

**Republic of the Philippines**  
**TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY**  
**East Service Road, South Super Highway, Taguig, Metro Manila**

**92<sup>nd</sup> TESDA BOARD MEETING**

16 December 2015, Wednesday, 2:00 p.m.  
7/F TESDA Board Room, Office of the Chair  
South Superhighway, Taguig, City

**Resolution No. 2015 - 14**

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**APPROVING THE EXTENSION OF CONTRACT OF LEASE WITH THE  
NORWEGIAN MARITIME FOUNDATION OF THE PHILIPPINES, INC. (NMFPI)  
FOR A PERIOD OF FIVE (5) YEARS FROM APRIL 2015 TO APRIL 2020**

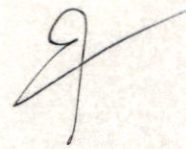
**WHEREAS**, Section 8 of Republic Act No. 7796, otherwise known as the "Technical Education and Skills Development Act of 1994," grants the Technical Education and Skills Development Authority (TESDA) Board the power to enter into, make, execute, perform and carry-out domestic and foreign contracts subject to existing laws, rules and regulations;

**WHEREAS**, in the exercise of this power, the TESDA Board may pass upon and approve contracts entered into by TESDA especially those that involve large procurements concerning priority projects, huge disbursements of public funds, usage, conveyance and disposal of assets, priority dealings on properties and other agreements affecting major policy issues of the agency;

**WHEREAS**, TESDA as the lessor, and Norwegian Maritime Foundation of the Philippines, Inc. (NMFPI) as the lessee, first entered into a contract of lease on 20 April 1995 over the Three Thousand Eight Hundred (3,800) square-meter parcel of land of TESDA in Taguig City with a fixed period of ten (10) years from April 1995 to April 2005 at a monthly rental fee of Eighty Thousand Pesos, Philippine Currency (Php 80,000.00), co-terminus with the contract;

**WHEREAS**, by virtue of a subsequent Memorandum of Agreement dated 29 December 2004, the foregoing contract of lease was extended for another fixed period of ten (10) years from April 2005 to April 2015 at a monthly rental fee of One Hundred Forty Thousand Pesos, Philippine Currency (Php 140,000.00), subject to an automatic yearly increase equivalent to eight percent (8%) of the contract price;

**WHEREAS**, the said Memorandum of Agreement provides that the NMFPI may exercise its option of renewing and/or extending the terms of the Agreement for a further period of five (5) years, or until April 2020 by giving a written notice thereof to TESDA at least two (2) years prior to the expiration of the Agreement;





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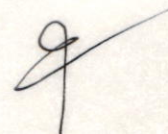
**WHEREAS**, the Supplemental Agreement dated 13 February 2008 was also entered into between TESDA and the NMFPI for the lease of additional area within the TESDA's property covering ninety (90) square meters where the NMFPI shall pay TESDA a monthly rental fee of Three Thousand Eight Hundred Seventy Pesos, Philippine Currency (Php 3,870.00);

**WHEREAS**, on 11 March 2013, the DOTC Maritime Industry Authority sent an endorsement letter addressed to the Director General of TESDA regarding the renewal of contract of lease of the NMFPI with TESDA and to allow them the usage of additional necessary space;

**WHEREAS**, by way of a formal letter dated 10 April 2013, the NMFPI declared its contractual rights to extend the present agreement for another period of five (5) years and proposed to enter into a new lease agreement which will extend beyond 2020, to which TESDA allowed subject to increase in the amount of prevailing lease rates within the area as expressed through a reply-letter dated 22 August 2013 signed by TESDA Dir. Pilar G. De Leon and addressed to Mr. Erik Freberg Blom, the Managing Director of NMFPI;

**WHEREAS**, during the 70<sup>th</sup> Finance TESDA Board and TESDA Secretariat Consultation Meeting held last 07 March 2014, the Board recommended the TESDA Secretariat to conduct the following:

1. Cause to be made a study of the value of the lot and all improvements therein or an independent real estate appraisal to be conducted by a certified independent appraiser to determine the reasonable rate of rent;
2. Look for contracts entered into by the government with other entities which are similar to the proposal of the NMFPI, or the purpose of benchmarking or comparison;
3. Provide/Issue a legal opinion in so far as the legality of the contract of lease is concerned;





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4. Submit an evaluation report of the training performance of the NTC-M; and;
5. Explore other options/items to be negotiated with the NMFPI for inclusion in the contract.

**WHEREAS**, the NMFPI through the NTC-M is currently leasing a parcel of land within the TESDA Compound in Taguig City with an area of Three Thousand Eight Hundred Ninety (3,890) square meters at a monthly rate of Fifty Four Pesos and Sixty-Two Centavos, Philippine Currency (Php 54.62) per square meter;

**WHEREAS**, in sum, the NMFPI at present pays TESDA a monthly rental fee of Two Hundred Sixty Six Thousand Six Hundred Ninety Six and 50/100 Pesos, Philippine Currency (Php 266,696.50) for the whole Three Thousand Eight Hundred Ninety (3,890) square meter lot;

**WHEREAS**, a Valuation Report presented to the Norwegian Training Center-Manila on 05 May 2014 declares that as of 10 January 2014, the Market Rent of the land (as if vacant or without buildings and/or un-encumbered by any Lease Instrument) is THREE MILLION SIX HUNDRED FORTY-EIGHT THOUSAND PESOS, PHILIPPINE CURRENCY (Php 3,648,000.00) PER ANNUM or translated to EIGHTY PESOS PHILIPPINE CURRENCY (Php 80.00) PER SQUARE METER PER MONTH;

**WHEREAS**, another Valuation Report caused to be made by TESDA, recommended that the monthly rate of lease on the same terms as the valuation report caused to be made by NMFPI was set at Eighty Nine Pesos Philippine Currency (Php89.00) per square meter per month;





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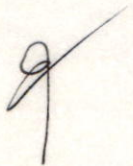
**WHEREAS**, the TESDA Secretariat initially offered to the NMFPI a lease rental rate of One Hundred Fifty Pesos Philippine Currency (Php 150.00) per square meter per month to reflect not only the value of the land but also the buildings and improvements on it when the same reverts to TESDA as contained in the expiring lease contract;

**WHEREAS**, it was mutually agreed upon by the parties that upon effectivity of the new Contract of Lease, NMFPI shall make a Security Deposit equivalent to three (3) months rental to serve as a bond for the proper and due performance of all the NMFPI's obligations under the contract;

**WHEREAS**, the present proposed contract states that NMFPI shall pay TESDA a monthly rental fee of Five Hundred Five Thousand Seven Hundred Pesos, Philippine Currency (Php 505,700.00) for the entire Three Thousand Eight Hundred Ninety (3,890) square meter lot;

**WHEREAS**, the NMFPI accepted the proposed lease rental of One Hundred Thirty Pesos, Philippine Currency (Php 130.00) per square meter from 2015 to 2035 at five percent (5%) escalation per year, pursuant to the letter sent by NMFPI's President, Ruben T. Del Rosario dated 05 November 2014;

**WHEREAS**, during the 88<sup>th</sup> EXCOM – TESDA Board Meeting held last 10 February 2015, the Executive Committee initially recommended to the TESDA Board the approval of the renewal of Contract of Lease of the NMFPI a period of twenty (20) years from April 2015 to April 2035 under the following conditions as contained in the draft contract of lease prepared by the TESDA Secretariat, to wit:





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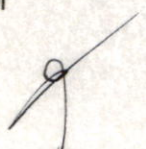
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1. **Duration and Extension** – the contract shall become effective for a fixed period of twenty (20) years from 20 April 2015 to 20 April 2035 which shall be renewed and/or extended for a fixed period by the mutual agreement of the parties. Pre-termination of this agreement shall be subject to the bilateral agreement of the Parties;
  
2. **Renumeration** – the FIRST PARTY shall pay a monthly rental fee amounting to FIVE HUNDRED FIVE THOUSAND SEVEN THOUSAND PESOS, PHILIPPINE CURRENCY, (PHP505,700.00) payable on or before the 30<sup>th</sup> of each month at 5% escalation per year. All payment shall be in a form of check payable to the TESDA Development Fund and the same shall constitute the revolving or development fund of the SECOND PARTY.
  
3. **Used of Leased Premises**
  - 3.1 The FIRST PARTY hereby expressly agrees and warrants that the leased premises shall be exclusively used for the purpose of training and housing of the equipment, tools, and machinery. The use of the said premises for any other purpose or business without the prior written consent of the SECOND PARTY is strictly prohibited;
  - 3.2 The FIRST PARTY shall not directly or indirectly sublease, assign, transfer, convey, mortgage or in way encumber its right of lease over the leased premises or any portion thereof under any circumstances whatsoever. Any contract that may be made in violation of this clause shall be considered null and void;
  - 3.3 The FIRST PARTY hereby acknowledges that the leased premises are in good and tenantable condition and agrees to keep the same in such good condition. The Parties agree that all improvements or alterations of whatsoever nature that are made





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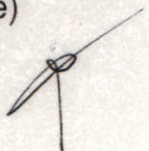
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thereon shall, upon completion thereof, form integral part of the leased premises and shall not be removed therefrom but shall belong to and become exclusive property of the SECOND PARTY upon the termination of this Agreement;

- 3.4 The FIRST PARTY shall pay and defray for at its exclusive expense the consumption of water, electric, light, telephone, or other utility services in the leased premises. The SECOND PARTY assumes no responsibility for the inadequacy or interruption in the utilities or services consumed or supplied in or to the leased premises, unless the same be due to the SECOND PARTY's inexcusable fault or gross negligence;
- 3.5 The FIRST PARTY shall comply with any and all laws, ordinance, regulations or order of the national or city government authorities; arising from the use, occupation and sanitation of the leased premises. Failure to comply with said laws, ordinances, regulations or orders shall be at the exclusive risk and expense of the FIRST PARTY;
- 3.6 The FIRST PARTY shall indemnify and keep the SECOND PARTY fully indemnified against all claims, action, demands, and proceedings made against the SECOND PARTY by any person arising out of any third party claims or bodily injury or damage to real or tangible personal property to the extent caused directly and proximately by the gross negligence or willful misconduct of the FIRST PARTY, its employees or agents. In no event shall either Party be liable to the other party or any other person or entity for any special, exemplary, indirect, incidental, consequential or punitive damages of any kind or nature whatsoever (including without limitation, lost revenues, profits, savings or business, or contribution or indemnity in respect of any claims against the Party) or loss or records or data, whether in an action based on contract, warranty, strict liability, tort, (including without limitation, negligence)





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or otherwise, even if such Party has been informed in advance of the possibility of such damages or such damages could have been reasonably foreseen by such Party except if such damage arises as a result of or in connection with the use and occupancy by the FIRST PARTY of the leased premises.

- 3.7 Upon its effectivity, this Agreement supersedes and renders void any and all agreements and understanding, oral and/or written, previously entered between the Parties covering the property herein leased and this Agreement may not hereafter be modified or altered except by instrument in writing and duly signed by the Parties hereto.

**WHEREAS**, however, TESDA received a letter dated 04 March 2015 from the NMFPI President Ruben T. Del Rosario and NTC-M Managing Director Erik Freberg Blom, stating that NMFPI is already withdrawing its previous proposal to extend the lease agreement with TESDA for another twenty (20) years;

**WHEREAS**, pursuant to the option it called two (2) years ago, NMFPI instead decided that NTC-M shall remain in TESDA just for the next five (5) years, or up to the year 2020 only, merely for the purpose of winding up its affairs and in order to stamp its legacy;

**WHEREAS**, during the 89<sup>th</sup> EXCOM – TESDA Board Meeting held last 24 March 2015, the Executive Committee recommended to the Board the approval of the extension of existing Contract of Lease for another period of five (5) years, or until April 2020 only, under the same terms and conditions identified in the 88th EXCOM – TESDA Board Meeting, except for the twenty-year period;





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**WHEREAS**, however, TESDA received a letter dated 21 April 2015 from NTC-M Managing Director Erik Freberg Blom, stating that they maintain their position that the extended lease from April 2015 to April 2020 shall be governed by the same terms and conditions as the current agreement and that said agreement provides that NMFPI "may exercise the option of renewing and/or extending the terms of their Contract for a further period of five (5) years XXX"., hence, there is no need for both parties to execute a new agreement.

**WHEREAS**, TESDA and the NMFPI, in an Addendum, agree to extend the lease agreement for a further period of five (5) years, or from April 20, 2015 to April 20, 2020 governed by the same terms and conditions as embodied in their MEMORANDUM OF AGREEMENT dated 22 December 2004 and the SUPPLEMENTAL AGREEMENT dated 13 February 2008 covering a total of 3,890.00 square meters except for the following terms and conditions:

1. For the use and occupancy of TESDA's property, NMFPI shall pay a monthly rental fee amounting to FIVE HUNDRED FIVE THOUSAND SEVEN HUNDRED PESOS ( PHP505,700.00) payable on or before the thirtieth (30<sup>th</sup>) day of each month, subject to an automatic yearly increase equivalent to five percent (5%) of the contract price. Whatever difference on the amounts paid by NMFPI for May, June, July and August 2015, and the mutually agreed upon rate will be settled by NMFPI within fifteen (15) calendar days from the signing of this Addendum;

2. Either party may pre-terminate this agreement by serving written notice upon the other party at least one hundred eighty (180) days before effectivity of such pre-termination subject to whatever obligations that had already been incurred by NMFPI;





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3. In the event that this agreement is pre-terminated at the instance of TESDA or any government agency, all tools, equipment and machines not belonging to the Industry partners shall remain in the ownership and possession of NMFPI. In all other cases of termination of this agreement not caused by TESDA or any government agency, NMFPI shall deliver to TESDA the leased premises in good condition including all the tools, equipment and machines not belonging to the Industry partner; and

4. The terms and conditions covered by the Agreement dated 22 December 2004 and Supplemental Agreement dated 13 February 2008 as described above which are not affected by the provisions of this Addendum shall be deemed incorporated herein.

**NOW THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED**, that the TESDA Board in its meeting today, 16 December 2015, approves the extension of Contract of Lease between TESDA and the NMFPI for a fixed period of five (5) years from April 2015 to April 2020 as recommended by the Executive Committee during the 91<sup>st</sup> EXCOM – TESDA Board Meeting held last 14 December 2015.

**BE IT RESOLVED FURTHER**, that the Board authorizes the Director General to sign the Addendum to the Memorandum of Agreement dated 22 December 2004 and Supplemental Agreement dated 13 February 2008 with NMFPI for and in behalf of the TESDA Board; and





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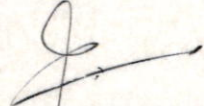
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**BE IT RESOLVED FINALLY**, that copy of this Resolution shall be disseminated to all concerned.

Approved this 16<sup>th</sup> Day of December 2015.

  
**RINALYN B. DUMOL**  
Board Secretary VI

Attested by:

  
**BR. ARMIN A. LUISTRO FSC**  
Co-Chairperson, TESDA Board  
Secretary, Department of Education