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RULES AND REGULATIONS IMPLEMENTING EXECUTIVE ORDER NO. 462

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Pursuant to Executive Order No. 462, "ENABLING PRIVATE SECTOR PARTICIPATION IN THE EXPLORATION, DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF OCEAN, SOLAR AND WIND ENERGY RESOURCES FOR POWER GENERATION AND OTHER ENERGY USES", the Department of Energy hereby adopts and promulgates the following rules and regulations:

General Provisions

SECTION 1. Title — This Circular shall be known as the Rules and Regulations Implementing Executive Order No. 462, dated December 29, 1997, and may otherwise be cited as "OSW Implementing Rules and Regulations".

SECTION 2. Policy Objectives — This Circular shall have the following policy objectives:

a. To accelerate the exploration, development, utilization and commercialization of ocean, solar and wind (OSW) energy resources which are indigenous, renewable, environment-friendly and of such abundance that can provide the Philippines self-sufficiency in energy and possibly surpluses for export in the future despite high energy demand due to rapid economic growth;

b. To enable/enhance private sector participation in the exploration, development, utilization and commercialization of OSW energy resources;

c. To ensure the proper management of OSW energy resources, consistent with the country's goals of energy self-sufficiency, affordability, and sustainable development.

SECTION 3. Scope — This Circular shall apply to the assessment, exploration, extraction, harnessing, development, utilization and/or commercialization of OSW energy resources in public, private and ancestral domains in the Philippines for power generation and other energy uses.

SECTION 4. Definition of Terms — Unless the context otherwise indicates, the terms used in this Circular shall have the following meanings:

a. "Accreditation" means the authorization granted by the Department to an entity for the establishment of a power plant in accordance with Executive Order 215, dated July 10, 1987, and its implementing rules and regulations.

b. "Ancestral domain" means the ancestral domain area as defined in Republic Act No. 8371, otherwise known as the "Indigenous Peoples Rights Act of 1997";

c. "Contract area" means the area awarded under an OSW production-sharing contract for OSW production-sharing contract for OSW energy resources in public domain;

d. "Contractor" means a production-sharing contractor for the assessment, exploration, extraction, harnessing, development, utilization and/or commercialization of OSW energy resources in public domain;

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e. “Department” means the Department of Energy created under Republic Act No. 7683;

f. “Electric utility” means an entity with a franchise to operate a distribution system, or to engage in the business of commercially supplying electricity within a specified area, or both.

g. “Environmental Compliance Certificate (ECC)” means the document issued by the Secretary of the Department of Environment and Natural Resources (DENR) or the DENR Regional Executive Director certifying that a proposed project or undertaking will not cause significant negative environmental impact, and that the project proponent has complied with the requirements of the EIS System;

h. “Environmental Impact Statement (EIS)” means the document(s) stating the result of studies on the environmental impact/s of a project, as well as the discussions on direct and indirect consequences upon human welfare and ecological and environmental integrity. The EIS may vary from project to project but shall contain in any case all relevant information and details about the proposed project or undertaking, including the environmental impacts of the project and the appropriate mitigating and enhancement measures;

i. “Environmental Impact Statement System (EIS System)” means the process institutionalized for the purposes of assessing the significance of the effects of any project on the quality of the physical, biological, and socio-economic environment, and designating appropriate preventive, mitigating and enhancement measures;

j. “Exclusive Economic Zone” means the area that includes the water, the air space superjacent to it, and the seabed and its sub-oil of the area extending beyond but not exceeding a distance of 200 nautical miles from the Philippine baselines;

k. “Franchise” means the privilege to operate, maintain and/or distribute power within a specific geographical area;

l. “Government” means the government of the Republic of the Philippines;

m. “Host Municipality/City” means the municipality or city where the OSW energy project is located;

n. “Host community” means a group of persons living in the environmental impact area or the area of environmental influence of an OSW energy project;

o. “Hybrid OSW system” means a power plant system that involves the use of a combination of ocean, solar and/or wind energy resources, or a combination of any of the OSW energy resources with any other energy source/s, whether renewable or nonrenewable to sustain a stable output;

p. “Negotiated Commercial Contract (NCC)” means an OSW production-sharing contract, without a pre-commercial contract (PCC) component, providing the terms and conditions for the commercial phase of the OSW energy project;

q. “Ocean energy” means any form of energy such as kinetic, thermal and chemical, from a body of water that is substantially influenced by tides;

r. “Offshore” means the water, sea bottom and sub-surface from the shore or coastline at the highest equinoctial tide level to the outer limit of the exclusive economic zone;

s. “OSW energy” means the energy that is harnessed/generated or produced from ocean, solar and wind;

t. “Private domain” means private land or privately held offshore area, including alienable and disposable land being claimed by a holder claimant, or occupant who has acquired a vested right thereto under the law, although the corresponding certificate or evidence of title or patent has not been actually issued;

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u. “Public Domain” means all lands and waters in the possession or ownership of the State, as distinguished from lands possessed by private individuals;

v. “OSW production-sharing contract” means a contract or an agreement entered into by and between the government, through the Department, and a qualified person or entity involving the assessment, exploration, extraction, harnessing, development, utilization and/or commercialization of OSW energy resource.

w. “Qualified person” means any citizen of the Philippines with capacity to contract, or a corporation, partnership, association, cooperative or any other business aggrupation organized under the laws of the Republic of the Philippines, at least sixty percent (60%) of the capital of which is owned by citizens of the Philippines;

x. “Qualified hybrid OSW system” means a hybrid OSW system that uses a combination of more than one energy resource that are all renewable or a combination of one or more OSW energy resource with one or more non-renewable energy source, provided that: (a) there is no grid electricity available in the project area from National Power Corporation or other duly accredited grid operator; (b) the OSW energy output is not less than 75% of the annual output of the system; and (c) the non-renewable installed capacity is not more than 50% of the OSW energy installed capacity;

y. “Secretary” means the Secretary of the Department of Energy;

z. “Solar Energy” means the energy transmitted from the sun;

aa.“Wind energy” means a form of kinetic energy arising from the movement of air;

bb.“Working capital” means net liquid assets (quick assets less current liabilities) consisting primarily of cash, temporary investments (marketable securities) and short-term receivables.

OSW PROJECTS IN PUBLIC DOMAIN

SECTION 5. OSW Production-Sharing Contract (OSWC) — Any person who engages or intends to engage in the assessment, exploration, extraction, harnessing, development, utilization and/or commercialization of any OSW energy resource in public domain shall secure an OSW production-sharing contract (OSWC) with the government through the Department.

SECTION 6. Components of an OSWC — An OSWC, as a general rule, shall consist of a Pre-Commercial Contract (PCC) and Pre-negotiated Commercial Contact (PNCC), the scope and application of which are as follows:

a. PCC — The PCC shall involve exploration, resource assessment, piloting, feasibility studies, environmental impact studies, and/or all other studies prior to commercial production, and shall be patterned after Model Contract Form No. 462-A prescribed by the Department. The PCC shall be signed by the Contractor and the Secretary at the time of the award of the OSWC.

b. PNCC — The PNCC shall involve the development, extraction, harnessing, utilization and commercialization of the OSW energy resource concerned. It shall be negotiated at the same time as the PCC and shall be patterned after Model Contract Form No. 462-B prescribed by the Department. The PNCC shall be signed by the Contractor and the Secretary after the Letter of Confirmation is issued to signify government approval of the Declaration of Commerciality for the project. When the project involves an installed capacity of one (1) megawatt or less, whether as one centralized system or as an aggregate of several small systems, the conditions and requirements for the PNCC shall be simplified and rationalized with respect to the need to encourage small-scale private sector investment in OSW energy development. For this purpose, the government share in Section 21 and the trust

account for termination and abandonment in Section 27 of this Circular shall be minimized by negotiation and the requirements for Declaration of Commerciality shall be simplified.

SECTION 7. OSW Without Pre-Commercial Contract Component — When conditions warrant, such as when enough information is available for an area to determine commercial feasibility, environmental impact and other conditions for commercialization of OSW energy the Pre-Commercial Contract (PCC) component of an OSW may be waived. In this case, an application for OSW shall be for a Negotiated Commercial Contract (NCC) using Model Contract Form No. 462-C. Such application shall be accompanied by a Declaration of Commerciality and other related documents.

SECTION 8. Accreditation of OSW Power Plant Projects — OSW Power plant projects in public domain shall go through the accreditation process of the Department in accordance with Executive Order No. 215 and its implementing rules and regulations, prior to the issuance of the Letter of Confirmation by the Secretary on the Contractor's Declaration of Commerciality; Provided that, for hybrid OSW systems, the ratio of OSW input and non-renewable source input may depart from relevant provisions of Energy Regulations No. 1-95, subject to the requirements for qualified hybrid OSW system as defined in item (x) Section 4 of this Circular.

SECTION 9. Duration of Contracts — The PCC for solar and/or wind energy shall have a term of two (2) years extendible three times for one year period per extension. For ocean energy, whether exclusively or in combination with solar and/or wind, the PCC shall have a term of three (3) years extendible four times for one year period per extension.

The PNCC or NCC for any OSW energy project shall have a term of twenty-five (25) years, renewable once for the same number of years.

SECTION 10. Qualifications of a Contractor — A Contractor must be a qualified person as defined in Section 4 (w) of this Circular. He must be technically and financially qualified to implement the work program of the OSW Project applied for. The qualifications of a Contactor shall be based on the work program submitted, together with the application and in particular, the following attributes:

a. Technical — The Contractor shall be able to undertake the work program by himself or engage the services of competent technical personnel to carry out the work program. For the purpose of assuring the availability of competent personnel, the Contractor shall submit to the Department the names of consultants and the extent and nature of work assigned to them.

b. Financial — The financial qualifications of a Contractor shall be: (1) working capital of at least 100% of the cost of the work program as submitted to the Department for the initial two years of the proposed contract, and a statement that it has the capability to fund the cost of succeeding work program as provided in the OSWC; and (2) such other factors which would substantially establish the financial capability of the applicant.

SECTION 11. Application for OSWC — An application for OSWC shall be accomplished in the form prescribed by DOE and submitted to the OSW Service Unit (SU) established in Section 32 of this Circular. Each application shall cover an area located in only one municipality or city.

SECTION 12. Processing of OSWC Application — Upon receipt of an application, for OSWC in public domain, the Department shall review the information therein provided and within fifteen (15) days pre-qualify the applicant. Once pre-qualified, the applicant shall submit to the SU within fifteen (15) days upon notice accomplished PCC form (Form 462-A) and PNCC form (Form 462-B) as the case maybe. If the submissions are in order as determined by the Department within fifteen (15) days upon receipt, the applicant shall pay a processing fee of one thousand pesos (P 1000) per application plus five pesos (P 5.00) for every hectare of public

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domain area in the block/s applied for, and the Contractor shall set aside an amount sufficient to shoulder the costs of consultation with the host municipality or city and the host community.

With the assistance of the Department through a one-stop-shop facilitation scheme, the Contractor shall secure a certification of the status of natural resources right in the area applied for, from Environmental Management Bureau (EMB), National Commission on Indigenous Peoples (NCIP), Forestry Management Bureau (FMB), Land Management Bureau (LMB), Mines and Geosciences Bureau (MGB) and Protected Areas and Wildlife Bureau (PAWB) for onshore areas, and from EMB, NCIP, MGB, Bureau of Fisheries and Aquatic Resources (BFAR), Maritime Industry Authority (MARINA) and PAWB for offshore areas and other government entities as the need arises.

Immediately upon the Contractor's compliance on the foregoing, the Department shall conduct negotiations with the Contractor on the terms and conditions of the PCC and PNCC or NCC. The host municipality/city and the host community shall be represented during the negotiations. All reasonable expenses incurred during the consultations shall be charged to the applicant. Upon conclusion of negotiations, the Contractor shall pay the occupation fee of fifty pesos (P 50) per hectare of land area covered by the contract to the Treasurer of the Host Municipality/City. Within thirty days (30) thereafter, the OSWC shall be signed by the Secretary and the Contractor.

SECTION 13. Identification of Contract Area — The SU shall develop an OSW Blocking System, subdividing the Philippine territory, its exclusive economic zone, and other areas that may be declared as part of the national territory into meridional blocks of one-half (1/2) minute of latitude and one-half (1/2) minute of longitude, each with an area of about eighty-one (81) hectares. Each block shall be designated a block number which shall be used exclusively in identifying the coverage of an OSW contract area. The SU shall make available to the public the OSW blocking maps with geographic coordinates and block numbers.

SECTION 14. Minimum Size of Contract Area — The minimum area that may be awarded in an OSWC shall be one (1) meridional block. However, the size of that area in hectares shall be subject to exclusion of portion/s in the block that may be covered by existing rights to land and other natural resources that may not be compatible to the privilege of using OSW energy resources.

SECTION 15. Maximum Size of Contract Area — The maximum areas that may be awarded in one contract or several contracts to one qualified person all over the Philippines shall be one hundred (100) blocks (about 8,100 hectares) for ocean or a combination, of ocean and wind and/or solar. The size of the area in hectares shall, however, be subject to exclusion of portion/s in the blocks that may be covered by existing rights incompatible to the privilege of using OSW energy resources.

Corollary to the above limitations, an individual shall not exceed the above maximum areas through membership in aggrupations such as corporations, partnership, cooperative or association. To monitor the area controlled by an applicant, he shall be required to make a sworn statement as to the number of blocks credited to him both as an individual and as a member of an aggrupations granted OSWC. The area controlled by an individual through such aggrupations, shall be computed pro-rata with respect to shareholdings.

SECTION 16. Mandatory Relinquishment of Area — At the 24th, 48th, and 72nd months of the PCC, the Contractor shall submit to the Department a delineation of at least fifty percent (50%) of the remaining subsisting contract area that it shall relinquish to the government. This area shall be of regular shape and consisting of contiguous blocks.

For contract areas consisting of only one block (original or remaining after previous relinquishment), relinquishment shall be in terms of quadrant of the block. Relinquishment shall not be required when the

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remaining contract area is only one quadrant (about 20 hectares).

SECTION 17. Survey and Monumenting of Contract Area — After having determined the final area that is commercially feasible, the Contractor shall engage the services of a geodetic engineer accredited by the Department to conduct a boundary survey and mark its corners with appropriate survey markers which shall serve as references, on land or offshore. The survey returns thereof shall be submitted to the SU for verification and approval. The survey plans approved by the Department and technical description of the Contract Area shall be among the required supporting documents for the Declaration of Commerciality.

The accreditation of geodetic engineers and the conduct of survey and monumenting shall be governed by a set of guidelines to be issued by the Geodata and Information Services Division (GISD) of the Department within sixty (60) days upon effectivity of this Circular.

The Contractor shall likewise furnish the Department and the Coast and Geodetic Survey Department of the National Mapping and Resource Information Authority with copies of all hydrographic and oceanographic data that had been collected in pursuance of an OSWC. The Contractor shall also furnish the same offices with the locations and descriptions of all structures that have been built or installed in the Contract Area for purposes of ensuring the safety of navigation.

SECTION 18. Declaration of Commerciality — After having conducted all the necessary studies and upon determination of the commercial feasibility of the project, the Contractor shall submit a written declaration to the Secretary stating that the project is commercially feasible. The Department shall review the facts supporting the declaration, and conduct public consultations with host community and the host municipality or city where the project is located. The Secretary shall then issue a Letter of Confirmation once all the necessary requirements are complied with, and favorable endorsements are given by the host community and host municipality or city. Within one (1) month thereafter, the Secretary and the Contractor shall sign the PNCC or NCC.

SECTION 19. Payment of Occupation Fee — For contract areas on land, an occupation fee of fifty pesos (P 50) per hectare, or a fraction of a hectare, shall be paid by the Contractor to the Treasurer of the host municipality or city immediately upon signing of the PCC and every year thereafter at the anniversary of signing.

For contract areas offshore, an occupation fee of fifty pesos (P 50) per hectare, or a fraction of a hectare, shall be paid by the Contractor to the Treasurer of the host Municipality or City immediately upon signing of the PNCC or NCC and every year thereafter at the anniversary of signing.

For offshore areas outside territorial jurisdiction of any Municipality or city, the occupation fee of fifty pesos (P 50) per hectare or a fraction of a hectare, shall be paid by the Contractor to the Department immediately upon signing of the PNCC or NCC and every year thereafter at the anniversary of the signing. The above occupation fees may be increased by the Secretary from time to time to allow for adjustment due to inflation and other factors as public interest may require.

SECTION 20. Distribution of Occupation Fee — The Treasurer of the municipality or city shall distribute the occupation fees collected in accordance with section 292 or RA 7160, otherwise known as the Local Government Code of 1991.

SECTION 21. Government Share — The government share shall be negotiated between the Department and the Contractor. At the least, it shall consist of a Signature Bonus and a Production Bonus. Additional components may, however, be included subject to agreement between the Department and the Contractor as may be specified in the PNCC or NCC.

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The signature bonus shall be paid to the Department at the date of signing the PNCC or NCC. It shall seek to recover any expense that the government may have incurred in the assessment, exploration and determination of economic feasibility of the OSW project. On the other hand, the determination of the signature bonus shall take into consideration the contribution of the project to national development.

The production bonus shall be paid to the Department at the end of each calendar year during the pendency of the PNCC or NCC whenever commercial production is realized. It shall seek to provide the government maximum share of the net revenue that may be derived from the project without unduly bringing burden to the consumer or market. In the case of electricity as product, the production bonus shall not result in electricity prices higher than the contracted selling rates to electric utility in the area where the project is located.

The distribution of the government share shall also be in accordance with Sections 290 and 292 of Republic Act No. 7160.

SECTION 22. Water Permit for Ocean Energy Resources — Water permit as required by PD 1067, otherwise known as Water Code of the Philippines, shall be secured by the contractor from the National Water Resources Board (NWRB) and shall be submitted to the Department as supporting document to the Declaration of Commerciality.

SECTION 23. Resolution of Resource-Use Conflicts — When the certification of status of natural resource rights in the area applied for shows conflict with existing rights to other natural resources, the Department shall negotiate with the concerned agency of the government for its resolution before issuing a Letter of Confirmation. In spite of existing rights to other natural resources, such as forestry, fisheries, mines, navigation and others, the use of OSW energy resources shall be given due consideration under the multiple-use concept. If for a certain reason acceptable to the Department, the agency concerned or the holder/s of existing rights would not agree, the OSW application shall be rejected. No subsequent OSWC application shall then be entertained by the Department over the same area as long as the existing right prevails.

SECTION 24. Incentives — The Contractor may avail himself of incentives offered by the government such as those under the Omnibus Investment Code of 1987, facilities granted by domestic and foreign financing institutions, and others.

SECTION 25. Concurrence of Host Municipality or City and Host Community — The concurrence of the host municipality or city regarding the putting up of an OSW project shall be based on a resolution of the Sangguniang Bayan or Sangguniang Panlungsod, as the case maybe. Concurrence of the host community shall be through a written endorsement of the duly designated representative of the said community as recognized by the Department.

SECTION 26. Transfer of OSW Contracts — Upon the awarding of the OSWC, the Contractor shall have the exclusive privilege to conduct the exploration, development, utilization and commercialization of the OSW energy resources in the contract area. However, such contract may be transferred or assigned only to another qualified person after a written request to the Department and upon approval of the Secretary; Provided, however, that the transferee or assignee possesses the financial and technical capability to continue the work obligations under the contract and that the Contractor had complied with all outstanding obligations at the time of transfer or assignment.

SECTION 27. Trust Account for Termination and Abandonment — To provide for environmental rehabilitation at the termination and abandonment of the contract area, the Contractor shall open a “trust account” starting at the first year of commercial production. Such account shall be jointly in the name of Contractor, the Department and

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the concerned municipality/ies or city/ies. An amount equivalent to at least one centavo (P 0.01) per kWh. A portion of the account may be used for payment of premiums for environmental insurance.

The required amount for quarterly remittance to the trust account shall be determined by the Secretary in consultation with the concerned host community/ies and municipality or city.

Any environmental rehabilitation cost during termination and abandonment in excess of the trust account shall be charged to the Contractor. Any excess that remains in this account after rehabilitation shall accrue to the municipality/ies or city/ies concerned.

SECTION 28. Procedure for Termination and Abandonment — An OSWC, whether in the PCC, PNCC or NCC stage, may be abandoned or terminated only after completion of an abandonment and termination plan as approved by the Department.

At least ninety (90) days prior to the expiration of a PCC, PNCC or NCC, the Contractor shall submit its termination or abandonment plan for the Department's approval. In case of early termination or abandonment, the Contractor shall submit to the Department a notice of intent to terminate or abandon at least one hundred twenty (120) days prior to the intended date of termination or abandonment. A termination and abandonment plan for execution by the Contractor shall accompany the said notice.

The Department shall issue detailed guidelines for the formulation of abandonment and termination plan within 90 days from effectivity of this Circular.

SECTION 29. Reportorial Requirement — All data obtained in the course of the assessment, exploration, extraction, harnessing, development and utilization of OSW energy resources, shall be submitted to the Department on a quarterly basis; Provided that such data shall be for the exclusive use of the Contractor and the government and that if the Contractor will need to transfer or distribute those data, a written permit from the Department shall be secured.

OSW POWER PLANT PROJECTS IN PRIVATE AND/OR ANCESTRAL DOMAIN

SECTION 30. Accreditation by Department — A qualified person who engages in an OSW power plant project with an installed capacity of more than one (1) megawatt in private and/or ancestral lands as well as in privately-held offshore areas shall apply with the Department for accreditation. For this purpose, Executive Order 215 and its implementing rules and regulations, shall apply; Provided that, for hybrid OSW system, the ratio of OSW input and non-renewable source input may depart from the relevant provision of Energy Regulations 1-95, as amended, subject to Section 4(x) of this Circular.

SECTION 31. Accreditation by Local Government Units — OSW power plant projects in private and/or ancestral domain with an installed generating capacity of 500 kW up to one (1) megawatt, shall hereby be delegated to the municipality or city where the project is located. Such accreditation shall be based on a local energy plan, as approved by the Department. The concerned municipality or city shall exercise supervision over such power plant project and shall submit periodic reports, once every three months, to the Department. For OSW projects below 500 kW, accreditation shall not be required as long as the output is not sold to compete or interfere with the business of any franchise holder.

IMPLEMENTING UNIT

SECTION 32. Service Unit — A service unit (SU) is hereby created to implement the provisions of Executive Order No. 462 and this Circular. It shall be headed by the Assistant Secretary for Operations.

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The Assistant Secretary shall be assisted by existing units of the Department that have relevance to the implementation of the Executive Order, such as Geodata and Information Services Division (GISD), Compliance Division (CD) and Contract Negotiations Division (CND) of Energy Resources Development Bureau (ERDB), Environmental Protection and Monitoring Division (EPMD) and Non-Conventional Energy Division (NCED) of Energy Utilization Management Bureau (EUMB), Energy Supply Administration Division (ESAD) of Energy Industry Administration Bureau (EIAB) and Policy and Program Coordinating Division (PPCD) of Energy Planning and Monitoring Bureau (EPMB). He shall also be assisted by the members of the Pole Vaulting Task Force created under DOE Order No. 97-04-011, the Technical Review Panel created under DOE Order 97-12-018, the Negotiating Panel created under DOE Order No. 95-08-21 and the OSW Secretariat created under DOE Order No. 97-04-011.

SECTION 33. Operating Funds — The funds for the operations of the service unit during the year 1998 shall be defrayed from the appropriate funds of the Office of the President. Thereafter, the required funds for the operations of this unit maybe included in the budget of the Department in the General Appropriations Act.

SECTION 34. Repealing Clause — Any rule or regulation inconsistent with the provisions of this IRR is hereby repealed or modified accordingly.

SECTION 35. Separability Clause — If for any reason or reasons, any part of this IRR be declared unconstitutional or invalid, no other parts or provisions hereof shall be affected thereby.

EFFECTIVITY

SECTION 36. This Circular shall take effect upon its complete publication in a newspaper of general circulation.

Adopted: 31 March 1998

(SGD). FRANCISCO L. VIRAY
Secretary

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