

## CONTRACT FOR THE FAIR VALUATION OF CAPITAL NOTES

### KNOWN ALL MEN BY THESE PRESENTS:

This *Contract for the Fair Valuation of Capital Notes* (the "**Contract**") is made and entered into by and between:

**PHILIPPINE DEPOSIT INSURANCE CORPORATION**, a government instrumentality created and existing under and by virtue of the provisions of Republic Act No. 3591, as amended, with principal office at SSS Bldg., 6782 Ayala Avenue corner V.A. Rufino Street, Makati City, Metro Manila, represented herein by its \_\_\_\_\_, **M** \_\_\_\_\_, hereinafter referred to as the "**PDIC**"

- and -

\_\_\_\_\_, a general professional partnership duly registered and licensed to do business in the Philippines, with principal office at \_\_\_\_\_, represented herein by its \_\_\_\_\_, **M** \_\_\_\_\_, hereinafter referred to as the "**FIRM**"

### WITNESSETH: That –

**WHEREAS**, in 2009, **PDIC's** ₱12 billion outstanding financial assistance to United Coconut Planters Bank (UCPB) was converted into UCPB's Capital Notes;

**WHEREAS**, the Capital Notes were valued in **PDIC's** books at cost as they were considered fully recoverable given UCPB's continuing financial improvement;

**WHEREAS**, Philippine Accounting Standard (PAS) 39 on Financial Instruments, including the Philippine Financial Reporting Standards (PFRS) 9, require a fair valuation for this type of instrument;

**WHEREAS**, in view thereof, **PDIC** needs the services of a professional and highly qualified accounting firm which will undertake the required services necessary to arrive at the fair valuation of the Capital Notes;

**WHEREAS**, a public bidding for the purpose was conducted by the **PDIC** pursuant to the provisions of Republic Act No. 9184 (*The Government Procurement Reform Act*);

**WHEREAS**, in said public bidding, the **FIRM** submitted the lowest responsive bid and offered the most advantageous terms and conditions for **PDIC**.

**NOW, THEREFORE**, for and in consideration of the foregoing premises and the mutual covenants herein contained, the parties hereby agree as follows:

## I. DEFINITION OF TERMS

1. The term "*Contract*" shall mean this Contract for the Fair Valuation of the Capital Notes, all addenda, attachments, and annexes hereto, and shall include all future amendments and supplements which may hereafter be mutually agreed upon.
2. The term "*Project*" refers to the Terms of Reference (TOR) hereto attached as Annex "**A**" and made an integral part hereof, including all its succeeding amendments and/or modifications as approved by both Parties.
3. The term "Capital Notes" refers to the P12 Billion outstanding financial assistance extended by PDIC to UCPB which were subsequently converted into Capital Notes of UCPB.
4. The term "Engagement Partner/Leader" refers to \_\_\_\_\_, of the **FIRM**.

## II. SCOPE OF THE SERVICES

1. **OBJECTIVES.** The main objective of this Contract is to engage the services of a professional and highly qualified accounting firm in undertaking the fair valuation of UCPB's Capital Notes.
2. **SPECIFIC ACTIVITIES OF THE FIRM.** The **FIRM** shall, to the full satisfaction of **PDIC**, render, undertake and provide **PDIC** with the following services:
  - 2.1 Adopt at least two (2) appropriate methods to be used in the estimation of the fair value of the Capital Notes, taking into account that the bank is operating as a going concern vis-à-vis the key features of the Capital Notes.
  - 2.2 Provide **PDIC** with a report on the valuation results of the methods used, including all copies, soft and hard, of the supporting computations, if any.
  - 2.3 Determine the appropriate accounting entry/ies to book the valuation.
  - 2.4 Provide pro-forma notes to financial statements, including disclosures required by the accounting standards in booking impairment of the Capital Notes.
  - 2.5 Provide advisory assistance to **PDIC** staff who may be tasked to do the valuation update, as may be necessary.
3. **SERVICE STANDARD.** The **FIRM** agrees to devote its technical skills/knowledge, undivided attention, and its best ability, with utmost

efficiency and effectiveness and in accordance with the best professional standards, in the performance/fulfillment of its obligations under this Contract. The **FIRM** shall exercise all reasonable skills, care and diligence in the discharge of its services and shall always work in the best interests of **PDIC**. To this end, the **FIRM** shall provide such number of personnel as may be required for the efficient fulfillment of the services with adequate qualifications and experience, subject to approval of **PDIC**.

4. **DELIVERABLES.** The **FIRM** shall submit and accomplish in favor of **PDIC** the following deliverables with respect to this Contract:

- 4.1 Detailed report on the fair valuation of the Capital Notes as of the latest available records of the bank but not earlier than December 31, 2012 and based on the methodologies included in the engagement proposal.
- 4.2 Summary of the necessary accounting entry/ies to book the valuation and adjustment to prior years' profit as necessary or required by existing accounting standards.
- 4.3 Details of necessary disclosures/pro-forma notes to financial statements, as required by existing accounting standards.
- 4.4 Computations/templates of computations made in the valuation process to aid **PDIC** personnel who may be tasked to do the valuation update as may be necessary.

5. **REQUESTS FOR APPROVAL OF AND COMMUNICATIONS/NOTICES TO PDIC.** All requests for approval of and communications/notices to **PDIC** shall be coursed through the \_\_\_\_\_ for \_\_\_\_\_ of **PDIC**.

### III. TERM

This Contract shall be for a period of \_\_\_\_\_, reckoned from the date of execution of this Contract. **PDIC** reserves the right to terminate this Contract at any time for any reasonable cause such as, but not limited to, unsatisfactory performance by the **FIRM** of its obligations under this Contract.

### IV. PROJECT TEAM

- 1. **PERSONNEL.** The services herein required shall be carried out by professional staff of the **FIRM**, hereinafter called the "**Project Team.**" The **FIRM** shall always ensure that the engagement partner/leader and other members of the Project Team who will actually perform the services must be a Certified Public Accountant, with no less than 10 years of experience in the practice of such profession for the

engagement partner and not less than two years of experience for other members.

2. **REPLACEMENT OF PERSONNEL.** If any member of the Project Team resigns, is discharged or is withdrawn from the service by the **FIRM**, the **FIRM** shall immediately inform **PDIC** of such fact and undertake to make available, as soon as possible and without additional cost to **PDIC**, a suitable replacement of equivalent or better qualifications acceptable to **PDIC**. In like manner, the **FIRM** shall replace any of its personnel found by **PDIC** to be unqualified, incompetent or undesirable.
3. **NO EMPLOYER-EMPLOYEE RELATIONSHIP.** It is expressly understood and agreed that all members of the Project Team assigned by the **FIRM** under this Contract are, for all legal intents and purposes, the employees of the **FIRM** and not of **PDIC**; hence, **PDIC** has no employer-employee relationship with them.
4. **INDEMNIFICATIONS.** The **FIRM** agrees and binds itself to save and hold **PDIC** and/or its officials, employees, or agents free and harmless from any and all liabilities, suits, actions, demands for damages arising from death or injuries to persons, properties, or any loss resulting from or caused by any member of the Project Team, directly or indirectly, incidental to or in connection with the performance of the services under the Contract.
5. **WORK HOURS/DAYS.** The Project Team shall adopt a work schedule as may be mutually agreed upon by both Parties for the effective discharge of the services under this Contract.
6. **OFFICE.** For this engagement, **PDIC** may designate an office space for the use of the Project Team as may be required by the **FIRM** over such periods of time and under the circumstances as agreed upon by both Parties.

## V. COST AND PAYMENT OF SERVICES

1. **CONTRACT PRICE.** In consideration of the services to be provided by the **FIRM** to **PDIC**, and compliance by the **FIRM** with all the terms and conditions of this Contract, **PDIC** agrees to pay the **FIRM** the amount of \_\_\_\_\_ **PESOS (Php\_\_\_\_\_)**, Philippine Currency, inclusive of applicable taxes, representation, transportation, allowances and out-of-pocket expenses.
2. **BILLING AND PAYMENT METHOD.** Billing and payment of the services shall be made in lump sum and only after **PDIC** shall have issued a Certificate of Acceptance of all the deliverables turned in by the **FIRM** to **PDIC** pursuant to this Contract.

3. All payments made under this Contract shall be subject to the auditing and accounting rules of the **PDIC** and the Commission on Audit.

## **VI. FIDUCIARY RELATIONSHIP**

1. The Parties agree that the services covered by this Contract are strictly personal and confidential and that this Contract has been entered into because of the special and peculiar fitness and exceptional experience of the **FIRM** and that by reason thereof, a breach of this Contract on the part of the **FIRM** will subject **PDIC** to financial material and operational loss. Accordingly,
  - 1.1 The **FIRM** and the Project Team shall not, either during the effectivity of this Contract or at any time thereafter, disclose or furnish to any person, firm or corporation any and all information relating to **PDIC**.
  - 1.2 The **FIRM** and the Project Team shall not, during the effectivity of this Contract and extending for a period of one (1) year reckoned from the termination of this Contract, be directly or indirectly engaged or have an interest in any business undertaking or operation of another group, office or company that, in the normal course of operation, would necessitate the use of the information or knowledge gained or acquired by the **FIRM** during its engagement by **PDIC**, unless written consent is obtained from **PDIC**.
2. **DEED OF UNDERTAKING (NON-DISCLOSURE AND CONFIDENTIALITY).** The **FIRM** acknowledges that all information which the **FIRM** or any member of the Project Team may obtain or receive in the course of this engagement is highly confidential. Therefore, prior to disclosing confidential information to the members of the Project Team, the **FIRM** shall issue appropriate instructions to the members of the Project Team to satisfy the members of the Project Team's obligations with **PDIC** under the Deed of Undertaking (Non-Disclosure and Confidentiality), which is attached hereto as Annex **B** and made an integral part of this Contract, and obtain their written agreement to receive and use the information on a confidential basis under the same conditions as contained in Annex **B**.

## **VII. REPRESENTATIONS AND WARRANTIES**

The **FIRM** represents and warrants that: (1) it is a general professional partnership duly registered and licensed to do business in the Philippines, validly existing and in good standing under the laws of the Philippines in which the conduct of its business requires it to qualify and has all requisite power and authority to carry on its business as now conducted, (2) it has the professional expertise and knowledge on the valuation of financial assets and liabilities as prescribed by existing and updates to provisions of the PFRS, (3) it has conducted not less than three (3) engagements in the valuation of

financial instruments, and (4) that the engagement partner/leader or other members of the project team who will actually perform the services must be Certified Public Accountants with no less than 10 years of experience in the practice of such profession for the engagement partner and not less than two years of experience for other members.

## VIII. PERFORMANCE EVALUATION AND GUARANTEE

1. **PERFORMANCE EVALUATION.** The performance of the **FIRM** and Project Team related to the services shall be evaluated by **PDIC**, through its Management Services Sector.
2. **SPOT INSPECTION/MEETINGS.** From time to time and/or whenever necessary, **PDIC**, through its Management Services Sector, shall conduct a review of the activities or call for meetings in connection with the services of the **FIRM** and the Project Team for the purpose of determining compliance with its obligations under the Contract.
3. **PERFORMANCE GUARANTEE/SECURITY.** To guarantee the faithful performance of the obligations and services required under this Agreement, the **FIRM** shall, upon execution of this Contract, post in favor of **PDIC** a Performance Security in the form of (Form of Security) in an amount equivalent to (Minimum Amount in % of Total Contract Price).

In the event that the Performance Security offered by the **FIRM** would be deemed inadequate or otherwise rendered unacceptable, **PDIC** shall have the right to require the **FIRM** to post a performance security in the form and amount determined by **PDIC** and allowed under existing laws and regulations.

The Performance Security shall be released within 15 days from the end of this Agreement's term and upon **PDIC's** issuance of the certification of the **FIRM's** faithful and complete performance of its obligations under this Contract. The Performance Security shall answer for any damage that **PDIC** may suffer by reason of the **FIRM's** default of any of its obligations and/or breach of the terms and conditions of this Agreement. It shall likewise guarantee payment for any loss, damage or injury that may be caused by the **FIRM** to **PDIC**, its employees and guests.

The Performance Security shall be forfeited in favor of **PDIC** in the event that the **FIRM** is in default or breach of its obligation under this Contract. Any changes made in this Contract shall in no way annul, release or affect the liability of the **FIRM** and the surety.

Failure of the **FIRM** to comply with any of the terms and conditions of this Contract shall result in the forfeiture of the Performance Security.

4. **LIQUIDATED DAMAGES.** In the event that the **FIRM** violates any of the terms and conditions of this Contract, or neglects to perform in a

timely manner any of the works, duties, functions, responsibilities or obligations stipulated herein, inclusive of the duly granted time extension, if any, or fails to carry out the tasks herein required in an acceptable manner for any reason whatsoever, the **FIRM** shall be liable for damages for such failure and shall pay **PDIC** liquidated damages in an amount equivalent to one-tenth (1/10) of one (1%) percent of the total contract price for every day of delay or breach, in addition to other remedies that **PDIC** may exercise under this Contract, pertinent laws, rules and regulations, until such services are finally delivered and accepted by **PDIC**. In the event that the total sum of liquidated damages or the total cost to **PDIC** of any such delay or inability by the **FIRM** to deliver its obligations exceeds 10% of the contract price, **PDIC** may terminate this Contract upon giving the **FIRM** written notice at least fifteen (15) calendar days prior to the intended date of termination and impose other appropriate sanctions over and above the liquidated damages.

**PDIC** need not prove that it has incurred actual damages to be entitled to liquidated damages. Furthermore, **PDIC** reserves the right to deduct any and all of the liquidated damages from any money due or payments which may become due to the **FIRM** under the terms of this Contract and/or from the securities/warranties filed/submitted by the **FIRM** as **PDIC** may deem convenient and expeditious under the prevailing circumstances.

5. **SUSPENSION OF PAYMENT.** In addition to the foregoing, **PDIC** shall have the right to suspend, in whole or in part, any payment due to the **FIRM** under this Contract in the event there is delay, default, failure or refusal on the part of the **FIRM** to perform its obligations under this Contract in an acceptable manner. Further, **PDIC** shall have the right to procure/engage, upon such terms and manner as **PDIC** shall deem appropriate, the services of another contractor to undertake the unperformed/undelivered service(s) of the **FIRM**. Any and all expenses that may be incurred in relation thereto shall be for the exclusive account of the **FIRM**.

In the event that such delay, default, failure or refusal continues for a period of more than ten (10%) percent of the Contract price or time, whichever comes first, inclusive of the duly granted time extension, if any, **PDIC** shall have the right to terminate this Contract upon giving the **FIRM** written notice at least five (5) calendar days prior to the intended date of termination. In addition, **PDIC** shall have the right to procure/engage the services of another contractor to complete the services required of the **FIRM** under this Contract. Any and all expenses that **PDIC** may incur in connection thereto shall be for the sole account of the **FIRM**.

The **FIRM** hereby agrees that the remedies mentioned above shall be understood to be without prejudice to other rights and remedies that **PDIC** may exercise under this Contract, applicable laws, rules and regulations.

6. **FORCE MAJEURE.** Neither party will be in breach of this Contract if the cause of the breach is occasioned by *force majeure*, any act of God, fire, act of the Government, war, commotion, insurrection, embargo, prevention from or hindrance in obtaining any materials, energy or other supplies. If such reasons continue to and thereby prevent the performance of the obligations under this Contract for a period of more than ten calendar (10) days, the Parties shall consult each other for the purpose of agreeing as to what action should be taken under said circumstances.

## IX. PRE-TERMINATION/TERMINATION OF CONTRACT

1. **PRE-TERMINATION.** **PDIC** shall have the sole option to pre-terminate this Contract, subject to a written notice to the **FIRM** of at least five (5) calendar days prior to the intended date of pre-termination, under any of the following:
  - 1.1 Violation by the **FIRM** of any terms, conditions, warranties and covenants of this Contract or any of its enclosures/annexes;
  - 1.2 Discovery of any misrepresentation by the **FIRM** during the effectivity of this Contract;
  - 1.3 If in the judgment of **PDIC**, the quality of services rendered by the **FIRM** is substandard and/or unsatisfactory, such as but not limited to, non-compliance with the deliverables as required in this Contract.

Upon pre-termination/termination of this Contract, the **FIRM** shall properly turn over to **PDIC** without need of demand, oral or written, all documents, files, books, and records which came into possession, including other accountabilities. Thereafter, the **FIRM** shall secure the necessary clearances from **PDIC** for all its accountabilities and responsibilities under this Contract.

The pre-termination herein referred to shall be understood to be without prejudice to other rights and remedies that **PDIC** may exercise against the **FIRM** under this Contract and other applicable laws, rules and regulations.

2. **TERMINATION FOR UNLAWFUL ACTS.** **PDIC** may terminate this Contract, after giving the **FIRM** written notice at least five (5) calendar days prior to the intended date of termination, whenever it is determined by **PDIC** that the **FIRM** has engaged, before or during the implementation of this Contract, in unlawful deeds and behaviors relative to Contract acquisition and implementation. Unlawful acts shall include, but not necessarily limited to, the following:



- 2.1. Corrupt, fraudulent, and coercive practices as defined under R.A 9184 otherwise known as the "Government Procurement Reform Act;"
- 2.2. Drawing up or using forged document;
- 2.3. Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
- 2.4. Any other act analogous to the foregoing.

The **FIRM** hereby agrees that the termination referred to herein shall be understood to be without prejudice to other rights and remedies available to **PDIC** under this Contract and the applicable laws, rules and regulations.

3. **OTHER GROUNDS FOR TERMINATION.** **PDIC** may terminate this Contract, in whole or in part, at any time for its convenience, after giving written notice to the **FIRM** at least five (5) calendar days prior to the intended date of termination, if it has been determined by **PDIC** that this Contract would be economically, financially or technically impractical and/or unnecessary on the part of **PDIC**; Provided, however, that **PDIC** shall accept, at the Contract terms and prices, the goods or services that have already been delivered and/or performed within thirty (30) calendar days prior to receipt by the **FIRM** of the Notice of Termination. For goods not yet performed/delivered but have already been purchased by the **FIRM** and are ready for delivery or performance prior to the actual receipt of the Notice of Termination by the **FIRM**, **PDIC** may elect to:

- 3.1. Have any portion thereof to be delivered and/or performed and pay at the Contract terms and prices; and/or
- 3.2. Cancel the remainder and pay to the **FIRM** an agreed amount for materials and parts previously purchased by the **FIRM**.

Provided, further, if the **FIRM** suffers loss in its initial performance of the terminated contract, such as purchase of raw materials for goods specially manufactured for **PDIC** which cannot be sold in the open market, the **FIRM** shall be allowed to recover partially from the Contract on a *quantum meruit* basis. Before recovery may be made, the fact of loss must be established under oath by the **FIRM** to the satisfaction of **PDIC** before recovery may be made

## **X. MISCELLANEOUS**

1. **ENCLOSURES/VARIANCE BETWEEN DOCUMENTS.** The documents/contracts enclosed/annexed hereto are integral parts of this Contract; however, if there is any contradiction or inconsistency between this Contract and said enclosures/annexes, this Contract shall take

precedence and the parties shall undertake all reasonable steps to harmonize or reconcile said contradiction or inconsistency.

2. **AMENDMENTS/MODIFICATIONS AND WAIVER**

2.1 Any amendment or modification to this Contract must be in writing and signed by the Parties hereto. The **FIRM** shall not implement any amendment or modification unless the same has been previously approved by **PDIC**.

2.2 No waiver by **PDIC** of any provisions of this Contract shall be binding unless made expressly and in writing. No failure or delay by **PDIC** to exercise any right, power, privilege or remedy under this Contract or its enclosures/annexes shall operate as a waiver thereof nor shall any single or partial exercise of such right, power, privilege or remedy preclude any further exercise thereof or any other right, power, privilege or remedy.

3. **BINDING EFFECT/ASSIGNMENT OF RIGHTS.** This Contract shall be binding upon the **FIRM**, its partners, successors-in-interest, its legal representatives and assigns. Foregoing notwithstanding, the **FIRM** shall not in any way assign, or transfer its rights and obligations under this Contract without the written approval of **PDIC**.

4. **GOVERNING LAW AND LANGUAGE.** The rights and obligation of the parties hereto shall be governed primarily, by the provisions of this Contract, and suppletorily by the provisions of R.A. 9184 otherwise known as the "Government Procurement Reform Act" and other applicable law, rules and regulations.

This Contract has been executed in English language, which shall be the binding and controlling language for all matters relating to the meaning and interpretation of this Contract. All correspondences and other documents pertaining to this Contract exchanged by the parties shall be written in English.

5. **SEVERABILITY.** If any one or more provisions of this Contract shall, for any reason, be held void or unenforceable, the legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired, and shall remain in full force and effect.

6. **DISPUTE/LITIGATION CLAUSE.** Any dispute arising out of or in connection with this Contract shall be referred to and finally resolved in the proper courts of the city of Makati, Metro Manila to the exclusion of all other courts.

7. **LITIGATION COST.** If any legal action or other proceeding is brought for the enforcement of this Contract, or because of any alleged dispute, breach, or misrepresentation in connection with any of the provisions of this Contract, the successful or prevailing party shall be entitled to

recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

**IN WITNESS WHEREOF**, the parties have hereunto signed this Contract this \_\_\_\_\_ day of \_\_\_\_\_ in Makati City, Philippines.

**PHILIPPINE DEPOSIT  
INSURANCE CORPORATION**

\_\_\_\_\_

By:

By:

\_\_\_\_\_

\_\_\_\_\_

**SIGNED IN THE PRESENCE OF:**

\_\_\_\_\_

\_\_\_\_\_

**CERTIFICATION:**

This is to certify that pursuant to PDIC Board Resolution No. \_\_\_\_\_ dated \_\_\_\_\_, the amount of P\_\_\_\_\_ has been set aside and made available by way of Budget allocation for CY 2014 to cover for the implementation of the approved **Contract of Consultancy for the Fair Valuation of Capital Notes**.

**ACKNOWLEDGMENT**

**REPUBLIC OF THE PHILIPPINES)  
CITY OF MAKATI ) S.S.**

**BEFORE ME**, a Notary Public for and in Makati City this \_\_\_\_\_ personally appeared the following with proof of their competent identity:

<b>Name</b>	<b>Competent Evidence of Identities</b>	<b>Date/Place Issued</b>
<b>V</b>		

They are both known to me to be the same persons who signed the foregoing document and acknowledged to me that their signatures prove their free acts and the entities they represent.

This document refers to a **Contract for the Fair Valuation of Capital Notes** consisting of \_\_\_\_\_ ( ) pages, including this page on which this Acknowledgment is written, signed by the parties and the witnesses on each and every page thereof and thereafter sealed with my notarial seal.

**WITNESS MY HAND AND SEAL** at the place and on the date first above written.

Doc. No. \_\_\_\_;  
Page No. \_\_\_\_;  
Book No. \_\_\_\_;  
Series of 2014.

**CONFIDENTIALITY AND NON-DISCLOSURE UNDERTAKING  
(The FIRM)**

This Undertaking entered into this \_\_\_\_\_ day of \_\_\_\_\_ by:

\_\_\_\_\_, a general professional partnership, duly registered and licensed to do business in the Philippines, with principal office at \_\_\_\_\_, represented herein by its Partner, \_\_\_\_\_, hereinafter referred to as the "**FIRM**"

- In favor of -

**PHILIPPINE DEPOSIT INSURANCE CORPORATION**, a government instrumentality created and existing under and by virtue of R.A. No. 3591, as amended, with principal office at SSS Bldg., 6782 Ayala Avenue corner V.A. Rufino Street, Makati City, Metro Manila, represented herein by its President, **Valentin A. Araneta** hereinafter referred to as the "**PDIC**"

**WITNESSETH: That –**

**WHEREAS**, the **FIRM**, through a public bidding conducted for the purpose, was awarded the Contract for the Valuation of Capital Notes.

The Contract appears in the Notarial Register of Atty. \_\_\_\_ as Doc. No. \_\_, Page No. \_\_, Book No. \_\_ Series of \_\_\_\_\_;

**WHEREAS**, in the fulfillment of the obligations under the Contract, it is necessary that confidential information would be disclosed to the **FIRM**;

**WHEREAS**, the unauthorized use and disclosure of confidential information could be detrimental to the concerned bank and could expose the bank and **PDIC** to potential legal risks;

**WHEREAS**, **PDIC**, pursuant to Section 9 (e) (3) of its Charter, as amended, is mandated to protect any confidential information about any bank or banking institution against unauthorized use and disclosure.

**NOW, THEREFORE**, in consideration of the foregoing, the **FIRM** binds itself to undertake the following:

**I. Confidential Information**

As used throughout this Undertaking, the term "Confidential Information" means any information in any form that is obtained from any officer or employee of **PDIC** whether before or after the execution of this Undertaking, which is disclosed in connection with the engagement of the **FIRM** as consultant for the Fair Valuation Services of Capital Notes. "Confidential Information" shall also pertain to the following:

- a) Any and all information about the concerned bank gathered during the conduct of engagement, which, if disclosed, would or would be likely to materially prejudice the commercial and financial interest, and/or competitive and legal position of the bank and **PDIC**; and
- b) Information on the condition or business and market information of the bank, which is not known or made available to the general public.

In addition to the above, Confidential Information shall also include any information which is disclosed by **PDIC** to the **FIRM** in whatever form or manner.

## II. Rationale for Requirement of Confidentiality

The **FIRM** understands that the requirement of confidentiality is based on the fact that the unauthorized disclosure or use by the **FIRM**, whether intentional or otherwise, of any Confidential Information may lead to the following consequences:

- a) Prejudice the commercial and financial interests, and/or competitive and legal position of the bank and **PDIC**;
- b) Affect/undermine the integrity of **PDIC**'s decision-making processes, and policies relative to its function as state insurer and receiver of closed banks;
- c) Place **PDIC** at risk for violation of the provisions of its Charter, which prohibits the unauthorized or uncontrolled use and disclosure of any confidential information about any bank or banking institution;
- d) Compromise the effectiveness of **PDIC**'s authority as co-regulator, state insurer, statutory receiver and liquidator as well as its investigation and examination powers over banks;
- e) Adversely affect and/or undermine the general stability of the Philippine banking system; and
- f) Violate existing laws on the secrecy of bank deposits, such as Republic Act No. 1405, as amended.

## III. Obligations of the FIRM

The **FIRM** agrees that:

- a) Any disclosure of information shall be subject to the prior written consent and/or approval of **PDIC**. **PDIC** reserves the right to grant or withhold its consent to the declassification and/or release of any Confidential Information to any third party.
- b) The **FIRM**'s obligations confidentiality and non-disclosure shall extend to and be binding upon its representatives, officers, employees, and/or agents. Consequently, the **FIRM** shall ensure that its representatives, officers, employees, and/or agents are made aware of and are

likewise bound to comply with this Undertaking and that the release of Confidential Information to them shall strictly be on a need to know basis. The **FIRM** shall issue appropriate instructions to the members of the Project Team and to any employee of the **FIRM** that may be involved in the PROJECT to satisfy their obligations with **PDIC** on Confidentiality and Non-disclosure under this Undertaking.

- c) Any and all Confidential Information shall remain classified and will not be disclosed to any party not authorized therein, nor cited in any report, paper, or presentation, without the prior written consent or approval of **PDIC**. Confidential Information shall absolutely not be disclosed to any person or entity unless prior written approval of **PDIC** is first obtained.

#### **IV. Breach of Undertaking**

Any breach or threatened breach of any provision of this Undertaking shall entitle **PDIC** to injunctive relief and the payment of liquidated damages in the amount of one hundred thousand pesos (₱100,000.00). **PDIC** shall also be entitled to any other adequate relief available to it under applicable Philippine laws.

This Undertaking is made under and shall be construed according to the laws of the Republic of the Philippines.

#### **V. Non-waiver of Rights**

It is further understood that no failure or delay by **PDIC** in exercising any right, power or privilege stated herein shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude the exercise of any other right, power or privilege.

#### **VI. Continuing Undertaking**

The termination of the relationship between the parties under the Contract shall not relieve the **FIRM** of its obligations of confidentiality and non-disclosure.

**IN WITNESS WHEREOF**, the **FIRM** acknowledges that it has read and understands this Undertaking and voluntarily accepts the duties and obligations set forth herein and signed this Undertaking at the place and on the date first above written.

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As represented by:

Engagement Partner

Witnesses:

**ACKNOWLEDGMENT**

REPUBLIC OF THE PHILIPPINES)  
CITY OF MAKATI ) S.S.

**BEFORE ME**, a Notary Public for and in Makati City, this \_\_\_\_\_ personally appeared the following persons with proof of their competent identity:

Name	Proof of Identity	Date/Place Issued
(Name of Firm)		

They are both known to me to be the same person who signed the foregoing Undertaking and acknowledged to me that their signatures prove their free acts and the entities they represent.

This Confidentiality and Non-Disclosure Undertaking consists of four (4) pages, including this page on where this Acknowledgment is written, signed by the party and the witnesses on each and every page thereof.

**WITNESS MY HAND AND SEAL** at the place and on the date first above written.

Doc. No. \_\_\_\_;  
Page No. \_\_\_\_;  
Book No. \_\_\_\_;  
Series of 2014.