, registration, approval, consent, authorization or other requirement that may, from time to time, be required from the ROP under the laws of the Republic of the Philippines with respect to the Project.

"Construction Period" refers to the span of time from the Commencement Date up to the issuance of the Certificate of Final Completion.

 "Credit Agreement" means the agreement(s) signed or to be signed by the Concessionaire with the Lenders in respect of the Loans.

"Default Interest Rate" means twelve percent [12%] per annum.



"Design" means the design to be prepared by the Concessionaire's engineers and architects for the Project to be approved in accordance with Section 6 of this Agreement.

"Direct Agreement" means the agreement to be entered into among the ROP, the Concessionaire and the Lenders in connection with the Credit Agreement and Security Deed subject to existing laws and provisions to be agreed upon among the ROP, the Concessionaire and the Lenders.

"Drawings" mean the preliminary design and plans of the Project.

"End Users" refer to the passengers within the premises of the Catclan Airport, well-wishers and guests, the Concessionaires, lessees, and tenants in the Terminal and their respective employees and guests, and the employees and guests of the Concessionaire.

"Equity" means the capital of the Concessionaire which shall include paid-in capital, paid-in surplus, if any, and any other form of capital contribution allowed under the law.

"Facility Operator" refers to the Concessionaire or a Person designated by the Concessionaire that shall be responsible for the Operation and/or Maintenance in accordance with the Operating and Maintenance Standards.

"Financial Closing" means the satisfaction of all the conditions precedent or the waiver thereof and the release of the first drawdown on the Credit Facility; provided that Financial Closing shall occur not later than twelve (12) months from the signing of the Agreement, unless such period is extended by the mutual agreement among the ROP, the Concessionaire and the Lenders or as allowed under this Agreement.

"Financing Costs" refer to all amounts in each case supported by verifiable evidence from time to time owed or which may become owing by the Concessionaire to Lenders or any other persons or entities who have provided, loaned or advanced funds or provided financial facilities to the Concessionaire for the Project, including, without limitation, all principal, interest, associated fees, charges, reimbursements, and other related expenses (including the fees, charges and expenses of any agents or trustees of such persons or entities), whether payable at maturity, by acceleration or otherwise, and further including amounts owed by the Concessionaire to its professional consultants and advisers, suppliers, contractors and sub-contractors.

"Financial Model" refers to the document attached as Annex "E", which sets forth the projected financial statements and other assumptions which constitute the financial basis on which the Concessionaire proposed to enter into this Agreement and accept the consequential commercial risk attendant thereto.

"Force Majeure" refers to:

- (a) other than as referred to in paragraph (b) below, any war (whether declared or not), hostilities, belligerence, blockade, revolution, insurrection, riot, public disorder, expropriation,

requisition, confiscation or nationalization, export or import restrictions by any governmental authority, closing of airports, harbors, docks, canals, or other appurtenance to or adjuncts of or vital facility for air or sea navigation (such as without limitation the taxiways, runways and communication facilities), rationing or allocation, whether imposed by law, decree or regulation or compliance of industry at the insistence of any governmental authority, or fire, unusual flood, earthquake, volcanic activity, storm, typhoons, lightning, tide (other than normal tides), tsunamis, perils of the sea, accidents of navigation or breakdown of vessels, accidents in harbors, docks, canals, aircraft, or other appurtenance to or adjuncts of air or sea navigation, epidemic, quarantine, strikes, lockouts or other labor disturbances, or any other event, matter or thing, wherever occurring, which shall not be within the reasonable control of the party affected thereby;

- (b) any war (whether declared or not), hostilities, belligerence, blockade, revolution, insurrection, riot or public disorder initiated by or involving the ROP or occurring in the Republic of the Philippines, strikes and other labor disturbances involving employees of the ROP, any act in the nature of expropriation, requisition, confiscation or nationalization (including the commencement of any act, deed or judicial or administrative proceeding in the furtherance of the foregoing), by or involving the ROP or occurring in the Republic of the Philippines; export or import restrictions imposed by ROP, exchange controls imposed by the ROP, closing of airports, harbors, docks, canals, or other appurtenance to or adjuncts of or vital facility for air or sea navigation (such as, without limitation, the taxiways, runways and communication facilities) of or within the Republic of the Philippines; rationing or allocation, whether imposed by law, decree or regulation or compliance of industry at the insistence of the ROP and each event or circumstance referred to in this paragraph (b) is a "Governmental Force Majeure".
- (c) A 10% increase or higher from the base rate of the Project Cost as provided in the Financial Model due to any of the following macro-economic factors: inflation rates, interest rates and foreign exchange rates of the US Dollar and the Philippines.

"Franchise" refers to the exclusive right conferred by the ROP to the Concessionaire or the Facility Operator to operate the Caticlan Airport for the duration of the Project and the Concession Period.

"Gross Revenues" refer to all income earned by the Concessionaire from the Caticlan Airport on account of this Agreement.

"ICAO" refers to the International Civil Aviation Organization or its successor.

"Incremental and Consequential Costs" refer to additional costs properly documented and reasonably incurred by the Concessionaire or the Facility Operator (including without limitation additional overhead costs, cost of

any catch-up program, demobilization, re-mobilization, storage costs, termination penalties, increase in construction costs) in excess of a budgeted or contracted amount. The amount of Incremental and Consequential Costs shall be certified by the Independent Certification Engineer.

"Independent Certification Engineer" means the independent person or firm appointed pursuant to Section 5 of this Agreement.

"Independent Certification Engineer Agreement" means the consultancy contract to be entered into by the ROP and the Concessionaire with an independent person or firm appointed pursuant to Section 5 of this Agreement.

"Interim Operational and Maintenance Performance Security" refers to the security with a face value of Five Million Pesos (P5,000,000.00) which the Concessionaire shall deliver to the ROP in accordance with Section 4.1 to ensure compliance with the Operating and Maintenance Specifications."

"Interim Operational and Maintenance Performance Standards" means the minimum requirements in respect of the operations and maintenance of the Caticlan Airport during the Transition Period as agreed upon by the ROP and the Concessionaire as provided in Section 4.1 of this Agreement.

"In-Service Date" refers to the Day immediately following the Day on which the Certificate of Partial Completion for Phase IB is issued or deemed to be issued pursuant to Section 13.3.2.

"Lands" refer to all the lands and areas, including foreshore areas, to be used by the Concessionaire in accordance with the terms hereof.

"Landing and Take Off Fees" refer to landing and takeoff fees for aircrafts.

"Lenders" refer to the persons who have provided or committed debt financing for the Project together with their respective successors and assigns.

"Lenders' Representative" refers to the person designated by the Lenders as such for the purposes of this Agreement.

"Loans" refers to any loans or debt financing from time to time committed or provided by the Lender(s) to Concessionaire.

"Losses" refer to any loss suffered by the Concessionaire or the Facility Operator other than any Incremental and Consequential Costs, including, without limitation, any lost revenues.

"Minor Outstanding Items" refer to minor defects or items of outstanding Works which do not, in the reasonable opinion of the Independent Certification Engineer, adversely affect the ability to meet the Performance Standards or the safe operation of the Caticlan Airport and which entitles the Concessionaire to the issuance of the Certificate of Partial Completion only.

"Net Financial Return" means the return to be realized by the Concessionaire on the total Project Cost. This shall be computed using the standard "internal rate of return" methodology and the same assumptions specified in the Financial Model.

"Operation and Maintenance" refers to the tasks and services as defined and described in the Operating and Maintenance Manual.

"Operation and Maintenance Manual" refers to the document indicating the standards to be followed during the Concession Period in accordance with Section 15.2.

"Operation and Maintenance Performance Security" refers to the security which the Concessionaire shall deliver to the ROP in accordance with Section 15.3 to ensure compliance with the Operating and Maintenance Standards."

"Operational and Maintenance Performance Standards" refer to the minimum requirements in respect of the operations and maintenance of the Caticlan Airport to be submitted by the Concessionaire to, and agreed with, the ROP.

"Other Fees" refer to Fees and income other than the Regulated Fees, such as, but not limited to, aircraft parking fees, aircraft tacking fees, check-in counter fees, lease/rental charges, concession privilege fees for passenger services, food services, transportation utility concessions, miscellaneous concession fees, portorage fees, greeter/well-wisher fees, car park fees, advertising fees, VIP facilities fees, and other incidental or related fees which are generated from the operation of the land-side of the Terminal and within the terminal complex.

"Parametric Formula" refers to the formula for rate adjustments of the Regulated Fees, i.e., Terminal Fees and Landing and Take Off Fees, contained in Annexes "F" and "F-1", respectively.

"Performance Standards" refer to the minimum level of performance or output acceptable to the ROP to be appended hereto as Annex "G". The Performance Standards shall have two (2) components: the first, being applicable during the Construction Period shall be embodied in the Design to be approved by the ROP in accordance with Section 6, and the second, being applicable during the Concession Period shall be the minimum requirements referred to in the Operational and Maintenance Performance Standards which shall be appended to the Operations and Management Agreement to be executed between the Concessionaire and the Facility Operator.

"Project" refers to all the aspects and activities in relation to the financing, design, rehabilitation, building, construction, operation and maintenance of Caticlan Airport, as provided in this Agreement.

"Project Cost" refers to the total costs of the Project, set forth in Annex "H", as may be increased or decreased in accordance with this Agreement.

"Project Management Office" refers to an office to be created by ROP pursuant to existing laws, manned by duly authorized personnel, and specifically assigned to attend to and address all construction-related issues relative to this Agreement. The authority of the Project Management Office shall be fixed in writing by ROP, a copy of which shall be served to the Concessionaire prior to the commencement of Works. The authority of the Project Management Office shall cease upon the actual or constructive issuance of the Certificate of Completion.

"Regulated Fees" - refers to Terminal Fees and Landing and Take Off Fees.

"Revenues" refer to all operating income derived by the Concessionaire from the Project.

"Right of Way" refers to the right of passage over or under and of access and egress to and from the Site, and any part or parts thereof, without undue interference by any third party for the purpose of constructing, operating and maintaining the Project.

"Right of Way and Site Delivery Schedule" refers to the schedule of Right of Way and delivery of Site as agreed upon by the Parties as provided in Annex "I".

"ROP" refers to the Government of the Republic of the Philippines, acting thru DOTC and/or the CAAP.

"ROW Fund" refers to the fund provided for in Section 8.8 of this Agreement.

"Security Deed" refers to the deed to be signed among the ROP, the Concessionaire and the Lenders or their trustee relating to the security interest of the Lenders on the Project, as the case may be, and the enforcement thereof by the Lenders.

"Site" refers, *inter alia*, to the areas, Lands and air spaces where the runway, apron, Terminal, terminal complex, equipment and other utilities and facilities of the Project are to be located and constructed, including other areas necessary for work sites as more specifically described in Annex "J".

"Specifications" refers to the technical specifications applicable to the construction of the Project indicated in Annex "K" of the Agreement.

"Taxes" refers to any present or future taxes, (including income taxes, withholding taxes, value-added taxes, business and real estate taxes and documentary stamp taxes among others), duties (including customs duties), tariffs, fees, (including registration fees for mortgages or security interests related to the Credit Agreement) assessments, deductions, levies, imposts, withholdings or charges whatsoever, that may now or hereafter be imposed, withheld, levied, assessed or collected by any Competent Authority, together with interest thereon and penalties and other increments thereto.

"Temporary Lands" refers to the lands and any other places to be occupied temporarily by the Concessionaire and the Contractor during the Construction Period at no cost to the ROP.

"Tenant Agreements" collectively refer to the lease agreements which the Concessionaire may execute for office spaces, booths, commercial spaces or other property in the Caticlan Airport, or the agreements with respect to services to be rendered therein.

"Terminal" refers to the Caticlan Airport terminal as, built and constructed pursuant to this Agreement, including all equipment, facilities and machineries operated and maintained therein by the Concessionaire or the Facility Operator.

"Terminal Fees" refer to the fees which the Concessionaire shall collect from domestic and international passengers departing from the Terminal.

"Termination Just Compensation" means the pre-determined amount of moneys calculated in accordance with the respective provisions of Section 25.

"Timetable" refers to the milestones set forth in Annex "L", as the same may from time to time be modified in accordance with this Agreement.

"Total Actual Expenses To Date" means the amount determined on the date of termination of this Agreement which is the sum of (i) all capital cost, (ii) development, design, construction and project management costs; (iii) advances made, if any, which were incurred by the Concessionaire in carrying out the Works, (iv) the costs of goods or services procured by the Concessionaire for the performance of the Works, and (v) any contract breakage costs (including redundancy payments to the employees) as a result of early termination of any contract, such as without limitation, the supply of construction works, goods, plant, equipment, design services, management services, maintenance and security services, all of which were incurred by the Concessionaire in carrying out the Works.

"Transfer Date" refers to the Day immediately following the last day of the Concession Period.

"Transition Period" refers to the span of time from actual complete turn over of the operation and management of the Caticlan Airport to the Concessionaire, in accordance with Section 4 of this Agreement up to the date immediately following Financial Closing.

"Utilities" refers to public utilities, which include, but is not limited to, power, gas, water, and telecommunication.

"Utility Providers" refer to any person or corporation supplying and/or providing Utilities to the Concessionaire for the purpose of the construction of the Project or the Operation and Maintenance of the Caticlan Airport.

"Works" refer to all works required to be carried out in connection with the Drawings, Design, construction and completion of the civil, structural,

sanitary, mechanical, electrical and architectural infrastructure of the Project including all ancillary equipment and facilities.

"Work Performance Security" refers to the security which the Concessionaire shall deliver to the ROP to ensure the completion of the construction of the project in accordance with Section 20.2

1.2 Rules of Interpretation

The headings in the Agreement are used merely to facilitate identification of the provisions and shall not be taken into consideration in the interpretation or the construction of the Agreement.

"Days" shall, whenever used in this Agreement, refer to calendar days unless otherwise provided herein.

"Persons, Firms and Corporations" or words importing persons or parties shall include firms and corporations and any organization having legal capacity.

Save where otherwise stipulated, reference to persons, parties, firms and corporations shall include reference to the permitted successors and/or assigns of the Concessionaire, the Facility Operator and the ROP.

Whenever in this Agreement an act or obligation is to be performed by the ROP, it is understood that the performance shall be undertaken by the DOTC and/or CAAP as the implementing agency, unless another Competent Authority is specifically designated.

Words importing the singular shall also include the plural and vice versa where the context requires.

SECTION 2 CONCESSION AND PROJECT SCOPE

2.1 Concession Award

2.1.1 The ROP hereby grants to the Concessionaire the Concession, which includes the Franchise pursuant to Section 12.3 of the IRR of RA 7718, as provided under this Agreement. The ROP hereby acknowledges that the Concession may include any extension or expansion of the Project as may be agreed upon by the Parties.

2.1.2 For the design, construction, equipping, completion, testing and commissioning of any expansion or extension, the parties hereby acknowledge that the Concessionaire may submit a written proposal with respect thereto. Within thirty (30) Days from receipt by the DOTC of such written proposal, the parties shall commence discussions and exert best efforts until the ROP and the Concessionaire agree on the terms and conditions pursuant to which the Concessionaire shall implement any extension or expansion, and execute or cause to be executed the appropriate legal instruments for this purpose, including without limitation, any amendment or revision to this Agreement.

2.2 Project Scope

2.2.1 The scope of the Project shall include:

- (a) Transfer of the operations and management to the Concessionaire of the Caticlan Airport, provided that the ROP shall retain (i) operations and control of air traffic services, national security matters, immigration, customs and other governmental functions and (ii) regulatory powers insofar as aviation security, standards, and regulations are concerned at the Caticlan Airport;
- (b) Financing the Project Cost, while maintaining a debt-to-equity ratio of 70:30, provided that if the actual Project Cost should exceed the amount indicated in Annex H, Concessionaire shall ensure that the debt-to-equity ratio is maintained;
- (c) Immediate improvement of the existing Terminal during the Transition Period which will provide comfort, security and safety to passengers of Caticlan Airport;
- (d) Acquisition of portions of or even whole parcels of land necessary for the Project;
- (e) Extension of the existing runway by 2.1 kilometers and providing the same with navigational and visual aids to enable handling of night flight operations in accordance with the Airport Development Plan;
- (f) Upgrading of the Caticlan Airport into a larger and more technologically advanced facility to allow international airport operations as provided in the Airport Development Plan;
- (g) Rehabilitation of the existing passenger terminal into a general aviation area for small or private aircrafts in accordance with the standards and recommended practices of ICAO Annex 14;
- (h) Providing the Caticlan Airport with such facilities and equipment stated in Annex "M", and maintaining or upgrading said facilities and equipment as may, from time to time, be required in the operation of the Caticlan Airport.
- (i) Testing, pre-commissioning and commissioning of the Caticlan Airport and all its facilities, and inspecting the Works to ensure that the same comply with the Design;
- (j) Transfer/turnover of the Caticlan Airport to ROP or its designee at the end of the Concession Period, free from any and all liens and encumbrances of whatever kind and nature;
- (k) Compensating ROP for allowing Concessionaire to operate and manage the Caticlan Airport in accordance with letter

(a) hereof, in the amount indicated in Annex "N" as agreed upon by the Parties. The first payment hereof shall be made immediately upon the turn-over by ROP of the operations and management of Caticlan Airport to the Concessionaire, and every year thereafter on the anniversary date of such turn-over, until the end of the Concession Period.

2.2.2 The parties shall work together in order to achieve the timely completion of the Project in accordance with the Timetable and the Airport Development Plan, which provides for the development and upgrade of the Caticlan Airport in phases as provided therein.

2.3 Franchise

2.3.1 Subject to existing law, the Concessionaire is hereby granted a franchise to operate and maintain the Caticlan Airport up to the end of the Concession Period and to collect the fees, rentals and other charges in accordance with this Agreement, as may be adjusted from time to time based on the Parametric Formula attached as Annexes F and F-1.

2.4 Rights of the Concessionaire

2.4.1 The Concessionaire shall have, among others, the following rights:

- (a) Call for biddings and award contracts for the Project, with or without bidding, provided that, in the case of general civil works, the chosen Contractors of Concessionaire shall be used;
- (b) Arrange for the Site preparation activities and the preparation of all design and engineering plans required for the Project; approve or reject equipment, facilities and other materials required for the Works without prejudice to Section 5.2 hereof;
- (c) Appoint and remove consultants and professional advisers at no additional cost to the Project;
- (d) Appoint, organize and direct staff, to implement, manage and supervise the Project in accordance with Sections 9 and 15 hereof;
- (e) Enter into contracts for the supply of materials and services without prejudice to section 5.2 hereof;
- (f) Purchase materials, equipment and facilities without prejudice to section 5.2 hereof;
- (g) Lease or allow sublease of any portion of the Caticlan Airport without need for written approval of the ROP and/or DOTC; provided that the lessee shall use the leased area for the same activities reasonably related to a domestic and

international passenger terminal operations; and provided further that such use as indicated in the Airport Development Plan is not altered or modified;

- (h) Enter into contracts, including management, security or O&M agreements, with entities qualified to undertake the management, operation, and or maintenance of the Caticlan Airport, without need for written approval of the ROP and/or the DOTC/CAAP; provided that the Concessionaire shall remain liable for all obligations under this Agreement;
- (i) Generate and receive income from the Project, including the imposition and collection for its own account of all fees, charges, and rents imposed or being collected by ROP at the Caticlan Airport, or such other fees, charges or rent that may be imposed or collected by the Concessionaire, as provided and allowed in this Agreement;
- (j) Create, by way of mortgage, pledge, assignment, fixed or floating charge or other lien, security interests in favor of the Lenders over the Project, its revenues, contracts, insurances, share capital and other assets of whatever kind and description as security for the claims of the Lenders; and
- (k) Do and perform acts and things necessary or desirable for the completion of the Project in accordance with the Specifications and as contained in this Agreement in accordance with generally accepted engineering standards and the Timetable, and for the efficient management and operation of the Caticlan Airport.

SECTION 3

CONCESSION PERIOD

Section 3.1 Concession Period

3.1.1 The Concession Period shall be as defined in Section 1.1 hereof. Accordingly, all Tenant Agreements entered into by the Concessionaire under and pursuant to this Agreement shall be coterminous with the Concession Period, except when the Tenant Agreements are for periods of shorter duration.

3.1.2 This Agreement may be renewed or extended for another twenty-five (25) years upon written agreement of the parties hereto through the execution of a renewal or extension contract.

3.1.3 For purposes hereof, either party shall inform the other party, in writing of its intention to renew the Concession Period beyond its twenty-five (25) year term at least twelve (12) months prior to the expiration of the original Concession Period.

SECTION 4 TRANSITION PERIOD

4.1 Airport Operation

- 4.1.1 Within one hundred eighty (180) Days from effectivity of this Agreement, the ROP and the Concessionaire shall agree on the mechanics and procedure on the transfer of the operations and management of Caticlan Airport to the Concessionaire, including the Interim Operational and Maintenance Performance Standards. The ROP shall grant and issue all necessary Consents for the timely and expeditious transfer of the operations and management of the Caticlan Airport to the Concessionaire/Facility Operator and the implementation of the Interim Operational and Maintenance Performance Standards, as provided in this Agreement. The ROP shall transfer the operation and management of the Caticlan Airport to the Concessionaire within 180 days from effectivity of this Agreement, or such later date as may be agreed upon by the parties. However, the ROP shall continue to control and provide (i) air traffic services, national security matters, immigration, customs and other governmental functions and (ii) regulatory powers insofar as aviation security, standards, and regulations are concerned at the Caticlan Airport.
- 4.1.2 For the purpose of an orderly transition, the ROP shall assign to the Concessionaire the unexpired portion or period of any service or operation agreement currently being undertaken at the Caticlan Airport provided that the ROP shall continue to be liable for any obligation, cost, expense, claim, whether or not liquidated or contingent, arising from such agreements prior to or due to actions, claims, events, conditions, or omissions which arose or happened prior to the assignment in favor of the Concessionaire. The terms and conditions of the assignment agreement(s) between the Concessionaire and the ROP, including relevant third party, if any, shall be mutually agreed upon by all the parties concerned. Nothing herein shall be construed to prohibit DOTC from maintaining arrangements for the uninterrupted provision of essential aviation and navigational services at the Caticlan Airport. The ROP shall hold the Concessionaire and the Facility Operator free and harmless from any and all consequences, including defaults, claims, expenses, actions, or costs, arising from, in relation to, or in connection with the operation and maintenance of the Caticlan Airport by ROP prior to the Transition Period.
- 4.1.3 During the Transition Period, the Concessionaire shall be liable for all costs and expenses related to or arising from the operation and maintenance of the Caticlan Airport in accordance with the agreed Interim Operational and Maintenance Performance Standards. As such, the Concessionaire shall have the right to collect for its own account Terminal Fees and Other Fees in connection with its operation and maintenance of the Caticlan Airport, as provided in this Agreement. To ensure Concessionaire's faithful obligations under this Agreement during the Transition Period, Concessionaire shall post an Interim Operational and Maintenance Performance

Security in the amount of Five Million Pesos (P5,000,000.00), which security shall be immediately released on the day following the close of the Transition Period.

- 4.1.4 The Concessionaire and the Facility Operator shall not, by reason hereof, be deemed to be the successor employer of the existing employees of the ROP and DOTC. In any event, the Concessionaire or the Facility Operator shall not be responsible for the payment of separation and/or other benefits to the displaced employees of DOTC, and the ROP undertakes to hold, as it hereby holds the Concessionaire (on a full indemnity basis) free and clear of any and all liabilities related thereto. While the Concessionaire or the Facility Operator have no obligation to hire the displaced employees of the ROP and DOTC, the Concessionaire shall give preference to the employment of qualified employees of DOTC in the operation of the Caticlan Airport, based on the reasonable selection criteria which the Concessionaire shall adopt in consultation with DOTC.

SECTION 5 INDEPENDENT CERTIFICATION ENGINEER

5.1 Appointment of the Independent Certification Engineer

- 5.1.1 The ROP and the Concessionaire shall appoint the Independent Certification Engineer for the duration of the Construction Period. A Selection Committee shall be created composed of representatives from the DOTC, CAAP and the Concessionaire. The Selection Committee shall be tasked to formulate and implement the manner and procedure for selecting the Independent Certification Engineer to be appointed under this Agreement subject to the approval by the duly designated authorities from the Concessionaire and the DOTC.
- 5.1.2 In the discharge of its functions, the Independent Certification Engineer shall, at all times, act fairly and impartially. The appointment of the Independent Certification Engineer shall be evidenced by a consultancy contract containing terms and conditions mutually acceptable to both the Independent Certification Engineer, on the one hand, and the ROP and the Concessionaire, on the other. The reasonable compensation of the Independent Certification Engineer shall form part of the Project Cost.

5.2 Duties of the Independent Certification Engineer

- 5.2.1 The general functions of the Independent Certification Engineer shall be limited to the following:
- (a) Review and recommend approval of the Design;
 - (b) Verify that the construction, materials, workmanship and the quality of the Works are in compliance with this Agreement, the Performance Standards, the Design and any agreed amendment thereto;

- (c) Verify that the progress of the Works is in compliance with the Timetable;
- (d) Check to ensure that there is an effective quality assurance procedure for the Works;
- (e) Assist in preparing a list, if any, of outstanding Works, Minor Outstanding Items as well as defects and remedial works;
- (f) Assist in supervising the performance of any corrective and remedial works;
- (g) Verify and recommend any Variations and adjustment required under this Agreement;
- (h) Report on the progress of the Works and the related cash flow forecasts to ensure completion of the Works within the time and the costs budgets established in accordance with this Agreement;
- (i) Keep full and proper records of all meetings and discussions conducted by it;
- (j) Prepare reports for submission to the Concessionaire and the ROP to cover the issues of quality, time and cost;
- (k) Liaise with the technical advisor assigned by the Lenders for the Project;
- (l) Determine the amount of Incremental and Consequential Costs to be borne by the relevant party hereto, in the appropriate cases specified herein; and
- (m) Such other functions as provided as may be stipulated in the relevant consultancy contract between the Independent Certification Engineer on the one hand, and the ROP and the Concessionaire on the other.

5.2.2 The Independent Certification Engineer shall provide the ROP, the Concessionaire and the Lenders, (as the case may be), with information, data and documentation through submission of periodic reports prepared during the course of its service or specific reports prepared at the request of the ROP and the Concessionaire in relation to the Works.

5.2.3 The Independent Certification Engineer shall give due attention and regard to any observations made by the ROP, the Concessionaire (and the Lenders as the case may be) in relation to the Works and in respect of any item which they may require to be undertaken or remedied.

5.2.4 The details of the scope of services of the Independent Certification Engineer are set out in Annex "O" which shall be the basis for the preparation of the Independent Certification Engineer Agreement.

5.2.5 The instructions and conclusions of the Independent Certification Engineer shall conform to and be consistent with the policies, guidelines, activities and general mode of practice of any Competent Authority whose expertise or authority in matters related to inspection, testing, control or commissioning are provided by Applicable Law.

- 5.2.6 The Independent Certification Engineer shall provide the services set forth herein and in accordance with the relevant consultancy contract between the Independent Certification Engineer on the one hand, and ROP and the Concessionaire on the other.

SECTION 6 PREPARATION AND APPROVAL OF DESIGN

6.1 Approval of Drawing and Design

- 6.1.1 Immediately after the Commencement Date, the Concessionaire shall commence the preparation of the Drawing and the Design in accordance with the Timetable. The Concessionaire shall submit the Drawing and Design for the approval of the ROP to the Independent Certification Engineer on or before the twelfth (12th) calendar month from Commencement Date, with a copy thereof to be given to the DOTC Project Management Office.
- 6.1.2 The Concessionaire may submit a Design for the entire Project. In the alternative, it may utilize the "design-build" method of construction and submit a Design for every portion or phase of the Project. The Independent Certification Engineer shall evaluate the Design submitted by the Concessionaire in respect of compliance with Specifications and recommend approval thereof to DOTC.
- 6.1.3 The Independent Certification Engineer, in conjunction with the DOTC, shall inform the Concessionaire in writing of the approval, rejection, partial approval or partial rejection of the Drawing or the Design proposed by the Concessionaire, within sixty (60) Days from receipt of submittals. Should the Concessionaire not receive said written acceptance, rejection, partial acceptance or partial rejection within the period set forth, the ROP shall be deemed to have accepted the Drawing or the Design. The approved Drawings and Design shall, by reference, form an integral part of the Agreement. The approval by ROP of the Drawings and Design neither diminishes the responsibility of the Concessionaire for the integrity of its Drawings and Design nor transfers any part of such responsibility to the ROP.
- 6.1.4 If the Independent Certification Engineer, in conjunction with the DOTC, informs Concessionaire in writing of the objections to, or partial rejection of, the Drawing or the Design within the period provided in the preceding paragraph, the Concessionaire shall revise the same to address the objections and/or rejection thereof, and submit the revised Drawing or Design within thirty (30) days from receipt of the written advice.
- 6.1.5 Any resubmission shall be approved in accordance with Section 6.1.2, 6.1.3 and 6.1.4 hereof. When the ROP approves or is deemed to have approved the revision to the Design, the Concessionaire may proceed with the Works.

6.1.6 The ROP shall be liable for the Incremental and Consequential Costs of and Losses resulting from a deviation from the approved Drawing or Design if, as certified by the Independent Certification Engineer, such deviation has become necessary due to or is the result of any act or omission attributable to the ROP or persons under its control, or caused by Governmental Force Majeure or a Change of Circumstance in accordance with Section 24 since the approval of the Drawing or Design, in which case, the Concessionaire shall be entitled to an adjustment of the Timetable pursuant to Section 13.2. The Incremental and Consequential Costs and Losses arising under this Section shall be properly chargeable against ROP. The Concessionaire shall have the right, from time to time, to submit invoices to ROP, subject to proper and timely verification by the latter, ROP/CAAP undertakes that it shall include the same in the ROP/CAAP budget to be presented in the immediately succeeding budget year and commits to pay the same upon approval of the CAAP Board or upon approval of its yearly budget, whichever is earlier. Failure of ROP/CAAP to pay the said amount upon the approval of its Board or upon approval of its yearly budget, whichever is earlier, shall be considered as a default which entitles the Concessionaire to terminate this Agreement under Section 25 hereof. It is agreed that such amount shall earn interest only after ROP verification based on the Default Interest Rate until the same is fully paid.

6.1.7 The Concessionaire may immediately commence the Works on matters which have been accepted or deemed accepted in full, as well as partially accepted in writing by the ROP, through DOTC/CAAP, in accordance with Section 6.1.5.

6.2 Compliance with Statutes and Regulations

6.2.1 The Concessionaire shall conform in all respects with Applicable Laws governing the execution and completion of, and the remedying of any defects in the Drawing or the Design.

6.3 Additional Cost and/or Time

6.3.1 Except as otherwise stated hereinafter, the Concessionaire shall not be entitled to any extension of time nor to Incremental and Consequential Costs and Losses whatsoever in respect of any additional cost incurred on account of corrections to or revisions in the Design for reasons solely attributable to the Concessionaire.

6.3.2 The Concessionaire shall be entitled to an extension of the Timetable as provided for under Section 13.2 should it require additional time to redesign for reasons which are directly attributable to any changes in the Design as proposed or required by the ROP or persons under its control, or caused by Force Majeure or a Change of Circumstance in accordance with Section 24 since the approval of the Drawing or Design. Any Incremental and Consequential Costs and Losses in relation thereto shall be charged against the ROP. The Concessionaire shall have the right, from time to time, to submit invoices to ROP, subject to proper

and timely verification by the latter. ROP/CAAP undertakes that it shall include the same in the ROP/CAAP budget to be presented in the immediately succeeding budget year and commits to pay the same upon approval of the CAAP Board or upon approval of its yearly budget, whichever is earlier. Failure of ROP/CAAP to pay the said amount upon the approval of its Board or upon approval of its yearly budget, whichever is earlier, shall be considered as a default which entitles the Concessionaire to terminate this Agreement under Section 25 hereof. It is agreed that such amount shall earn interest only after ROP verification based on the Default Interest Rate until the same is fully paid.

SECTION 7 DRAWINGS AND DOCUMENTS

7.1 Custody and Supply of Drawings and Documents

- 7.1.1 The Concessionaire, at its expense, shall supply to the ROP and the Independent Certification Engineer four (4) copies of the Design (drawings and other documents) in print and electronic form as approved.
- 7.1.2 The Design shall remain the property of the Concessionaire during the Concession Period. Neither the ROP nor the Independent Certification Engineer shall permit a reproduction of the said Design, or the use thereof for any other purpose without the approval of the Concessionaire, other than for the implementation of the Project.

7.2 One Copy of Design to be Kept on Site

- 7.2.1 One (1) copy of the Design shall be kept on Site by the Concessionaire and shall at all reasonable times be available for use by the ROP and/or the Independent Certification Engineer, their representatives and by such persons authorized by the ROP in writing.

SECTION 8 CONCESSION PREMISES POSSESSION OF SITE/RIGHT OF WAY AND ACCESS THERETO

8.1 Site and Right of Way

- 8.1.1 The ROP represents and warrants that it will have Clean Possession, whether or not by virtue of full ownership through sale or purchase agreements, of all the Land that constitutes the Site and all Rights of Way at the time of its delivery to the Concessionaire in accordance with the Right of Way and Site Delivery Schedule, subject to agreement of the Parties. For the avoidance of doubt, all lands acquired by ROP for this Project through sale or purchase agreements shall be in the name of ROP.
- 8.1.2 The acquisition of the Site shall be the exclusive responsibility of the ROP. However, the Concessionaire shall advance the cost of the acquisition within thirty (30) days from Financial Closing up

to the amount specified in Section 8.8.1 hereof. The cost for the acquisition shall form part of the Project Cost. The ROP shall coordinate with the Concessionaire on the terms for the acquisition with a view to achieving the most favorable terms and optimum savings for the Project. The ROP guarantees the Concessionaire's continuous, peaceful, exclusive and uninterrupted use and Clean Possession of the Site during the Construction Period and the Concession Period. The ROP shall defend the Concessionaire's rights thereto against any and all third party claims. The foregoing guarantee shall extend to the Lenders and the Qualified Substitute Entity in the event the latter take over the Project pursuant to this Agreement.

8.1.3 Subject to the funds for the acquisition of the Site to be advanced by the Concessionaire, the ROP shall perform its obligations under this Section without any payment or other charge becoming payable in respect thereof at any time by the Concessionaire to the ROP.

8.1.4 If the ROP fails to deliver Clean Possession of the Site and/or any Right of Way in accordance with the Right of Way and Site Delivery Schedule, to be agreed upon by the Parties, and fails to maintain such Clean Possession thereof during the relevant period, the Concessionaire shall not be in default, the Works Performance Security shall not be callable, the Timetable shall be correspondingly extended in accordance with Section 13.2, which in no case shall be less than the period of delay, and the ROP shall bear the Incremental and Consequential Costs and Losses resulting therefrom. The Incremental and Consequential Costs and Losses arising under this Section shall be properly chargeable to ROP. The Concessionaire shall have the right, from time to time, to submit invoices to ROP subject to proper and timely verification by the latter. ROP/CAAP undertakes that it shall include the same in the ROP/CAAP budget to be presented in the immediately succeeding budget year and commits to pay the same upon approval of the CAAP Board or upon approval of its yearly budget, whichever is earlier. Failure of ROP/CAAP to pay the said amount upon the approval of its Board or upon approval of its yearly budget, whichever is earlier, shall be considered as a default which entitles the Concessionaire to terminate this Agreement under Section 25 hereof. It is agreed that such amount shall earn interest only after ROP verification based on the Default Interest Rate until the same is fully paid.




8.1.5 The Concessionaire shall in all cases endeavor to rearrange the Timetable with a view to minimize or avoid increased costs due to a delay in the delivery of Clean Possession of the Site. If (i) delivery of Clean Possession of the Site is delayed by one hundred eighty (180) Days or more, or (ii) if continuous clean possession of the Site is interrupted for a continuous period of one hundred eighty (180) Days or more, or (iii) if continuous clean possession is interrupted for a cumulative period of one hundred eighty (180) Days or more in any twenty-four (24) month period, then Concessionaire may terminate this Agreement at any time thereafter by thirty (30) Days written notice to the ROP, and

Section 25 shall apply. The Incremental and Consequential Costs and Losses arising under this Section shall be properly chargeable to ROP. The Concessionaire shall have the right, from time to time, to submit invoices to ROP subject to proper and timely verification by the latter. ROP/CAAP undertakes that it shall include the same in the ROP/CAAP budget to be presented in the immediately succeeding budget year and commits to pay the same upon approval of the CAAP Board or upon approval of its yearly budget, whichever is earlier. Failure of ROP/CAAP to pay the said amount upon the approval of its Board or upon approval of its yearly budget, whichever is earlier, shall be considered as a default which entitles the Concessionaire to terminate this Agreement under Section 25 hereof. It is agreed that such amount shall earn interest only after ROP verification based on the Default Interest Rate until the same is fully paid.

8.2 Required Consents

- 8.2.1 The Concessionaire shall timely and promptly obtain the Consents from Competent Authority for the removal of buildings, structures and other impediments at the Site.

8.3 Reservations for Aviation Purposes

- 8.3.1 The ROP expressly reserves any right it may have on or over the Site, air space, and easements and rights-of-way for the installation of navigational aids and the maintenance or modification of utility lines and access roads; provided that the exercise by the ROP of these reserved rights will be without expense to the Concessionaire, will not hamper the Concessionaire's use of the Caticlan Airport, and/or will not delay the Concessionaire in the exercise of its rights or the performance of its obligations hereunder. The ROP shall bear the expense of any replacement, or repair of the Concessionaire's property that may be required due to or arising out of the ROP's exercise of these reserved rights. The Incremental and Consequential Costs and Losses arising under this Section suffered by the Concessionaire shall be properly chargeable to ROP. The Concessionaire shall have the right, from time to time, to submit invoices to ROP, subject to proper and timely verification by the latter. ROP/CAAP undertakes that it shall include the same in the ROP/CAAP budget to be presented in the immediately succeeding budget year and commits to pay the same upon approval of the CAAP Board or upon approval of its yearly budget, whichever is earlier. Failure of ROP/CAAP to pay the said amount upon the approval of its Board or upon approval of its yearly budget, whichever is earlier, shall be considered as a default which entitles the Concessionaire to terminate this Agreement under Section 25 hereof. It is agreed that such amount shall earn interest only after ROP verification based on the Default Interest Rate until the same is fully paid.
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8.4 Items of Archeological Interest

- 8.4.1 The Concessionaire hereby acknowledges that any fossils, coins, articles of value or antiquity or other similar remains are and shall remain the property of the ROP. In the event of the discovery of any such items the Concessionaire shall immediately inform the ROP and the Independent Certification Engineer thereof; and allow the ROP, at its cost and under its responsibility, to enter the Site and remove the item.
- 8.4.2 The ROP further reserves its rights to all items and materials of archeological interest which may be found in the Site. If in the process of pursuing the Works, the Concessionaire should discover any item or material of archeological interest, the Concessionaire shall forthwith serve written notice of such fact to DOTC, and the latter shall make the necessary arrangement for the retrieval and disposition thereof; provided, however, that if Works are delayed by reason thereof, the Concessionaire shall not be in default, the Performance Security shall not be callable, and the Timetable shall be extended by an appropriate period not being less than the period of the delay; provided further that if the delay lasts for one hundred eighty (180) Days or more from the stoppage of the Works, Concessionaire may terminate this Agreement at any time thereafter by thirty (30) Days written notice to the ROP, and Section 25 shall apply. The Incremental and Consequential Costs and Losses arising under this Section suffered by the Concessionaire shall be properly chargeable to ROP. The Concessionaire shall have the right, from time to time, to submit invoices to ROP, subject to proper and timely verification by the latter. ROP/CAAP undertakes that it shall include the same in the ROP/CAAP budget to be presented in the immediately succeeding budget year and commits to pay the same upon approval of the CAAP Board or upon approval of its yearly budget, whichever is earlier. Failure of ROP/CAAP to pay the said amount upon the approval of its Board or upon approval of its yearly budget, whichever is earlier, shall be considered as a default which entitles the Concessionaire to terminate this Agreement under Section 25 hereof. It is agreed that such amount shall earn interest only after ROP verification based on the Default Interest Rate until the same is fully paid.
- 8.4.3 The foregoing notwithstanding, the Concessionaire shall endeavor to rearrange the Timetable to minimize or avoid increased costs.

8.5 Hazardous Substances

- 8.5.1 In the event of discovery of Hazardous Substances/Materials in the Site during the Construction Period and/or the Concession Period, the Concessionaire shall promptly serve written notice of such fact to the ROP and the latter shall, within fifteen (15) Days from receipt of such notice, make the necessary arrangement for the retrieval and proper disposition thereof; provided, however, that if Works are delayed or the operation of the Terminal is interrupted by reason of such discovery, the Concessionaire shall not be in default, the Works Performance Security or, as the case may be, the Operation and Maintenance Performance Security

shall not be callable, the Timetable or the Concession Period, as the case may be, shall be extended by an appropriate period not being less than the period of the delay; provided, further that if the delay or interruption lasts for one hundred eighty (180) Days or more from the stoppage of Works or interruption of operation of the Terminal, the Concessionaire may terminate this Agreement at any time thereafter in accordance with Section 25 of this Agreement. The Incremental and Consequential Costs and Losses arising under this Section suffered by the Concessionaire shall be properly chargeable to the ROP. The Concessionaire shall have the right, from time to time, to submit invoices to ROP, subject to proper and timely verification by the latter. ROP/CAAP undertakes that it shall include the same in the ROP/CAAP budget to be presented in the immediately succeeding budget year and commits to pay the same upon approval of the CAAP Board or upon approval of its yearly budget, whichever is earlier. Failure of ROP/CAAP to pay the said amount upon the approval of its Board or upon approval of its yearly budget, whichever is earlier, shall be considered as a default which entitles the Concessionaire to terminate this Agreement under Section 25 hereof. It is agreed that such amount shall earn interest only after ROP verification based on the Default Interest Rate until the same is fully paid.

8.6 Unforeseen Surface and Sub-Surface Conditions

- 8.6.1 If at any time the Concessionaire should find or uncover structures and/or waste materials (whether surface or subterranean) which have not been removed and/or properly disposed after delivery of Site and which should have been removed and disposed to make the Site suitable for the commencement of Works or for the continuing implementation of the Project, then the Concessionaire may, if it has the competence and technical skill to do so, undertake the clearing, removal, demolition and/or disposition of such structures and/or waste materials, the reasonable cost of which shall be recoverable from the ROP by way of Incremental and Consequential Costs and Losses; provided, that if the clearing, removal, demolition or disposal of such structures and/or waste materials or any other delay in delivering or providing on a continuing basis Clean Possession of the Site, shall cause a delay in the prosecution by the Concessionaire of the Works or the operation of the Terminal, then the Concessionaire shall not be in default, the Works Performance Security or, as the case may be, the Operation and Maintenance Performance Security shall not be callable, the Timetable or the Concession Period, as the case may be, shall be extended by an appropriate period not being less than the period of the delay or interruption. If the Concessionaire does not possess the competence or technical skill to undertake the clearing, removal, demolition or disposition of the structures or waste materials, then it shall be the ROP's obligation to clear, remove, demolish and/or dispose the same; provided, further that if the delay or interruption lasts for one hundred eighty (180) Days or more from the stoppage of Works or interruption of operation of the Terminal, the Concessionaire may terminate this Agreement in accordance with Section 25 of this Agreement. The Incremental and Consequential Costs and

Losses arising under this Section suffered by the Concessionaire shall be properly chargeable to ROP. The Concessionaire shall have the right, from time to time, to submit invoices to the ROP subject to proper and timely verification by the latter. ROP/CAAP undertakes that it shall include the same in the ROP/CAAP budget to be presented in the immediately succeeding budget year and commits to pay the same upon approval of the CAAP Board or upon approval of its yearly budget, whichever is earlier. Failure of ROP/CAAP to pay the said amount upon the approval of its Board or upon approval of its yearly budget, whichever is earlier, shall be considered as a default which entitles the Concessionaire to terminate this Agreement under Section 25 hereof. It is agreed that such amount shall earn interest only after ROP verification based on the Default Interest Rate until the same is fully paid. Provided, however, that the soil conditions in the Lupo-Lupo Lake and the hill at the proposed runway shall not be considered as unforeseen surface or sub-surface conditions contemplated under this Section.

8.7 Partial Delivery

- 8.7.1 Notwithstanding Section 8.1, and in order to accelerate the progress of the Works to mitigate a delay, the Concessionaire may, but is not obligated to, accept partial delivery of the Site; provided however, that the ROP shall not by reason of the Concessionaire's acceptance of partial Site delivery, be deemed released from its obligation to deliver Clean Possession of the Site, and the Concessionaire retains all rights available to it under the Agreement to enforce such obligation against the ROP.

8.8 Right of Way Fund

- 8.8.1 The cost of the undertakings of the ROP as provided in Section 8.1 shall be included in the Project Cost, up to the amount of Php/466,000,000.00 (hereinafter referred to as the "ROW Fund"). In case additional amounts are required beyond the ROW Fund, the parties shall use their best efforts to determine the respective liabilities of the parties pertaining to the additional amounts.

For the avoidance of doubt, notwithstanding that the Concessionaire advances the ROW Fund, the primary responsibility for the undertakings in Section 8.1 shall lie with the ROP. It is understood that the ROW Fund shall cover the undertakings in Section 8.1 during the Construction Period only.

SECTION 9 CONSTRUCTION WORKS CONCESSIONAIRE'S GENERAL RESPONSIBILITIES

9.1 Construction, in General

- 9.1.1 Any Site access, improvement and construction in connection with the Project, the Terminal and its adjunct facilities shall be undertaken in such a manner as to avoid interference with the operations of the existing Caticlan Airport and minimize inconvenience to the public.

9.2 Adequacy, Stability and Safety

- 9.2.1 The Concessionaire shall ensure the adequacy, stability and safety of all Site operations, methods of construction and the Works. The Works shall be performed in accordance with the Specifications and the terms and conditions of the Agreement. In this regard, all costs resulting from the failure to ensure the adequacy, stability and safety of all Site operations transferred or turned over to the Concessionaire, methods of construction and the Works shall be the responsibility of the Concessionaire and shall not form part of the Project Cost.

9.3 Standard in Carrying Out Responsibilities

- 9.3.1 The Concessionaire shall be responsible for the design, construction, supply, completion, testing and commissioning of the Project and the provision of the necessary technology. The Concessionaire shall provide, or shall cause to be provided, adequate supervision, labor materials, plant, equipment and all other things, whether of a permanent or temporary nature, required for the design, construction, completion, testing, commissioning and remedying of any defects.
- 9.3.2 In performing its obligations hereunder, the Concessionaire shall exercise reasonable judgment and shall act in the manner at par with international standard in the construction of an airport. The Concessionaire shall, with due care and diligence, design, execute and complete the Works and remedy any defects therein in accordance with the provision of the Agreement.
- 9.3.3 Failure of the Concessionaire to carry out the responsibilities under this Section shall be considered as a default which entitles the ROP to terminate this Agreement under Section 25 hereof.

9.4 Importation and Transport of Equipment and Compliance with Regulations

- 9.4.1 The Concessionaire shall be responsible for the importation and transport of equipment to the Site, including the payment of all applicable custom duties, the procurement of the Consents as specified but not limited to those listed in Annex "P", and the recruitment of local labor in accordance with Applicable Law.
- 9.4.2 The ROP hereby undertakes to assist the Concessionaire in obtaining the Consents and exemptions therefrom, if applicable.
- 9.4.3 Failure of the Concessionaire to carry out the responsibilities under this Section shall be considered as a default which entitles the ROP to terminate this Agreement under Section 25 hereof.

9.5 Sub-contracting

- 9.5.1 The Concessionaire may enter into such contractual arrangements (without any publicity or bid process) with the Contractor as the Concessionaire deems necessary to ensure the

timely and proper performance of the Works provided that the engagement of a third party shall not release the Concessionaire from any of its obligations hereunder. The Concessionaire may require the Contractor to use its reasonable endeavors, as far as practicable, to subcontract to Philippine contractors such portion or portions of the Works, subject always to reasonable requirements of any relevant export credit agency. No subcontracts shall be awarded to sub-contractors who are or have been blacklisted by the ROP.

- 9.5.2 Failure of the Concessionaire to carry out the responsibilities under this Section shall be considered as a default which entitles the ROP to terminate this Agreement under Section 25 hereof.

9.6 Commencement

- 9.6.1 The ROP shall issue a Notice to Proceed within seven (7) days from the date of the effectivity of this Agreement.

- 9.6.2 Upon receipt of such Notice to Proceed, the Concessionaire shall commence the Works not later than Fifteen (15) days from receipt thereof, provided that all the following conditions have been satisfied or agreed to be waived by the parties:

- (i) On the scheduled commencement date, that no Competent Authority shall have enacted any law or regulation which would prohibit, materially restrict, substantially increase the cost, or materially delay the implementation of the Project;
- (ii) Issuance of the amended Environment Compliance Certificate in accordance with Section 10 of this Agreement, if necessary;
- (iii) Subject to the Concessionaire's fulfillment and compliance with requirements, issuance by Competent Authority of the Consents, permits and licenses necessary to commence construction Works; and
- (iv) Delivery of Clean Possession of the Site in accordance with the Agreement.

9.7 Construction Period

- 9.7.1 Subject to extensions of time allowed in the Agreement, the Project shall be completed within a period of seven (7) years from the Commencement Date in accordance with the Timetable.

9.8 Satisfaction of Conditions Precedent

- 9.8.1 The party obliged to satisfy a condition precedent specified in Section 9.6.2 shall endeavor to timely and promptly achieve satisfaction of that condition and shall keep the other party informed of the progress regarding the same.

- 9.8.2 The ROP and the Concessionaire (and the Lenders when appropriate) may agree at any time to waive a condition precedent or to agree on a later date within which to satisfy such condition precedent.

- 9.8.3 If a party charged with the fulfillment of a condition precedent fails to do so on or before the last Day of Financial Closing and no waiver has been issued by the party who has the right to demand the fulfillment of such condition precedent, the other party may, by written notice, terminate the Agreement in accordance with Section 25. For the avoidance of doubt, it is agreed that the non-occurrence of Financial Closing shall be a ground for a no-fault termination and that either party shall have the right to terminate this Agreement in the event of non-occurrence of Financial Closing.

SECTION 10 PROTECTION OF THE ENVIRONMENT

10.1 ECC Requirement

- 10.1.1 The ROP confirms that an Environmental Compliance Certificate ("ECC") for the Project had already been issued by Department of Environmental and Natural Resources ("DENR"). However, the ROP had required the Concessionaire to undertake the extension of the runway to the Sibuyan Sea by way of reclamation, instead of piling as mandated in the issued ECC. In view thereof, the Concessionaire shall apply for an amendment to the issued ECC. The application for an amendment to the ECC shall be jointly signed by the Concessionaire and the ROP. The ROP will assist and cooperate with the Concessionaire to ensure that the issuance of an amended ECC, as provided herein and in accordance with the Timetable, is fulfilled. The Concessionaire and the ROP agree that the costs of obtaining the amended ECC shall form part of the Project Cost.
- 10.1.2 However, if the Project is delayed or adversely affected by the non-issuance of the amended ECC, as provided in Section 10.1.1, for any reason despite the prompt and proper filing and submittal of Concessionaire, then the Concessionaire shall not be in default, the Performance Security shall not be callable, and the Timetable and/or the Concession Period shall be extended by an appropriate period not being less than the period of the delay; provided, further that if the amended ECC is not obtained by Concessionaire within one hundred eighty (180) Days from submission of the duly completed application, either party may terminate this Agreement in accordance with Section 25 and which termination shall be deemed as a No-Fault Termination.

SECTION 11 VARIATIONS

11.1 Right to Vary of ROP

- 11.1.1 Variations from the Design may be initiated by the ROP at any time during the Construction Period, either by instructing the Concessionaire to do a Variation or by requesting the Concessionaire to submit a proposal therefor; provided that a

Variation shall not substantially change or affect the design Specifications and feasibility of the Project.

- 11.1.2 If the ROP requests for a Variation, the Incremental and Consequential Costs and Losses arising therefrom shall be properly chargeable to ROP. It is understood that such Variation shall not be undertaken until funds are available to pay for such Variation.

11.2 Right to Vary of Concessionaire

- 11.2.1 The Concessionaire may, at any time, propose a Variation to the ROP with a copy to the Independent Certification Engineer, if the Variation: (i) will reduce the cost of construction, maintenance or operation, (ii) improve the efficiency or value of the Project when completed, or (iii) otherwise be of benefit to the Project. Any such proposal shall be prepared at the cost of the Concessionaire.

11.3 Variation Procedure

- 11.3.1 If the ROP instructs a Variation or requests the Concessionaire to submit a proposal for a Variation, or if the Concessionaire submits a proposed Variation, the Concessionaire shall deliver to the ROP and the Independent Certification Engineer, as soon as practicable, the following:

- (i) a description of the proposed design and/or work to be performed and a program for its execution,
- (ii) the Concessionaire's proposal for any necessary modifications to the Timetable and,
- (iii) the Concessionaire's estimate of the Incremental and Consequential Costs and Losses, if any, adjustment to the Project Cost, if any, target completion date or such period as may be agreed upon by the parties and modifications to the Agreement; provided that the Concessionaire's estimate of the Incremental and Consequential Costs and Losses may be reviewed under the rules of dispute resolution in Section 27.

- 11.3.2 The ROP, in conjunction with the Independent Certification Engineer, shall inform the Concessionaire in writing of its acceptance, objection, partial acceptance or partial objection to the Variation(s) within thirty (30) Days from receipt of the request of the Concessionaire for approval of the proposed Variation(s). Should the evaluation of the proposed Variation(s) require more than thirty (30) Days due to the volume of documents involved or the complexity of the Variation(s), the ROP shall request for additional time to act on the request which in no case shall be more than fifteen (15) Days. Should there be no approval or objection within such time, the Variation shall be deemed accepted.

SECTION 12
COMMISSIONING AND TESTING

12.1 Inspection and Testing

- 12.1.1 To ensure that the Project complies with the Specifications and that the airport and various navigational equipment and facilities will operate in accordance with the Performance Standards, the Concessionaire shall undertake the Commissioning Tests, in accordance with the procedures, standards, protective settings and test programs as specified in Annex "D".
- 12.1.2 The Concessionaire shall, in writing, inform the ROP and the Independent Certification Engineer of any major inspections as set forth in the Timetable at least ten (10) Days prior to the intended inspection date. Taking into consideration the Timetable, the ROP shall exert best efforts not to postpone said inspections. However, should the ROP request for a postponement, ROP shall inform the Concessionaire thereof at least two (2) Days prior to the stated inspection date. The Concessionaire and the ROP shall agree on the re-scheduled inspection date which shall be held at the earliest possible time. In no case shall the period of postponement exceed fifteen (15) Days, unless a longer period of time is agreed upon by the parties. Should the delay caused by such postponement result in an adjustment to the Timetable, the same shall be adjusted accordingly pursuant to Section 13.2 of this Agreement, provided this shall not be construed as a breach by the Concessionaire of any of its obligations in this Agreement. In addition, the ROP shall bear the Incremental and Consequential Costs and Losses resulting from the delay, if any. The Concessionaire shall have the right, from time to time, to submit invoices to ROP, subject to proper and timely verification by the latter. ROP/CAAP undertakes that it shall include the same in the ROP/CAAP budget to be presented in the immediately succeeding budget year and commits to pay the same upon approval of the CAAP Board or upon approval of its yearly budget, whichever is earlier. Failure of ROP/CAAP to pay the said amount upon the approval of its Board or upon approval of its yearly budget, whichever is earlier, shall be considered as a default which entitles the Concessionaire to terminate this Agreement under Section 25 hereof. It is agreed that such amount shall earn interest only after ROP verification based on the Default Interest Rate until the same is fully paid.
- 12.1.3 If the Independent Certification Engineer finds that the Works subject of inspection are in compliance with the Design and approved Variations, if any, it shall certify such fact to the ROP and the Concessionaire. The ROP shall issue a Certificate of Partial Completion for such Work and serve the same to the Concessionaire within fifteen (15) Days from receipt of the written report of the Independent Certification Engineer. If the Independent Certification Engineer finds the Works wholly or partly unacceptable, it shall likewise certify such fact to the ROP and the Concessionaire. The ROP shall within the same period issue a written certificate of total or partial disapproval of the Works inspected, citing the findings of the Independent

Certification Engineer. Should the Concessionaire not receive written acceptance, objection, partial acceptance or partial objection of the Works inspected within the period set forth, the ROP shall be deemed to have accepted the Works subject of inspection and, as such, a Certificate of Partial Completion for such Works shall be deemed to have been issued, and the Concessionaire may proceed with further Works. All inspected Works which have been accepted or deemed accepted by the ROP in accordance with the foregoing procedure shall be taken into account in the periodic partial releases of the Performance Security pursuant to Section 20.3.

- 12.1.4 If based on the findings of the Independent Certification Engineer, the ROP shall inform the Concessionaire in writing of its objection or partial objection to any portion of the Works subject of the inspection on account of the failure of the Works to comply with the Specifications and approved Variations, if any, within the period stated in 12.1.3 for the issuance of the Certificate of Completion, the Concessionaire shall immediately undertake remedial Works to address the objection taking into account the ROP's recommendations. The Concessionaire shall undertake remedial Works within fifteen (15) Days from receipt of the written certificate of total or partial disapproval of the Works inspected or such other period as may be agreed upon by the Parties to address the objection taking into account the ROP's recommendations, at no additional cost to the Project.

12.2 Additional Testing

- 12.2.1 The ROP may require tests in addition to the tests provided for in Annex "D" only if the Independent Certification Engineer certifies in writing that such particular test is necessary.
- 12.2.2 The Concessionaire shall agree with the Independent Certification Engineer on the time and place for additional testing of any equipment, material or Works to be carried out by the Independent Certification Engineer. The Independent Certification Engineer shall give the Concessionaire not less than twenty four (24) hours notice of its intention to carry out the tests. If the Independent Certification Engineer fails to attend on the date agreed upon, the Concessionaire may proceed with the tests. However, any Incremental and Consequential Cost and Losses shall be for the account of the Independent Certification Engineer. Such condition to pay the Incremental and Consequential Costs and Losses shall be made part of the Independent Certification Engineer Agreement.

12.3 Cost of Tests

- 12.3.1 The cost of conducting any test shall be borne by the Concessionaire if such test:
- (i) is provided in Annex D, including additional tests as may be certified by the Independent Certification Engineer as necessary; or

- (ii) demonstrates that any of the equipment, material or Work is not in accordance with the Specifications.

SECTION 13 COMPLETION

13.1 Time for Completion

The Works shall be completed in accordance with the Timetable as the same may, from time to time, be extended in accordance with this Agreement.

13.2 Extension of Time of Completion

13.2.1 The Concessionaire may request an adjustment of the Timetable in the event of:

- (a) an approved variation,
- (b) any delay caused by a Competent Authority,
- (c) any delay caused by the Utility Providers except when such delay was due to the Concessionaire's fault or negligence,
- (d) any delay caused by Force Majeure except to the extent that the fault or negligence of the Concessionaire contributed thereto,
- (e) any delay occasioned by a Change in Law or a Change in Circumstance,
- (f) improper, negligent, or incorrect acts or omissions of the Independent Certification Engineer;
- (g) acts or omissions of third persons who are not under the control of the Concessionaire,
- (h) delay caused by any act or omission attributable to the ROP, acting through DOTC and/or CAAP;
- (i) delay caused by failure of ROP to deliver Clean Possession of the Site and/or any Right of Way in accordance with the Right of Way and Site Delivery Schedule agreed upon by the Parties;
- (j) delay caused by the retrieval and disposition of any item or material of archeological interest discovered at the Site;
- (k) delay caused by the retrieval and disposition of any Hazardous Substances/ Materials in the Site;
- (l) delay caused by the removal and disposal of structures and/or waste materials (whether surface and subterranean) at the Site;
- (m) delay caused by a request from ROP for the rescheduling of major inspections as set forth in the Timetable; or
- (n) delay in the issuance of the required ECC which is not attributable to the Concessionaire.

13.2.2 The Independent Certification Engineer after consultation with the ROP and the Concessionaire shall recommend the adjustment

of the Timetable. The same shall be effective immediately upon approval by the ROP.

- 13.2.3 Any dispute on the extension of time for completion recommended by the Independent Certification Engineer shall be subject to dispute resolution pursuant to Section 27.

13.3 Certificate of Completion

- 13.3.1 The Concessionaire shall inform the ROP and the Independent Certification Engineer of the proposed final inspection of the Works at least fifteen (15) Days prior to the intended date of inspection.

- 13.3.2 If, on the final inspection of the Works, the Independent Certification Engineer finds that the Works in all material respects comply with the Design and approved Variations, if any, then it shall within five (5) Days from the final inspection, certify such fact to the Concessionaire and the ROP. The ROP shall issue and deliver to the Concessionaire, within thirty (30) Days from receipt of the certificate of the Independent Certification Engineer, a Certificate of Final Completion and release to the Concessionaire its Works Performance Security. If the ROP fails to issue the Certificate of Final Completion within the period specified above, then the Certificate of Final Completion shall be deemed issued by the ROP and received by the Concessionaire upon the lapse of the period and the Concessionaire shall be entitled to the release of the Performance Security.

In the event that the Independent Certification Engineer identified and submitted a list of Minor Outstanding Items, the ROP shall only issue a Certificate of Partial Completion and withhold the Works Performance Security until the Concessionaire has rectified the Minor Outstanding Items.

- 13.3.3 Subsequent inspections (i.e., after completion of the rectification referred to in Section 13.3.2 above) shall be done in accordance with the procedure set forth above.

SECTION 14 FINANCING AGREEMENTS

14.1 Financing

- 14.1.1 In connection with the Credit Agreement, the ROP agrees that:

- (i) The Loans under the Credit Agreement will be denominated in foreign currency and/or Philippine Peso;
- (ii) Subject to existing laws, the ROP will enter into a Direct Agreement with the Concessionaire and the Lenders in connection with certain aspects of the Credit Agreement and a Security Deed, in such form as may be reasonably acceptable to both the ROP and the Lenders, with regard, *inter alia*, to the following parameters:

- a. that Concessionaire may assign its rights under this Agreement to the Lenders as security for its obligations to them and that the ROP shall consent to, and acknowledge, such assignment and acknowledge, where relevant, any other security interests which may be created in favor of the Lenders pursuant to this Agreement and the financing agreements entered into by the Concessionaire and the Lenders;
 - b. that ROP will not exercise any right it may have to terminate this Agreement without giving the Lenders at least ninety (90) Days written notice of its intention to do so after the expiration of all notice and cure periods available to the Concessionaire, and allowing the Lenders an opportunity within a further ninety (90) Days to cure any default;
 - c. that the Lenders or their nominee may, at any time on giving written notice to the ROP, withdraw from any undertaking they may have given to continue to perform the obligations of the Concessionaire under this Agreement in which event ROP's right to terminate this Agreement shall revive in accordance with sub-clause (b) above;
 - d. that nothing contained in this Agreement or the Direct Agreement shall preclude the Lenders from canceling their commitments or accelerating the Loans owed to them or exercising any other rights they, or any Lenders' agent may have, in accordance with the security documents and the Direct Agreement, including without limitation exercising any security interests at any time at which any Loans are outstanding;
- (iii) If required by the Lenders for the purpose of financing, the ROP acknowledges that the Concessionaire and the ROP shall execute a Security Deed which may include *inter alia* the assignment of rights and obligations under the Agreement and rights to the Project.
- (iv) The ROP, the Concessionaire, and the Lenders shall agree on the conditions regarding the applications of insurance proceeds in accordance with the provisions of Section 18.
- (v) Subject to existing laws, if required by the Lenders for the purpose of financing, the CAAP or other Competent Authority, after discussions between the parties, shall issue such necessary commitment letters as long as the terms thereof are consistent with the provisions of this Agreement.

14.1.2 The Concessionaire shall use all reasonable efforts to negotiate the provisions of the Credit Agreement on terms and conditions that are reflective of those prevailing in the international capital markets.

SECTION 15
OPERATION AND MAINTENANCE OF THE SYSTEM

15.1 Operation and Maintenance of the Caticlan Airport

15.1.1 The Concessionaire shall have the right to designate a Facility Operator to operate and maintain the Caticlan Airport, without need of DOTC approval. However, the Concessionaire shall remain to be solely and primarily responsible for all the obligations and liabilities of the Facility Operator. The Concessionaire shall notify DOTC on the designation of the Facility Operator or any change thereof.

15.1.2 The Concessionaire shall directly or through a Facility Operator, operate and maintain the Caticlan Airport in all material respects in accordance with the parameters set in the Performance Standards to be prepared by the Concessionaire with the assistance of ROP and approved by the Competent Authority. The operations and management arrangement between Concessionaire and Facility Operator shall be reduced into writing and upon execution, a copy shall be submitted to the ROP. In the event Concessionaire should want to change the Facility Operator or should the latter resign or otherwise be unable to discharge its functions, Concessionaire shall designate a new Facility Operator with qualifications equivalent or better than that of the Facility Operator.

15.2 Standards of Operation and Maintenance

15.2.1 Notwithstanding the designation of a Facility Operator, the Concessionaire shall have full responsibility for all aspects of the Operation and Maintenance of the Caticlan Airport and shall collect, for its own account, the Regulated Fees and Other Fees generated from the Caticlan Airport and from the End-user.

15.2.2 The Concessionaire and the Facility Operator, shall, in consultation with the ROP, prepare an Operations and Maintenance Manual pursuant to the Performance Specifications. The Operations and Maintenance Manual shall take into account, among other things, the internationally accepted standards and practices in operating an international airport system comparable to the Project. All manuals/procedures shall be submitted by the Concessionaire not later than sixty (60) Days prior to the In-Service Date. The ROP shall approve the Operations and Maintenance Manual within thirty (30) Days from receipt thereof if the same complies with the minimum requirements referred to in the Operating and Maintenance Specifications. Otherwise, the ROP shall serve written notice to the Concessionaire and the Facility Operator of its objections, specifying its exceptions to the Operations and Maintenance Manual. The Concessionaire and the Facility Operator shall rectify the objections within a period of fifteen (15) Days or such other period of time as may be agreed upon by the Parties and shall re-submit the same to the ROP until such time that the same have been rectified to the satisfaction of the ROP. If the ROP fails to approve the Operations Manual or

the changes thereto resulting from the ROP's exceptions within the prescribed periods, the same shall be deemed approved.

15.3 Enforcement of Operation and Maintenance Standards

- 15.3.1 To guarantee the faithful performance by the Concessionaire/Facility Operator of its obligations in respect to the Operation and Maintenance of the Caticlan Airport, the Concessionaire shall post in favor of the ROP not later than thirty (30) Days from In-Service Date an Operations and Maintenance Performance Security in the form of cash, manager's check, cashier's check, bank draft or guarantee confirmed by a local bank (in case it is issued by a foreign bank), letter of credit issued by a reputable bank, surety bond issued by the Government Service Insurance System, or a combination of any of the foregoing, in the amount of Twenty Five Million Pesos (P25,000,000.00), which must be valid for the entire Concession Period.
- 15.3.2 The form of the Operation and Maintenance Performance Security shall be agreed to by the ROP and the Concessionaire.
- 15.3.3 The Concessionaire must ensure compliance with international standards by securing an Aerodome Rating Certificate from the Competent Authority. The Operations and Maintenance Performance Security shall be forfeited in favor of the ROP in the event that the annual Aerodome Rating Certificate is not obtained for failure of the Concessionaire to comply with its obligations to operate and maintain the Caticlan Airport in accordance with this Agreement.
- 15.3.4 The ROP agrees to indemnify and hold the Concessionaire, and its officers, directors, employees, representatives and agents harmless from any liabilities, obligations, losses and damages of whatsoever kind or nature, which may be imposed on or asserted against the Concessionaire by reason of ROP's fault in any way relating to, or arising out of the operation of the Air Traffic Services; provided that the Concessionaire shall not be indemnified for losses or damages caused by the gross negligence or willful misconduct of its officers, directors, employees, representatives and agents.

15.4 Safety and Security

- 15.4.1 The Facility Operator shall at all times ensure a safe and secure environment within the Caticlan Airport.

15.5 Maintenance and Repairs

- 15.5.1 The Concessionaire shall maintain and repair, as part of its operating cost, all elements of the Caticlan Airport.
- 15.5.2 The Concessionaire shall, as part of the operating cost, keep an adequate inventory of supplies and spare parts until the Transfer Date and shall ensure that during such period, the Caticlan

Airport is in good condition and operating under the set operating parameters.

15.5.3 The Facility Operator shall at all times comply with the Operating and Maintenance Standards with respect to the cleanliness and sanitation requirements of the Caticlan Airport.

15.5.4 Except when the damage or loss is directly attributable to the ROP, the Concessionaire shall be obliged to make repairs, alterations, additions or betterments to the Caticlan Airport, or any property or facilities therein during the Concession Period. However, should the Concessionaire fail to make any repairs which it is liable to perform, or fail to commence work thereon or continue said works diligently after a reasonable period of time, the ROP shall serve written notice to the Concessionaire of its failure to make the repairs. If the Concessionaire fails to commence repairs expeditiously and to complete the same within a reasonable time determined by the Independent Certification Engineer, (taking into account the nature of the repair work required) the ROP, through DOTC/CAAP, shall have the option to undertake the repairs by forfeiting the Operations and Maintenance and Performance Security.

15.6 **Competent Personnel Complement and Staff**

15.6.1 The Concessionaire and/or the Facility Operator shall hire, employ and maintain in its service only such personnel and staff as would possess the competence, skill, experience and technical know-how necessary to enable it to discharge with due diligence its functions to meet the Operating and Maintenance Standards.

15.7 **Administrative and Operational Functions.**

15.7.1 The Concessionaire and/or Facility Operator shall have the right to promulgate rules and regulations which are consistent with Applicable Laws to ensure the safety, convenience and comfort of the users of the Caticlan Airport, to prevent and/or minimize loss or damage to the Caticlan Airport, and for such other purposes as any operator or manager of property of similar kind may be reasonably expected to promulgate. Copies of said rules and regulations shall be furnished to all concerned agencies of the ROP at least fifteen (15) Days prior to their effectivity, but in no case later than fifteen (15) Days after their promulgation. The ROP undertakes that all concerned agencies, in the discharge of their respective functions, shall acknowledge and take into consideration the rules and regulations promulgated by the Concessionaire/Facility Operator pursuant to this Section.

15.8 **Leasing and Subleasing**

15.8.1 The Concessionaire may lease any portion of the Terminal or terminal complex without need for written approval of DOTC; provided the lessee shall use the same for activities reasonably related to passenger terminal operations in the Terminal and/or terminal complex; and provided further that such use as indicated in the Airport Development Plan is not altered or modified.

15.8.2 The Concessionaire may permit its lessees to enter into sub-lease agreements with respect to the latter's respective leased premises without need for written approval of DOTC provided that the sub-lessees shall use the same for activities reasonably related to the passenger terminal operations in the Terminal and the terminal complex and the use thereof as indicated in the Airport Development Plan is not altered or modified.

15.9. Additions and Improvements

15.9.1 The Concessionaire may make extraordinary additions and improvements, at no cost to the ROP, in the Terminal or terminal complex with the prior written approval of DOTC.

15.10 Reports

15.10.1 The Concessionaire or the Facility Operator, as the case may be, shall furnish DOTC reports on the construction, operation, and the maintenance of the Caticlan Airport. DOTC, the Concessionaire and the Facility Operator shall within a reasonable time from the execution of this Agreement, agree in writing on the format and contents of such report.

15.11 Utilities

15.11.1 The Concessionaire or the Facility Operator shall be responsible for the payment of all Utilities used within the Caticlan Airport.

**SECTION 16
MONITORING, INSPECTION AND COORDINATION**

16.1. Monitoring and Inspection of Construction

16.1.1 DOTC, through its Project Management Office (DOTC-PMO), shall monitor all of the Concessionaire's plans and programs for the development, rehabilitation, construction and completion of the Project to ensure compliance with the provisions of this Agreement.

16.1.2 DOTC-PMO may at any reasonable hour of any business day conduct regular monthly inspection of actual construction works, provided that DOTC shall ensure that such regular inspections shall not hinder or cause undue delay to the construction works.

16.2. Inspection of Operation and Maintenance

16.2.1 DOTC may inspect the Caticlan Airport at any reasonable hour of any business day to determine and ensure that the obligations of the Facility Operator in respect of Operation and Maintenance are faithfully discharged in accordance with the Agreement. The duly designated inspectors shall be provided by DOTC with identification papers to ensure and facilitate access to the facilities and equipment in the Caticlan Airport.

16.3. Coordination with Relevant Persons

- 16.3.1 The ROP shall ensure that all customs, immigration, police and other necessary government regulatory agencies with inherent functions to be exercised within the Caticlan Airport shall exercise their functions thereat during the Concession Period and at no cost to the Concessionaire. Within a reasonable time from the execution hereof, which shall not be later than twelve (12) months prior to In-Service date, the ROP, through DOTC, the Concessionaire and the Facility Operator shall, in a written notice, identify such government agencies, and after consultation and coordination with such government agencies, agree on the procedures and mechanics for the conduct of official business by such government agencies within the Caticlan Airport.

16.4 Office Space

- 16.4.1 The Concessionaire shall make available temporary or permanent office spaces, up to a total of Two Hundred (200) square meters, at no cost to the ROP within the concession premises to the ROP and its agencies and instrumentalities (whose duties necessarily require a presence at the Project and/or Caticlan Airport) as may be reasonably needed for the performance of their official functions; provided, however, that such office spaces shall not be in excess of what is reasonably necessary for the conduct of such official functions; and provided further that the Concessionaire shall not be obligated to provide any other facility, utility or convenience (including without limitation telephone lines and other communication facilities, furniture, equipment or supplies), all of which shall be for the sole account and responsibility of the ROP and/or the relevant agencies or instrumentalities.

SECTION 17 REVENUES

17.1 Revenues

- 17.1.1 Upon commencement of Works during the Transition Period, up to the end of the Concession Period, for the investment and services it will provide under this Agreement, Concessionaire shall impose and collect for its own account the Regulated Fees and Other Fees. The Regulated Fees shall, on the start of the Transition Period, be fixed at the initial rates equal to those imposed and collected by DOTC on the day immediately preceding the Transition Period, as may be adjusted under this Agreement. Subject to existing laws, rules and regulations, the Regulated Fees shall from the In-Service Date be fixed at the rates no less than those then being imposed and collected at the Ninoy Aquino International Airport or any other international airport in the Philippines of similar standards, which ever is higher in accordance with the Parametric Formula as indicated in Annexes F and F-1 of this Agreement. Provided that Regulated Fees during the Transition Period shall automatically be adjusted at rates not less than that being imposed or collected at the Manila Domestic Airport once the Concessionaire has upgraded

the facilities of the Caticlan Airport that will provide standards of comfort to the End-Users comparable to those existing at the Terminal I of the Manila Domestic Airport and certified by the Independent Certification Engineer.

- 17.1.2 The rate of Other Fees shall be reasonably determined by the Concessionaire based on existing market rates and conditions taking into account the financial viability of the Project as provided in this Agreement. For Other Fees, Concessionaire may make any adjustments it deems appropriate without need for the consent of the ROP or any government agency. The Concessionaire shall at all times be judicious in fixing the Other Fees in order to ensure that End Users are not unreasonably deprived of services. While the vehicular parking fee, portorage fee and greeter/well wisher fee constitute Other Fees of the Concessionaire, the ROP may require the Concessionaire to explain and justify the fee it may set from time to time if in the reasonable opinion of the ROP, the said fees have become exorbitant resulting in the unreasonable deprivation of End Users of such services.
- 17.1.3 At any time, Concessionaire may impose new categories of fees, rents, and charges other than the Regulated Fees or Other Fees.
- 17.1.4 All Revenues derived from the operation and management of the Caticlan Airport shall accrue to the Concessionaire.
- 17.1.5 With respect to fees and charges which the ROP may impose on third parties for its own account, the ROP shall prescribe the terms, conditions and manner of collection thereof; provided, that if the Concessionaire is made the collection agent for such fees and charges, the ROP shall bear all Taxes and costs (including without limitation the cost of any legal action which may be instituted by third parties) attendant thereto.
- 17.1.6 The ROP undertakes that only the following persons are, at the time of the execution of this Agreement, exempt by law from the payment of Terminal Fee, to wit:
- i. children two (2) years old and below;
 - ii. transit passengers;
 - iii. refugees;
 - iv. pilgrims bound for Mecca, Saudi Arabia, with authority from the Office of the President;
 - v. extra crew of air carriers;
 - vi. the Philippine Sports Commission and its delegation or representatives to any international sports convention, conference or meeting; and athletes, coaches and other officials to any international competition; and

require the Concessionaire to make the Lenders co-insured under the relevant insurance policy or policies.

- 18.1.3 The Concessionaire shall provide the ROP, through DOTC, with certified true copies of all duly executed insurance policies within fifteen (15) Days from its receipt of the same.

18.2 Disclosure

- 18.2.1 Each party shall give full, true and accurate information to the relevant insurer regarding all matters and things the non-disclosure of which might, in any way, prejudice or affect any policy or the payment of any and all claims there under.

18.3 Cross Liabilities

- 18.3.1 Wherever a policy is issued in favor of more than one insured party, the policy shall provide that all contracts, riders or endorsements shall operate as if they were separate policies covering each of the insured parties. Each policy shall stipulate that the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the insured parties, and that a failure by any insured party to observe and fulfill the terms of the policy shall not prejudice the rights, entitlements and remedies of the other insured party.

18.4 Obligation to Rebuild or Reinstate

- 18.4.1 As a general principle, the ROP and the Concessionaire agree that insurance proceeds shall first be applied exclusively by the Concessionaire for the repair/restoration/replacement of the Project, air and navigation equipment, or the Caticlan Airport as the case may be, or any portion thereof which may have been damaged, lost or destroyed; provided however, that the prosecution of the Works or the continuance of the operation of the Project, as the case may be, remain economically viable as determined and agreed upon by both Parties. The ROP and the Concessionaire, however, agree that a more definitive agreement on the application of the insurance proceeds shall be dealt with in the Direct Agreement and/or agreed upon between the parties.

- 18.4.2 If, at any time, an insurance policy should become void, or if the insured property or the insured risk should subsequently become uninsurable, or if the policy can no longer be procured at commercially reasonable rates without fault or negligence on the part of the ROP or the Concessionaire, then the ROP, the Concessionaire and, if appropriate the Lenders, will consult with each other to determine the appropriate actions or measures to be taken. If no agreement is reached within thirty (30) Days from the commencement of consultation, then either the ROP or the Concessionaire may terminate this Agreement in accordance with Section 25 and such termination shall be deemed as a no-fault termination.

SECTION 19

TRANSFER AND TURN-OVER

19.1 Transfer

- 19.1.1 At the end of the Concession Period, the Concessionaire shall transfer to the ROP or its designee (and shall execute such documents as may reasonably be necessary to effect such transfer) free from any lien or encumbrance created by the Concessionaire for and in consideration of the sum of ONE PESO (1.00), all its rights, title to, and interest in the Caticlan Airport.

Prior to the Transfer Date, the Concessionaire shall arrange for the training of certain key personnel of DOTC on matters related to the operation of the Terminal/terminal complex. The ROP or its designee shall accept the transfer of the Caticlan Airport at the Transfer Date. The Concessionaire shall also deliver to the ROP or its designee on such date such operating manuals, plant operation, design drawings and other information as may reasonably be required by the ROP or its designee to enable it to take over the operation of the Caticlan Airport.

19.2 Turn-Over/Transfer

- 19.2.1 Only the premises, properties, equipment and things enumerated in Annex M (or the replacements and substitutions therefor) as part of the Caticlan Airport shall be turned over/transferred to the ROP or its designee.

19.3 Inventories

- 19.3.1 One hundred eighty (180) Days prior to the end of the Concession Period, the ROP, through DOTC and the Concessionaire shall conduct an inventory of the Caticlan Airport and agree on the mechanics of transfer and turn-over including the security arrangements; provided, however, that the Concessionaire shall be liable for any discrepancies between the inventory listed in Annex M (or the replacements and substitutions therefor) and the actual inventory transferred to ROP or its designee; provided, further, that the Concessionaire shall continue to exercise the same care regarding the Caticlan Airport until actual transfer thereof to the ROP or its designee.

19.4 Warranties

- 19.4.1 The Caticlan Airport shall be turned over/transferred by the Concessionaire to the ROP or its designee in operational/serviceable condition subject to wear and tear; provided that surviving warranties given by manufacturers, suppliers and contractors shall likewise be turned-over by the Concessionaire to the ROP or its designee. The Concessionaire shall be under no liability whatsoever to the ROP or its designee in respect of the operation of the Caticlan Airport by the ROP, or any person designated by the ROP. The ROP shall likewise fully

indemnify and keep fully indemnified at all times the Concessionaire against any liability to any person arising from the use or operation of the Caticlan Airport after the Transfer Date.

19.5 Taxes, Fees, Charges and Assessments

- 19.5.1 The ROP shall bear the cost of transferring title over the Caticlan Airport to the ROP or its designee. The ROP holds the Concessionaire free and harmless on a full indemnity basis against any and all Taxes, fees, charges and other impositions that may be assessed or levied upon by any taxing authority on the transfer of the Caticlan Airport to the ROP or its designee. It is understood that the ROP shall pay directly all Taxes, fees, charges and other impositions that may be assessed or levied upon by any taxing authority on the transfer of the Terminal or terminal complex to the ROP or its designee to the relevant government agency.
- 19.5.2 Upon the transfer of the Caticlan Airport to the ROP or its designee, all Taxes, fees, charges and assessments on the Caticlan Airport which may accrue thereafter shall be for the sole account of the ROP.

**SECTION 20
DELAY, SANCTIONS AND WORKS PERFORMANCE SECURITY**

20.1 Liquidated Damages Payable by the Concessionaire

- 20.1.1 If the Concessionaire fails to complete the Works within the Construction Period or any approved extensions thereof due to its fault, it shall pay the ROP, as sole and exclusive remedy, liquidated damages in an amount equivalent to 1/10 of one percent (1%) of the Cost of the unperformed portion for each calendar day of delay until the Works are completed and accepted in accordance with the Agreement. For the avoidance of doubt, it is understood that the Concessionaire shall not be deemed in default and that this Agreement cannot be terminated by the ROP for as long as the Concessionaire pays the liquidated damages; provided, however, that once the cumulative amount of liquidated damages reaches ten (10%) percent of the contract amount, the ROP may terminate this Agreement pursuant to Section 25 hereof.

20.2 Works Performance Security

- 20.2.1 To guarantee the faithful performance by the Concessionaire of the Works, the Concessionaire shall post in favor of the ROP, prior to the Commencement Date, a Works Performance Security in an amount equal to Pesos: TWO HUNDRED FIFTY MILLION PESOS (P250,000,000.00), which shall be reduced from time to time pursuant to Section 20.3.1. The Works Performance Security shall be in the form of cash, manager's check, cashier's check, bank draft or guarantee, confirmed by a local bank (in the case of foreign bidders bonded by a foreign bank), letter of credit issued by a reputable bank, surety bond callable on demand and

issued by the Government Service Insurance System or by surety or insurance companies duly accredited by the Office of the Insurance Commissioner, or a combination thereof which performance security shall remain valid until the ROP issues, or is deemed to have issued, a Certificate of Final Completion.

20.2.2 If the Concessionaire is in breach of any of its obligations relating to the Works, the ROP may send a written notice of such breach to the Concessionaire, specifying the nature of the breach and serving notice that it will make a call on the Works Performance Security unless remedial measures are undertaken within the period allowed in the Agreement.

20.2.3 If the breach is not remedied within the applicable remedy period, the ROP may call on the Works Performance Security.

20.2.4 Following a call, the proceeds of the Works Performance Security shall be deposited by the ROP (and the Lenders as the case may be) in a trust account and said funds shall be applied to the rectification of the breach that gave rise to the call on the Works Performance Security.

20.3 Releases

20.3.1 Partial Releases. The Works Performance Security shall be partially released by the ROP from time to time to the extent of the percentage of completion certified by the Independent Certification Engineer and accepted by the ROP in accordance with the Timetable. Partial releases shall be made within fifteen (15) Days from the date the ROP accepts or is deemed to have accepted the relevant Works pursuant to provisions of Section 13.3.

20.4 Renewal

20.4.1 The Works Performance Security (as reduced from time to time pursuant to partial releases envisioned in Section 20.3.1 above) shall be renewed annually during the Construction Period, and, until finally released by the ROP, shall continue and remain in force. Whenever renewed, the amount of the Works Performance Security shall be adjusted accordingly.

20.5 Compliance

20.5.1 The ROP agrees that the obligation of the Concessionaire to post the Works Performance Security shall be complied if the Concessionaire shall assign to the ROP the rights and benefits in and to the performance bond to be posted by the Contractor; provided that the ROP shall be included as a beneficiary and provided further that such performance bond is in the form compliant with and in the amount not less than that prescribed in Section 20.2.1.

SECTION 21
SPECIFIC UNDERTAKINGS OF THE ROP

21.1 Undertakings of ROP

21.1.1 In addition to the covenants, undertakings and commitments of the ROP set forth elsewhere in this Agreement, the ROP shall comply and cause all third parties under its direct control to comply with the following special obligations:

- (a) Provide personnel to render air traffic services and to maintain and operate air navigational facilities at Caticlan Airport based on international standards.
- (b) Deliver to the Concessionaire, in accordance with the Timetable and the Right of Way and Site Delivery Schedule, Clean Possession of the Site. ROP guarantees the Concessionaire's continuous, peaceful, exclusive and uninterrupted use and Clean Possession of the Site during the term of the Concession Agreement up to Transfer Date and shall defend the Concessionaire's rights thereto against any and all third party claims.
- (c) Assist in obtaining from the Department of Environment and Natural Resources (DENR), particularly, the Land Management Bureau (LMB), a foreshore lease contract or other necessary permits as may be required for the expansion of the existing runway.
- (d) Issue and/or assist in obtaining all Consents from and enter into all necessary agreements with, the proper authorities and any and all parties whether governmental or private, now or which may hereafter become necessary for the continued operation of the Project as a domestic airport and operation of the Caticlan Airport as an international airport, including but not limited to the following:
 - i. Consents necessary to continue the operation of the Project as a domestic as well as international airport as proposed by the Concessionaire.
 - ii. Compliance with ICAO requirements necessary to operate the Project as an international airport.
 - iii. Approval of fees to be charged by the Concessionaire and any adjustments thereof necessary for the Project as proposed by the Concessionaire.

Provided, however, that if the Project is delayed or adversely affected by the non-issuance of a relevant Consent by a Competent Authority for any reason despite the prompt and proper filing and submittal of Concessionaire, then the Concessionaire shall not be in default, the Performance Security shall not be callable, and the Timetable and/or the

Concession Period shall be extended by an appropriate period not being less than the period of the delay; provided, further that if any relevant Consent is not obtained by the Concessionaire within one hundred eighty (180) Days from submission of the duly completed application, Concessionaire may terminate this Agreement at any time thereafter by thirty (30) Days written notice to ROP.

- (e) Assist in the issuance of landing rights to foreign carriers, through the Civil Aeronautics Board or thru any other relevant agency, to ensure the economic viability of the Project.
- (f) Exert its utmost efforts to assist the Concessionaire in obtaining Utilities at the Site such as, without limitation, water, power and communication facilities; provided, however, that if the Project is delayed by reason of the non-availability of any necessary Site utility without fault or negligence on the part of the Concessionaire, then the Concessionaire shall not be in default, the Performance Security shall not be callable, and the Timetable and/or the Concession Period shall be extended by an appropriate period not being less than the period of the delay.
- (g) Subject to existing law, rules and regulations, grant the necessary tax incentives and/or exemptions to the Project.
- (h) Coordinate with the relevant local government unit in arranging traffic rerouting and other traffic management measures in accordance with the Timetable as may be necessary for the unimpeded construction at the Site as provided in the Specifications, and in connection therewith, coordinate and make necessary arrangements with the Competent Authorities to ensure that Works are done in accordance with the Timetable.
- (i) Ensure that without the prior written consent of the Concessionaire, which consent shall not be unreasonably withheld, any of the rights and obligations of the RCP under this Agreement shall not be assigned or transferred to any person.
- (j) Ensure that no discriminatory action or omission shall be taken against the Concessionaire, the Facility Operator, or the Contractor and its sub-contractors by any Competent Authority, whether or not the result of such discriminatory action or omission; (i) would affect the ability of the Concessionaire, the Facility Operator, or the Contractor and its sub-contractors to perform their respective obligations; ii) would adversely affect the financial projections or the financial condition of the Concessionaire, the Facility Operator, or the Contractor and its sub-contractors; or iii) would adversely affect the Net Financial Return.

SECTION 22
SPECIFIC UNDERTAKINGS OF THE CONCESSIONAIRE

22.1 Undertakings of Concessionaire

- 22.1.1 In addition to the covenants, undertakings and commitments of the Concessionaire set forth elsewhere in this Agreement, the Concessionaire shall comply and/or cause all third parties under its direct control to comply with the following special obligations:
- (a) Remit to the ROP the amount provided in Section 2.2.1(k);
 - (b) Pay for all the permits and licenses necessary for the Project as required herein;
 - (c) Obtain Financial Closure within twelve (12) months from the effectivity of this Agreement;
 - (d) Pay all the necessary taxes from the Turn-over and/or Transfer of the Caticlan Airport until the end of the Concession Period or until the end of any extension, as the case may be, including but not limited to real estate, income, value added tax, etc; and
 - (e) Pay for all cost of operations and maintenance of air navigational facilities and air traffic services, which shall not include the salaries of the manpower provided by CAAP.

SECTION XXIII
FORCE MAJEURE

23.1 Effect of Force Majeure

- 23.1.1 A party shall not be responsible/liable or deemed in breach hereof because of non-performance, suspension of performance, or delay in the performance of any of its obligations hereunder due solely to Force Majeure; provided, that:
- (a) The affected party shall, as far as practicable, within forty-eight (48) hours from the occurrence of the Force Majeure, send a written notice to the other, describing the particulars thereof;
 - (b) The non-performance, suspension of performance, or delay in performance is of no greater scope and of no longer duration than is required by the Force Majeure;
 - (c) The affected party uses reasonable efforts to remedy its partial performance, non-performance, or suspension of performance or delay in performance;
 - (d) When the affected party is able to resume performance of its obligations under this Agreement, the said party shall give the other party written notice to that effect; and

- (e) The Force Majeure was not primarily caused by any grossly negligent or intentional act or omission of the affected party, or its failure to comply with any law, rule, regulation, order or ordinance or by his default or breach of this Agreement.

23.2 Liability for Force Majeure

- 23.2.1 Notwithstanding the provision of Section 23.1.1, the ROP shall not be exempt from the consequences resulting from, or be excused from the performance of its obligations under this Agreement by reason of, Governmental Force Majeure as the same is defined in paragraph (b) of the definition of Force Majeure in Section I hereof (whether or not such consequences result in a breach of any of the provisions of this Agreement), and the ROP shall be fully responsible for all the direct losses or damages which Concessionaire may suffer by reason of such Governmental Force Majeure. Provided however, that the Concessionaire shall immediately inform in writing the ROP of the existence of such Force Majeure and that the ROP shall forthwith verify and validate the existence of such Force Majeure or event.
- 23.2.2 Any provision of this Agreement to the contrary notwithstanding, the Concessionaire shall be entitled to terminate this Agreement at any time during the term of this Project, if by reason of an event constituting Force Majeure under paragraph (a) in the Definition of Terms in Section I hereof, (i) the Project (whether completed or in the process of construction) or any portion thereof, or any other vital installation or facility necessary for the construction or operation of the Caticlan Airport should be destroyed, or (ii) even without destruction of the Caticlan Airport, any vital installation or facility, the effect of such Force Majeure is to make the prosecution of the Works during the construction period or the continuing operation of the Caticlan Airport impractical or economically non-viable, in either case as shown by substantial and verifiable evidence, or (iii) if the effect of such Force Majeure shall continue for one hundred eighty (180) consecutive Days. For the avoidance of doubt, termination under this section shall be a no-fault termination.
- 23.2.3 In events constituting Force Majeure under paragraph (c) in the Definition of Terms in Section I hereof, the parties shall discuss and determine the most economically viable approach or strategy to address the situation. Pending such discussion and until determination of the proper approach or strategy, the Works shall be suspended accordingly. It is hereby agreed that occurrence of Force Majeure under paragraph (c) in the Definition of Terms in Section I hereof will not constitute breach on either party unless a party refuses to participate in the aforesaid discussion as agreed upon.

SECTION 24 CHANGE IN CIRCUMSTANCE

- 24.1 In the event that as a result of any Applicable Law promulgated by the ROP or any Competent Authority coming into effect after the signing of this Agreement, or as a result of any Change in

Law, the interest of the Concessionaire in the Project and/or the Concessionaire's expected Net Financial Return is materially reduced, prejudiced or otherwise adversely affected, then the Concessionaire may elect to terminate this Agreement in accordance with Section 25 and the same shall be deemed as an ROP fault termination.

- 24.2 In the event that as a result of any Applicable Law promulgated by the ROP or any Competent Authority coming into effect after the signing of this Agreement, or as a result of any Change in Law, the Franchise is amended in such a way that the interest of the Facility Operator is otherwise adversely affected or the free exercise by the Facility Operator of the franchise is impaired or materially reduced, or the franchise is revoked without fault on the part of the Facility Operator, then the Facility Operator shall be entitled to a termination and the same shall be deemed as ROP fault termination.
- 24.3 The occurrence of any of the following events shall likewise constitute a change in circumstances and shall entitle the Concessionaire to exercise the remedies thereunder:
- (i) any act or omission or adoption of policy by the ROP in relation to airport, in general, which would cause economic harm to the Concessionaire or otherwise adversely affect the Concessionaire's interest in the Project or materially reduce or prejudice its Net Financial Return.
 - (ii) promulgation of any exchange control regulation by any Competent Authority which would: (a) prohibit the free transfer of funds outside of the Philippines; (b) impose restrictions on such fund transfers, which restrictions are not in existence at the time of execution of the Agreement or (c) would subject the purchase of foreign exchange to restrictions or conditions which do not exist at the time of execution of this Agreement.

SECTION 25 TERMINATION

25.1 Ground for Termination

25.1.1. This Agreement may be terminated on the following grounds:

(a) By Concessionaire upon default by the ROP:

- (i) Non-payment by the ROP of any of its financial obligations in the Agreement;
- (ii) Material breach by the ROP of its obligations under the Agreement;
- (iii) Material breach by the ROP of any of its representations, warranties, undertakings and covenants herein, whether such breach be committed directly or through circumvention;

- (iv) Commission or omission of an act, or the occurrence of an event directly or indirectly attributable to the ROP, which materially and adversely affects the interest, financial or otherwise, of the Concessionaire and its shareholders in the Project, and includes any Governmental Force Majeure or Change in Circumstance; or
- (v) The expropriation, compulsory or involuntary acquisition or nationalization by any Competent Authority of the (i) Project, in whole or in part, (ii) any shares of the Concessionaire or the Facility Operator, or (iii) any asset or right of the Concessionaire or the Facility Operator.

(b) By ROP upon default by the Concessionaire:

- (i) Failure of the Concessionaire to finish the Works in all material respects in accordance with the Design and the Timetable including duly approved contract Variation except when such delay is not attributable to the fault of the Concessionaire;
 - (ii) Material breach by the Concessionaire of its obligations under the Agreement;
 - (iii) Material breach by the Concessionaire of any of its representations, warranties undertakings and covenants herein, whether such breach be committed directly or through circumvention;
 - (iv) Except as otherwise permitted in this Agreement, change in control of the Concessionaire arising from the sale, assignment, transfer or other disposition of capital stock which results in an ownership structure violative of statutory or constitutional limitations;
 - (v) A pattern of continuing or repeated non-compliances, willful violation, or non-performance of other terms and conditions hereof which is hereby deemed a material breach of this Agreement if the Operation or Maintenance of the Catidlan Airport has been materially and adversely affected; and
 - (vi) For any other event so provided in this Agreement.
- (c) No fault terminations under Sections 9.8.3, 10.1.2, 18.4.2, 23.2.2, and 23.2.3 of this Agreement.
- (d) Mutual agreement of the parties even in the absence of any breach or default under this Agreement.

25.2 Procedure and Effects of Termination

25.2.1 If the termination of this Agreement is caused by a default of the ROP, then the Concessionaire shall give the ROP, through the DOTC, a notice of termination specifying in reasonable detail the cause(s) for termination and giving the ROP a reasonable period of time to cure such default, such period being ninety (90) days or such longer period as may be approved by the Concessionaire, taking due consideration of the nature of the default and the remedy required. If the ROP fails to remedy the default within the applicable curing period then the Concessionaire shall have the right to terminate this Agreement by sending a termination notice to ROP (the "Termination Notice"), through CAAP with an invoice on the following amounts:

(a) If this Agreement is terminated during the Construction Period:

(i) The ROP shall assume all Financing Costs and attendant liabilities; and

(ii) Pay to the Concessionaire the Termination Just Compensation equal to the Total Actual Expenses to Date and a return on the Equity equal to 12.46% per annum compounded pursuant to existing law.

b) If this Agreement is terminated after Construction Period:

(i) The ROP shall assume all Financing Costs and attendant liabilities; and

(ii) Pay to the Concessionaire Termination Just Compensation equal to the Total Actual Expenses to Date and a return on the Equity equal to 12.46% per annum compounded pursuant to existing law.

25.2.2 The ROP shall pay the Concessionaire the Termination Just Compensation either in the form of outright cash payment or negotiable ROP promissory note or debt instrument. Termination shall become effective on the date specified in the Notice of Termination and ROP shall pay the same within six (6) months from receipt of said Notice and the same shall be subject to payment of Default Interest Rate until fully paid.

25.2.3 If the termination of this Agreement is caused by a default of the Concessionaire, then the DOTC shall give the Concessionaire a notice of termination specifying in reasonable detail the cause(s) for termination and giving the Concessionaire a reasonable period of time to cure such default, such period being ninety (90) days or such longer period as may be approved by the Concessionaire, taking due consideration of the nature of the default and the remedy required. If the Concessionaire fails to remedy the default within the applicable curing period then the ROP shall have the following rights:

(a) If this Agreement is terminated prior to the full repayment of Loans:

- (i) The ROP shall allow third parties who hold a lien on the Project, to select and designate a qualified third party to complete the Project and assume the Concessionaire's obligations under this Agreement ("Qualified Substitute Entity"). In such a case, DOTC shall serve such third parties and the Concessionaire a written notice that the Concessionaire has failed to complete the Project and is required to look for a Qualified Substitute Entity (the "Notice of Substitution"). The appropriate parties shall have one (1) year from receipt of the Notice of Substitution to effect a substitution. The appropriate parties shall immediately inform DOTC in writing of the selection of the Qualified Substitute Entity for DOTC's evaluation and approval, which approval shall not be unreasonably withheld. Upon approval by DOTC of the selection of the Qualified Substitute Entity, the Qualified Substitute Entity shall exercise all of the Concessionaire's rights and privileges and shall assume all of the Concessionaire's obligations, duties and responsibilities hereunder, provided the Qualified Substitute Entity delivers to the Concessionaire just compensation for whatever Project assets the Qualified Substitute Entity intends to use. However, failure of the Qualified Substitute Entity and the Concessionaire to agree on the amount of the just compensation to be paid shall not, in any way, prejudice the continuation of the Project.
- (ii) In the event that a Qualified Substitute Entity is not established, the ROP shall select and designate, in accordance with existing laws, rules and regulations, a qualified third party to complete the Project.
- (iii) In any case, DOTC will forfeit the Performance Security.
- (iv) The Concessionaire may be compensated for actual expenses incurred for the project.

(b) If this Agreement is terminated after full repayment of the Loans, DOTC shall take over the Project and assume all attendant liabilities in accordance with Applicable Laws.

For the avoidance of doubt, in the event that paragraph (a)(i) of this Section is declared illegal or unenforceable, the same shall be deemed as a default under Section 25.1.1(a)(iv).

25.2.4 If the termination of this Agreement is pursuant to Section 25.1.1(c), then the following shall occur:

- (i) The ROP shall assume all Financing Costs and attendant liabilities; and

- (ii) Pay to the Concessionaire the Termination Just Compensation equal to the Total Actual Expenses to Date and a return on the Equity equal to 12.46 % per annum compounded pursuant to existing law.

25.2.5 The ROP shall pay the Concessionaire the Termination Just Compensation either in the form of outright cash payment or negotiable ROP promissory note or debt instrument. Termination shall become effective on the date specified in the Notice of Termination and ROP shall pay the same within six (6) months from receipt of said Notice and the same shall be subject to payment of Default Interest Rate until the same is fully paid.

25.3 Common Provisions of Termination

25.3.1 If any amount payable by the ROP under the termination provisions is subject to the payment of Taxes when received by the Concessionaire, then the ROP shall pay to the Concessionaire such additional amount as will result in the Concessionaire receiving such amount as if no Taxes were paid.

25.3.2 In addition to such amounts, the ROP will pay to the Concessionaire interest on the compensation amounts (or any part that remains outstanding) at the Default Interest Rate as of the date after the issuance of the termination invoice to the ROP and thereafter if the Concessionaire has still not received such sums (or any part thereof).

25.3.3 The ROP may rely on the certificate of the Lender's agent as to the outstanding amount of the Loans.

25.3.4 The Termination Just Compensation amounts are in full and final settlement of all the Concessionaire's claims and rights against the ROP for termination of this Agreement but it is without prejudice to:

- (a) any antecedent liability of the ROP to the Concessionaire that arose prior to the termination of the Agreement; and
- (b) any breach by either party of their obligations under the Agreement which continue after its termination.

25.3.5 The full payment by the ROP to the Concessionaire of the Termination Just Compensation shall be a condition precedent to the transfer and/or turn-over by the Concessionaire to the ROP of the Project. Upon full payment of the Termination Just Compensation, the Concessionaire shall immediately transfer the Project to the ROP in operational/serviceable condition subject to wear and tear.

25.3.6 Nothing in the foregoing payment of obligations requires or obliges the ROP to guarantee the obligations of the Concessionaire to its lenders or to assume responsibility for the repayment of any debt directly incurred by the Concessionaire in

implementing the Project in case of loan default except if termination or payment is attributable to a breach or default by ROP.

25.4 Corollary Obligations Resulting From Termination

- 25.4.1 The ROP shall respect and honor the terms and conditions of all Tenant Agreements, and from the effectivity of termination shall exercise all rights and assume all obligations of Concessionaire thereunder, provided such terms and conditions are within the capacity of the ROP to comply with.
- 25.4.2 Commencing from the date of termination, the ROP shall likewise assume the full payment of all taxes, fees, charges, and assessments of whatever kind or nature which may be imposed on the Catclan Airport or any portion thereof.
- 25.4.3 All securities held by the ROP in connection with this Agreement shall be discharged and returned to the Concessionaire in case the termination is pursuant to Section 25.1.1 (a) or 25.1.1 (c).

SECTION 26 REPRESENTATION AND WARRANTIES

26.1 Representation of Concessionaire

- 26.1.1 The Concessionaire makes the following representations and warranties to the ROP, and acknowledges that the ROP has relied upon such representations and warranties in entering this Agreement:
 - (i) It is duly organized and existing under Applicable Law;
 - (ii) It has the full power and authority to enter into and perform all its obligations under this Agreement, and to do all acts and things and execute, perform and deliver all other documents as maybe required hereunder;
 - (iii) It has taken all the necessary corporate legal action to authorize the execution, delivery and performance of this Agreement;
 - (iv) The execution, delivery and performance of this Agreement by it do not and will not (i) violate any Applicable Law; (ii) conflict with, or result in the breach of, or result in the imposition of any security interest, encumbrance, lien or charge under, any agreement or instrument to which it is a party or by which its assets are bound; or (iii) constitute a default or an event that, with the passing of time or giving of notice or other condition or both, would constitute a default under any such agreement or instrument;
 - (v) No consent or authorization, (other than the required Consents) is necessary for the due execution, delivery and performance of this Agreement;

- (vi) It has not given or promised any consideration to any official of the ROP in order to obtain this Agreement, and that the execution of this Agreement shall not result directly or indirectly in a violation of the Anti-Graft and Corrupt Practices Act, and
- (vii) There is no pending or, to the best of its knowledge, threatened action or proceeding, affecting them before any Competent Authority, that could reasonably be expected to materially and adversely affect their financial condition or operations or their ability to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

26.2 Representations of ROP

26.2.1 The ROP makes the following representations and warranties to the Concessionaire and acknowledges that the Concessionaire has relied on such representations and warranties in entering to this Agreement:

- (i) It has all requisite legal authority and right to execute and deliver this Agreement and to perform its obligations herein;
- (ii) The execution, delivery and performance of this Agreement by it do not and will not (i) violate any Applicable Law; (ii) conflict with, or result in the breach of, or result in the imposition of any security interest, encumbrance, lien or charge under, any agreement or instrument to which it is a party or by which its assets are bound; or (iii) constitute a default or an event that, with the passing of time or giving of notice or other condition or both, would constitute a default under any such agreement or instrument;
- (iii) All information provided by the ROP to the Concessionaire and the Facility Operator are true and accurate in all material respects; and
- (iv) The obligations and liabilities of the DOTC/CAAP under this Agreement constitutes a valid, legal and binding obligation of the Republic of the Philippines, enforceable under the terms and conditions provided under this Agreement.

SECTION 27 DISPUTE RESOLUTION

27.1 Amicable Settlement

27.1.1 The parties shall meet regularly during the term of this Agreement to discuss the progress of the construction and during the Concession Period, the Operation and Maintenance of the Project, to ensure that the same shall proceed in accordance with the provisions of this Agreement. In the event of any dispute, the parties shall at all times endeavor to resolve the same amicably within thirty (30) Days from its occurrence. Any dispute that remains unsolved by the parties through amicable settlement

with thirty (30) days shall be resolved by arbitration as provided in Section 27.2.

27.2 Arbitration

27.2 Arbitration

27.2 Arbitration

27.2 Arbitration

~~27.2.1 If parties failed to settle the dispute amicably, any and all disputes~~
~~in language of, and to each shall be in English.~~

27.2.2 Each party shall appoint one arbitrator for confirmation by the Center for Dispute Resolution in Singapore, or its successor (the "Appointing Authority"), and the two arbitrators shall agree on the third member within thirty (30) Days, who shall be the chairperson of the arbitration tribunal. Should the two (2) arbitrators fail, within the above period, to reach an agreement on the third arbitrator, he shall be appointed by the Appointing Authority.

27.2.3 The arbitration tribunal may allow for provisional remedies in favor of any of the parties. The award rendered in any arbitration proceedings shall be final and binding upon the parties and may be enforced by judgment of a court having competent jurisdiction.

27.2.4 Each party hereby agrees and covenants that it will not make any appeal to any court in respect of the arbitral award of the arbitration tribunal. In addition, each of the party hereby waives any right to commence or maintain any suit or legal proceedings concerning a dispute until the same shall have been determined in accordance with the arbitration proceeding provided herein, except for the enforcement of the arbitral award.

27.2.5 The cost of arbitration shall initially be funded by the claimant, provided that the arbitral tribunal may reallocate the liability for such cost as it may reasonably determine. Each party shall fund its own legal and other expenses relating to such arbitration including the cost for the arbitrator appointed by a party.

SECTION 28
ASSIGNMENTS, TRANSFERS AND ENCUMBRANCE

28.1 Assignments and Transfers

28.1.1 Except as otherwise provided in this Agreement, the Concessionaire shall not, either directly or indirectly assign, hypothecate, encumber or transfer this Agreement or any interest herein.

28.2 Listing and Trading of Shares of Stock

28.2.1 Subject to existing laws, the ROP shall not pose any objections to the eventual listing and trading of the shares of stock of

Concessionaire in the Philippine Stock Exchange, Inc. and in such other foreign and local exchanges.

SECTION 29 CONFIDENTIALITY

29.1 General

- 29.1.1 All information with respect to the parties, the Project, and the Agreement are, and at all times shall be, confidential and may not be released to third parties (other than to their own employees or agents for the purpose of carrying out their respective obligations under the Agreement), without the express prior written consent of the parties, as the case may be.

29.2 Excluded Information

- 29.2.1 The obligation of confidentiality does not extend to information:

- (a) disclosed with the consent of the other party; or
- (b) which is required to be disclosed by law or by any stock exchange commission or any Competent Authority.

29.3 Period

- 29.3.1 The obligation of the parties under this Section shall continue throughout the effectivity of this Agreement and up to a period of three (3) years after the expiration or termination of the Agreement.

SECTION 30 MISCELLANEOUS

30.1 Waiver of Immunity from Suit

- 30.1.1. Each Party waives, to the fullest extent permitted by law, any immunity from jurisdiction and immunity from execution to which such Party would be entitled without such waiver, in respect of any obligation or liability or dispute resolution procedure or arbitration award rendered under this Agreement.

30.2 Mutual Trust

- 30.2.1 In entering into this Agreement the parties recognize that it is impracticable to make provision for every contingency that may arise in the course of performance hereof. Accordingly, the parties hereby declare it to be the intention that this Agreement shall operate between them with fairness and without detriment to the interest of either of them. If in the course of performance of this Agreement, a particular circumstance or event occurs which is not otherwise covered by this Agreement, then the parties shall use their best endeavors to agree upon such action as may be necessary and equitable to remove the cause or causes of the same.

30.3 Non-Relief from Accrued Liability

- 30.3.1 The termination of this Agreement shall not relieve either party of any liability that may have already accrued hereunder.

30.4 Non-Relinquishment or Non-Waiver of Rights

- 30.4.1 The failure of any party to this Agreement to insist upon a strict performance of any of the terms, conditions and covenants hereof shall not be deemed a relinquishment or waiver of any right or remedy that either party may have, nor shall it be construed as a waiver of any subsequent breach or default of the terms, conditions or covenants herein contained, which shall be deemed in full force and effect. No waiver of any right by either party shall be deemed to have been made unless expressed in writing and signed by both parties.

30.5 Notices

- 30.5.1 All notices required or permitted to be given under the Agreement (each a "Notice") shall be in English and in writing and shall be in the following order of priority: (i) personally delivered, (ii) sent by courier, (iii) sent by registered or certified mail, with a return receipt requested or (iv) transmitted by telecopy with a copy sent concurrently by registered or certified mail, with a return receipt requested. Notices shall be delivered or mailed to the party entitled thereto as follows:

To the DOTC: Columbia Tower Building, Ortigas Avenue, Mandaluyong City, Metro Manila

To the Concessionaire: 6/F F&M Building, 109 Carlos Palanca Street, Legaspi Village, Makati City

- 30.5.2 Any party may change its address by giving at least seven (7) Days written notice of the changed address to the other party in the manner set forth in the Agreement.

- 30.5.3 All Notices hereunder shall be deemed received (i) upon delivery, if personally delivered or sent by courier, (ii) on the date set forth in the return receipt, if given by registered or certified mail and (iii) upon transmittal, if by telecopy with a copy dispatched concurrently by registered or certified mail as provided above in this section. The inability to make delivery, because of a change of address of which no notice was given, or rejection or other refusal to accept any Notice, shall be deemed to be receipt of the Notice as of the date of such inability to deliver or rejection or refusal to accept.

30.6 Separability Clause

- 30.6.1 The invalidation of any of the terms, conditions, stipulations, covenants, conditions, or restrictions, or any part hereof by a final judgment of a court of competent jurisdiction shall not affect the other provisions hereof. If necessary for the full implementation of this Agreement, the parties shall promptly negotiate in good faith for alternate provisions to replace any provision which has been so declared invalid by a court of competent jurisdiction, subject to the provision of Section 27.1. and 27.2.1 hereof in case the parties fail to reach an agreement on the matter.





30.7 Governing Law

- 30.7.1 The pertinent laws of the Republic of the Philippines shall be applied in interpreting and applying the terms and conditions of this Agreement.

30.8 Payments

- 30.8.1 Every sum payable by the ROP or by the Concessionaire hereunder shall be paid in full without set off or counterclaim, condition or qualification of any nature (except as expressly contemplated herein) and free and clear of, and without any deduction for, withholding for or on account of any taxes, levies, imposts, duties, charges or fees of any nature, except as required by law. If any payment is required to be made subject to any such deduction or withholding, then the amount payable shall be increased to such amount as will, after such deduction or withholding, result in the net receipt by the recipient of the full amount payable by the other party hereunder as if such withholding or deduction had not been made.
- 30.8.2 Whenever this Agreement imposes unto a party the obligation to pay a sum of money to the other, or otherwise to bear a specific cost or expense, it is understood that unless a different period is specified, that payment shall be made on demand. Any failure to pay any sum of money under this Agreement within the prescribed period shall earn interest equal to the Default Interest Rate. The Default Interest Rate shall be computed on a daily basis and shall accrue immediately on the day after the lapse of the last date of the prescribed payment period until the relevant amount together with accrued interest is fully paid.

30.9 Entire Agreement, Amendments and Supplements

- 30.9.1 This Agreement contains the entire agreement and understanding between the ROP and the Concessionaire as to the subject matter hereof, and merges and supersedes all prior agreements, commitments, representations, writings, and discussions between them. This Agreement may not be amended, changed, modified or supplemented, in any way, except by an instrument in writing executed by both the Concessionaire and the ROP, duly approved by the DOTC Secretary.
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30.10 Indemnities

- 30.10.1 Whenever a party gives or is required to give an indemnity to the other party to cover any potential loss, damage or liability of the latter, the indemnity is understood to be full and complete protection to the party sought to be indemnified and shall survive the termination of this Agreement. No party shall be liable for any punitive, special, indirect or consequential damages (such as lost revenues) unless expressly provided otherwise in this Agreement.
- 30.10.2 The ROP shall defend and indemnify the Concessionaire and the Facility Operator, as well as their respective directors, officers and employees, from and against, and hold them harmless from any Loss incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, for personal injury to or death of persons or damage to property arising out of the negligent or intentional act or omission of the ROP in connection with this Agreement.
- 30.10.3 The Concessionaire shall defend and indemnify the ROP from and against, and hold harmless from any costs, expenses and claims incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon it for personal injury to or death of persons or damage to property arising out of the negligent or intentional act or omission of the Concessionaire or the Facility Operator in connection with this Agreement.

30.11 Effectivity

- 30.11.1 This Agreement shall be effective immediately upon occurrence of all the following:
- (a) Signing of this Agreement by the ROP, through the DOTC Secretary and the authorized signatory of the Concessionaire and approved by the President of the Republic of the Philippines;
 - (b) All Government approvals required for the execution and legal entry into force of this Agreement have been obtained;
 - (c) The Concessionaire shall have submitted within thirty (30) days from execution of this Agreement proof of equity contribution in accordance with 11.3 of the IRR of the BOT Law such as Treasurer's Affidavit attesting to actual paid-up capital or shareholders agreement between and among two (2) or more shareholders of the Concessionaire undertaking to contribute/subscribe the required equity contribution;
 - (d) Posting of Performance Security in the amount specified under Section 20.2 hereof; and
 - (e) Receipt by the Concessionaire of a copy of the opinion of the Department of Justice confirming the legality, validity and enforceability of this Agreement.

IN WITNESS WHEREOF, the Government of the Republic of the Philippines, acting through the Department of Transportation and Communications through the Civil Aviation Authority of the Philippines and Concessionaire, by their respective duly authorized representatives, have caused this Agreement to be signed on the day and at the place first above-written.

GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

By:


LEANDRO R. MENDOZA

Secretary

Department of Transportation and Communications

Chairman Ex Officio

Civil Aviation Authority of the Philippines

**CATICLAN INTERNATIONAL AIRPORT AND DEVELOPMENT
CORPORATION**

Concessionaire

By:


LINO A. BARTE

President

Signed in the presence of:


ATTY. DOROTEO A. REYES II

Undersecretary for Civil Aviation


GEORGE YANG

Chairman of the Board

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES }
CITY OF MANDALUYONG } S.S.

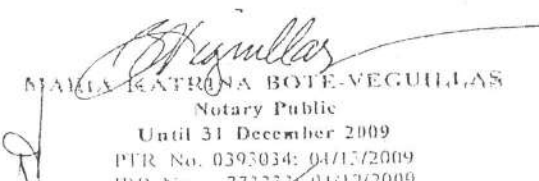
BEFORE ME, a Notary Public for and in the above jurisdiction personally appeared the following persons:

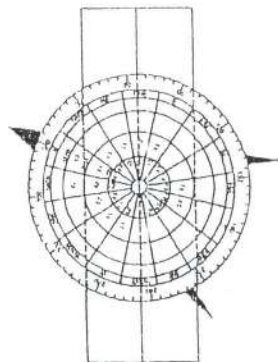
<u>Name</u>	<u>Valid Government ID</u>	<u>Issued on/at</u>
LEANDRO R. MENDOZA	TIN-134174190	
LINO A. BARTE	NII-71-009320	05 JAN. 2007

who acknowledged to me that they are the same persons who executed the foregoing Catidlan Airport Concession Agreement consisting of sixty two (62), including the page on which this Acknowledgment is written (but excluding the Annexes). They acknowledged to me that the same is their free and voluntary act and deed as well as of the entities which they respectively represent.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 24th of 2 2009 2009.

Doc. No. 188;
Page No. 33;
Book No. 1;
Series of 2009.


MARIA KATRINA BOTE-VEGUILLAS
Notary Public
Until 31 December 2009
PTR No. 0395034; 04/17/2009
IBP No. 77333; 04/12/2009
Roll No. 43731; Page No. 247; Book No. XVIII

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SOURCE: PULSAR - ROXAN CITY CUPZ (183 KT) CAPS WIND COVERAGE WIND
 PER LIT (191 - 202) - ON CALVE 0 - 142
 WIND ROSE