CONGRESS OF THE PHILIPPINES NINETEENTH CONGRESS First Regular Session

#### HOUSE OF REPRESENTATIVES

#### H. No. 4122

BY REPRESENTATIVES SALCEDA, COLADA, HARESCO, RECTO, SINGSON-MEEHAN, SUANSING (M.A.), DIONISIO, DAYANGHIRANG, LAGON (S.), BRIONES, TY, YAP (ERIC), SUANSING (H.), ORDANES, PADUANO, DAGOOC, ANG, SUAN, CAGAS, VERGARA, ENCISO, TARRIELA, ZAMORA (M.C.), BARZAGA, SALO, REYES, QUIMBO, FUENTEBELLA, MARIÑO, KHO (R.), ROBES, GUTIERREZ, MAGSINO, ALVAREZ (J.), RILLO, GORRICETA, LEE, PADIERNOS, ATAYDE, CUA, ABANTE, BASCUG, DELOS SANTOS, HERRERA, SALIMBANGON, LACSON-NOEL, PUMAREN, DE JESUS, RODRIGUEZ (R.), TEVES (A.), EUDELA, TAN-TAMBUT, ROMUALDO, DALIPE AND ROMUALDEZ (F.M.), PER COMMITTEE REPORT NO. 25

### AN ACT

## IMPOSING VALUE-ADDED TAX ON DIGITAL TRANSACTIONS IN THE PHILIPPINES, AMENDING FOR THE PURPOSE SECTIONS 105, 108, 109, 110, 113, 114, 115, 236, AND 288 AND ADDING A NEW SECTION 105-A OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 105 of the National Internal Revenue Code of 1997, as amended, is

2 hereby further amended to read as follows:

1	"SEC. 105. Persons Liable Any person who, in the course of trade or
2	business, sells, barters, exchanges, leases goods or properties, INCLUDING
3	THOSE THAT ARE DIGITAL OR ELECTRONIC IN NATURE, renders
4	services, INCLUDING THOSE RENDERED ELECTRONICALLY, and any
5	person who imports goods shall be subject to the value-added tax (VAT) imposed
6	in Sections 106 to 108 of this Code.

7 "The value-added tax is an indirect tax and the amount of tax may be shifted
8 or passed on to the buyer, transferee or lessee of the goods, properties or services.
9 This rule shall likewise apply to existing contracts of sale or lease of goods,
10 properties, or services at the time of the effectivity of Republic Act No. 7716.

11 "The phrase 'in the course of trade or business' means the regular conduct or 12 pursuit of a commercial or an economic activity, including transactions incidental 13 thereto, by any person regardless of whether or not the person engaged therein is a 14 nonstock, nonprofit private organization (irrespective of the disposition of its net 15 income and whether or not it sells exclusively to members or their guests), or 16 government entity.

17 "The rule of regularity, to the contrary notwithstanding, services as defined
18 in this Code rendered in the Philippines by nonresident foreign persons shall be
19 considered as being rendered in the course of trade or business."

20 SEC. 2. A new Section designated as Section 105-A of the National Internal Revenue Code
21 of 1997, as amended, is hereby amended to read as follows:

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# "SEC. 105-A. *PERSONS LIABLE IN DIGITAL OR ELECTRONIC TRANSACTIONS*. – THE NONRESIDENT DIGITAL SERVICE PROVIDER

IS LIABLE FOR ASSESSING, COLLECTING, AND REMITTING THE
 VALUE-ADDED TAX ON THE TRANSACTIONS THAT GO THROUGH
 ITS PLATFORM.

4 "FOR THIS PURPOSE, THE TERM 'DIGITAL SERVICE 5 PROVIDER' REFERS TO A SERVICE PROVIDER OF A DIGITAL 6 SERVICE OR GOOD TO A BUYER, THROUGH OPERATING AN 7 ONLINE PLATFORM FOR PURPOSES OF BUYING AND SELLING OF 8 GOODS OR SERVICES OR BY MAKING TRANSACTIONS FOR THE 9 PROVISION OF DIGITAL SERVICES ON BEHALF OF ANY PERSON: 10 PROVIDED, THAT THE DIGITAL SERVICE PROVIDER MAY BE:

"(A) A THIRD PARTY, SUCH AS A SELLER OF GOODS AND 11 SERVICES WHO, THROUGH INFORMATION-BASED TECHNOLOGY 12 OR THE INTERNET, SELLS MULTIPLE PRODUCTS FOR ITS OWN 13 ACCOUNT, OR ONE WHO ACTS AS AN INTERMEDIARY BETWEEN A 14 SUPPLIER AND BUYER OF GOODS AND SERVICES, SUCH AS A 15 MERCHANDISER OR RETAILER, WHO COLLECTS OR RECEIVES 16 PAYMENT FOR SUCH GOODS AND SERVICES FROM A BUYER IN 17 BEHALF OF THE SUPPLIER AND RECEIVES A COMMISSION 18 THEREON; 19

"(B) A PLATFORM PROVIDER FOR PROMOTION THAT USES
THE INTERNET TO DELIVER MARKETING MESSAGES TO ATTRACT
BUYERS;

"(C) A HOST OF ONLINE AUCTIONS CONDUCTED THROUGH
 THE INTERNET, WHERE THE SELLER SELLS THE PRODUCT OR
 SERVICE TO THE PERSON WHO OFFERS THE HIGHEST PRICE FOR
 IT;

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5 "(D) A SUPPLIER OF DIGITAL SERVICES TO A BUYER IN
6 EXCHANGE FOR A REGULAR SUBSCRIPTION FEE OVER THE USAGE
7 OF THE SAID PRODUCT OR SERVICE; AND

8 "(E) A SUPPLIER OF GOODS OR ELECTRONIC AND ONLINE
9 SERVICES THAT CAN BE DELIVERED THROUGH AN INFORMATION
10 TECHNOLOGY INFRASTRUCTURE, SUCH AS THE INTERNET.

"FOR THIS PURPOSE, THE TERM 'BUYER' REFERS TO ANY 11 PERSON WHO RESIDES OR CONSUMES TAXABLE DIGITAL 12 SERVICES IN THE PHILIPPINES FROM A DIGITAL SERVICE 13 PROVIDER EITHER FOR PERSONAL CONSUMPTION, OR FOR 14 TRADE OR BUSINESS PURPOSES. THE TERM "DIGITAL SERVICE" 15 REFERS TO ANY SERVICE THAT IS DELIVERED OR SUBSCRIBED 16 OVER THE INTERNET OR OTHER ELECTRONIC NETWORK AND 17 WHICH CANNOT BE OBTAINED WITHOUT THE USE OF 18 INFORMATION TECHNOLOGY AND WHERE THE DELIVERY OF THE 19 SERVICE MAY BE AUTOMATED. DIGITAL SERVICES SHALL 20 INCLUDE ONLINE LICENSING OF SOFTWARE, UPDATES, AND ADD-21 ONS, WEBSITE FILTERS AND FIREWALLS; MOBILE APPLICATIONS, 22 VIDEO GAMES, AND ONLINE GAMES; WEBCAST AND WEBINARS; 23

PROVISION OF DIGITAL CONTENT SUCH AS MUSIC, FILES, IMAGES, 1 TEXT AND INFORMATION: ADVERTISEMENT PLATFORM SUCH AS 2 PROVISION OF ONLINE ADVERTISING SPACE ON INTANGIBLE 3 MEDIA PLATFORM; ONLINE PLATFORM SUCH AS ELECTRONIC 4 MARKETPLACES OR NETWORKS FOR THE SALE, DISPLAY, AND 5 COMPARISON OF PRICES OF TRADE PRODUCTS OR SERVICES; 6 SEARCH ENGINE SERVICES; SOCIAL NETWORKS; DATABASE AND 7 HOSTING SUCH AS WEBSITE HOSTING, **ONLINE** DATA 8 WAREHOUSING, FILE SHARING AND CLOUD STORAGE SERVICES; 9 INTERNET-BASED TELECOMMUNICATION; ONLINE TRAINING 10 SUCH AS PROVISION OF DISTANCE TEACHING, E-LEARNING, 11 ONLINE COURSES AND WEBINARS; ONLINE NEWSPAPERS AND 12 JOURNAL SUBSCRIPTION; AND PAYMENT PROCESSING SERVICES." 13 SEC. 3. Section 108 of the National Internal Revenue Code of 1997, as amended, is hereby 14 further amended to read as follows: 15 "SEC. 108. Value-added Tax on Sale of Services and Use or Lease of 16 17 Properties. – "(A) Rate and Base of Tax. - There shall be levied, assessed and collected, a 18

value-added tax equivalent to twelve percent (12%) of gross receipts derived from
the sale or exchange of services, including the use or lease of properties.

"The phrase 'sale or exchange of services' means the performance of all
 kinds of services in the Philippines for others for a fee, remuneration or
 consideration, WHETHER RENDERED ELECTRONICALLY OR

OTHERWISE, including those performed or rendered by construction and service 1 contractors; stock, real estate, commercial, customs and immigration brokers; 2 lessors of property, whether personal or real; warehousing services; lessors or 3 distributors of cinematographic films; persons engaged in milling, processing, 4 manufacturing or repacking goods for others; proprietors, operators or keepers of 5 hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of 6 restaurants, refreshment parlors, cafes and other eating places, including clubs and 7 caterers; dealers in securities; lending investors; transportation contractors on their 8 transport of goods or cargoes, including persons who transport goods or cargoes for 9 hire and other domestic common carriers by land relative to their transport of goods 10 or cargoes; common carriers by air and sea relative to their transport of passengers, 11 goods or cargoes from one place in the Philippines to another place in the 12 Philippines; sales of electricity by generation companies, transmission by any 13 entity, and distribution companies, including electric cooperatives; services of 14 franchise grantees of electric utilities, telephone and telegraph, radio and television 15 broadcasting and all other franchise grantees except those under Section 119 of this 16 Code and non-life insurance companies (except their crop insurances), including 17 surety, fidelity, indemnity and bonding companies; and similar services regardless 18 of whether or not the performance thereof calls for the exercise or use of the 19 physical or mental faculties. The phrase 'sale or exchange of services' shall 20 likewise include: 21

1	"(1) The lease or the use of or the right or privilege to use any copyright,
2	patent, design or model, plan, secret formula or process, goodwill, trademark, trade
3	brand or other like property or right;
4	"(2) The lease or the use of, or the right to use of any industrial, commercial
5	or scientific equipment;
6	"(3) The supply of scientific, technical, industrial or commercial knowledge
7	or information;
8	"(4) The supply of any assistance that is ancillary and subsidiary to and is
9	furnished as a means of enabling the application or enjoyment of any such property,
10	or right as is mentioned in subparagraph (2) or any such knowledge or information
11	as is mentioned in subparagraph (3);
12	"(5) The supply of services by a nonresident person or the employee in
13	connection with the use of property or rights belonging to, or the installation or
14	operation of any brand, machinery or other apparatus purchased from such
15	nonresident person;
16	"(6) The supply of technical advice, assistance or services rendered in
17	connection with technical management or administration of any scientific,
18	industrial or commercial undertaking, venture, project or scheme;
19	"(7) THE SUPPLY BY ANY PERSON, WHETHER RESIDENT OR
20	NONRESIDENT, OF DIGITAL SERVICES SUCH AS ONLINE
21	ADVERTISEMENT SERVICES, PROVISION FOR DIGITAL
22	ADVERTISING SPACE, AND ANY OTHER FACILITY OR SERVICE FOR
23	THE PURPOSE OF ONLINE ADVERTISEMENT;

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"(8) THE SUPPLY BY ANY RESIDENT OR NONRESIDENT OF 1 2 DIGITAL SERVICES IN EXCHANGE FOR A REGULAR SUBSCRIPTION FEE OVER THE USAGE OF THE SAID PRODUCT OR SERVICE; 3 (9) THE SUPPLY OF ELECTRONIC AND ONLINE SERVICES 4 AN INFORMATION THAT CAN BE DELIVERED THROUGH 5 **TECHNOLOGY INFRASTRUCTURE, SUCH AS THE INTERNET;** 6 "[7] (10) The lease of motion picture films, films, tapes and discs; and 7 "[8] (11) The lease or the use of or the right to use radio, television, satellite 8 transmission and cable television time." 9 "Lease of properties shall be subject to the tax herein imposed irrespective of 10 the place where the contract of lease or licensing agreement was executed if the 11 property is leased or used in the Philippines. 12 "The term 'gross receipts' means the total amount of money or its equivalent 13 representing the contract price, compensation, service fee, rental or royalty, 14 including the amount charged for materials supplied with the services and deposits 15 and advanced payments actually or constructively received during the taxable 16 17 quarter for the services performed or to be performed for another person, excluding value-added tax. 18 "x x x." 19 SEC. 4. Section 109 of the National Internal Revenue Code, as amended, is further 20 21 amended to read as follows: "SEC. 109. Exempt Transactions. -22

1	"(1) Subject to the provisions of [s]Subsection (2) hereof, the following transactions
2	shall be exempt from the value-added tax:
3	"(A) x x x
4	"(B) x x x
5	"(C) x x x
6	"(D) x x x
7	"(E) x x x
8	"(F) x x x
9	"(G) x x x
10	"(H) Educational services INCLUDING ONLINE COURSES AND
11	WEBINARS rendered by private educational institutions, duly accredited by the
12	Department of Education (DepEd), the Commission on Higher Education (CHED),
13	the Technical Education and Skills Development Authority (TESDA) and those
14	rendered by government educational institutions AND SALE OF ONLINE
15	SUBSCRIPTION-BASED SERVICES TO EDUCATIONAL INSTITUTIONS
16	<b>RECOGNIZED BY THE DepEd, CHED AND STATE UNIVERSITIES AND</b>
17	COLLEGES;
18	"x x x."
19	SEC. 5. Section 110 of the National Internal Revenue Code, as amended, is further
20	amended to read as follows:
21	"SEC. 110. Tax Credits. –
22	"(A) Creditable Input Tax. –
23	"(1) x x x

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"(2) x x x

2	"Provided, That the input tax on goods purchased or imported in a calendar
3	month for use in trade or business for which deduction for depreciation is allowed
4	under this Code shall be spread evenly over the month of acquisition and the fifty-
5	nine (59) succeeding months if the aggregate acquisition cost for such goods,
6	excluding the VAT component thereof, exceeds One million pesos P[hP]1,000,000):
7	Provided, however, That if the estimated useful life of the capital good is less than
8	five (5) years, as used for depreciation purposes, then the input VAT shall be spread
9	over such a shorter period: Provided, further, That the amortization of the input VAT
10	shall only be allowed until December 31, 2021 after which taxpayers with unutilized
11	input VAT on capital goods purchased or imported shall be allowed to apply the
12	same as scheduled until fully utilized: Provided, finally, That in the case of purchase
13	of services, lease or use of properties, the input tax shall be creditable to the
14	purchaser, lessee or licensee upon payment of the compensation, rental, royalty or
15	fee.
16	"NOTWITHSTANDING THE FOREGOING, NO CREDITABLE
17	INPUT TAX SHALL BE CLAIMED BY NONRESIDENT DIGITAL
18	SERVICE PROVIDERS.
19	"x x x."

SEC. 6. Section 113 of the National Internal Revenue Code of 1997, as amended, is further
amended to read as follows:

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"SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons.-

1 "(A) Invoicing Requirements. – A VAT-registered person shall issue:

- 2 "(1) x x x
- **3** "(2) x x x
- 4 "(B) x x x
- 5 "(C) x x x

6 "(D) NOTWITHSTANDING SUBSECTION (A), A VAT-REGISTERED
7 NONRESIDENT DIGITAL SERVICE PROVIDER MAY ISSUE AN
8 ELECTRONIC INVOICE OR RECEIPT, SUBJECT TO THE RULES AND
9 REGULATIONS TO BE PRESCRIBED BY THE SECRETARY OF
10 FINANCE UPON THE RECOMMENDATION OF THE COMMISSIONER
11 OF INTERNAL REVENUE.

- 12 "[D] (E) x x x
- 13 "[E] (F) x x x."
- SEC. 7. Section 114 of the National Internal Revenue Code of 1997, as amended, is further
  amended to read as follows:
- 16 "SEC. 114. Return and Payment of Value-Added Tax. –

"(A) In General. – Every person liable to pay the value-added tax imposed
under this Title shall file a quarterly return of the amount of his gross sales or receipts
within twenty-five (25) days following the close of each taxable quarter prescribed
for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the
value-added tax on a monthly basis: *Provided, finally,* That beginning January 1,
2023, the filing and payment required under the Subsection shall be done within
twenty-five (25) days following the close of each taxable quarter.

"Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: *Provided*, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.

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6 "(B) Where to File the Return and Pay the Tax. – Except as the Commissioner 7 otherwise permits, the return shall be filed with and the tax paid to an authorized 8 agent bank, Revenue Collection Officer or duly authorized city or municipal 9 Treasurer in the Philippines located within the revenue district where the taxpayer 10 is registered or required to register.

"(C) Withholding of Creditable Value-Added Tax. – The Government or any 11 of its political subdivisions, instrumentalities or agencies, including government-12 13 owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added 14 tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-15 added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final 16 value-added tax at the rate of five percent (5%) of the gross payment thereof: 17 Provided, That beginning January 1, 2021, the VAT withholding system under this 18 Subsection shall shift from final to a creditable system: *Provided, further*, That [the 19 payment for lease or use of properties or property rights to non-resident owners] 20 UNLESS THEY ARE DULY-REGISTERED WITH THE BUREAU OF 21 **INTERNAL REVENUE** UNDER SECTION 236. **PAYMENTS** TO 22 NONRESIDENTS FOR SERVICES RENDERED IN THE PHILIPPINES 23

1	UNDER SECTION 108 shall be subject to twelve percent (12%) withholding tax at
2	the time of payment: Provided, finally, That payments for purchases of goods and
3	services arising from projects funded by Official Development Assistance (ODA)
4	as defined under Republic Act No. 8182, otherwise known as the 'Official
5	Development Assistance Act of 1996', as amended, shall not be subject to the final
6	withholding tax system as imposed in this Subsection. For purposes of this Section,
7	the payor or person in control of the payment shall be considered as the withholding
8	agent."
9	SEC. 8. Section 115 of the National Internal Revenue Code (NIRC) of 1997, as amended,
10	is hereby further amended to read as follows:
11	"SEC. 115. Power of the Commissioner to Suspend the Business Operations of a
12	Taxpayer The Commissioner or his authorized representative is hereby
13	empowered to suspend the business operations and temporarily close the business
14	establishment of any person for any of the following violations:
15	"(a) x x x
16	"(b) Failure of any Person to Register as Required under Section 236
17	"The temporary closure of the establishment shall be for the duration of not less
18	than five (5) days and shall be lifted only upon compliance with whatever
19	requirements prescribed by the Commissioner in the closure order.
20	"THE TEMPORARY CLOSURE CONTEMPLATED UNDER THIS
21	SECTION SHALL INCLUDE THE SUSPENSION OF BUSINESS
22	OPERATIONS IN THE PHILIPPINES OF A DIGITAL SERVICE
23	<b>PROVIDER AS DEFINED IN SECTION 105 OF THIS CODE."</b>

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1	SEC. 9. Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended,
2	is hereby further amended to read as follows:
3	"SEC. 236. Registration Requirements. –
4	"(A) x x x
5	"(B) x x x
6	"(C) x x x
7	"(D) x x x
8	"(E) x x x
9	"(F) x x x
10	"(G) Persons Required to Register for Value-Added Tax. –
11	"(1) x x x
12	"(2) x x x
13	"(3) ANY NONRESIDENT DIGITAL SERVICE PROVIDER WHO, IN
14	THE COURSE OF TRADE OR BUSINESS, ENGAGES IN THE SALE OR
15	EXCHANGE OF DIGITAL SERVICES DEFINED UNDER THIS ACT, SHALL
16	BE LIABLE TO REGISTER FOR VALUE-ADDED TAX IF:
17	"(A) THE GROSS SALES OR RECEIPTS OF SUCH DIGITAL
18	SERVICE BUSINESS FOR THE PAST TWELVE (12) MONTHS BEFORE
19	THE DATE OF FILING OF VAT RETURN, OTHER THAN THOSE THAT
20	ARE EXEMPT UNDER SECTION 109(A) TO (BB), HAVE EXCEEDED
21	THREE MILLION PESOS (P3,000,000); OR
22	"(B) THERE ARE REASONABLE GROUNDS TO BELIEVE THAT
23	THE GROSS SALES OR RECEIPTS OF THE DIGITAL SERVICE
24	BUSINESS FOR THE NEXT TWELVE (12) MONTHS FROM THE DATE

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1 OF FILING OF VAT RETURN, OTHER THAN THOSE THAT ARE 2 EXEMPT UNDER SECTION 109(A) TO (BB), WILL EXCEED THREE 3 MILLION PESOS (P3,000,000);

*"PROVIDED*, THAT THE BIR SHALL ESTABLISH A SIMPLIFIED
AUTOMATED REGISTRATION SYSTEM FOR NONRESIDENT DIGITAL
SERVICE PROVIDERS SUBJECT TO THE RULES AND REGULATIONS
TO BE PRESCRIBED BY THE SECRETARY OF FINANCE UPON THE
RECOMMENDATION OF THE COMMISSIONER OF INTERNAL
REVENUE.

"x x x."

SEC. 10. Section 288 of the National Internal Revenue Code (NIRC) of 1997, as amended,
is hereby further amended to read as follows:

13 "SEC. 288. Disposition of Incremental Revenues. –

14 "x x x

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15 "(H) INCREMENTAL REVENUES FROM THE VALUE-ADDED TAX ON
 16 DIGITAL SERVICE PROVIDERS. –

FIVE PERCENT (5%) OF THE INCREMENTAL REVENUE FROM THE 17 IMPOSITION OF THE VALUE-ADDED TAX ON DIGITAL SERVICE 18 PROVIDERS, UNDER SECTION 108, SHALL BE ALLOCATED TO AND 19 USED EXCLUSIVELY THE CREATIVE **INDUSTRIES** 20 FOR 21 DEVELOPMENT FUND ESTABLISHED UNDER REPUBLIC ACT. NO. 11904." 22

SEC. DESIGNATION OF A REPRESENTATIVE OFFICE FOR 1 11. NONRESIDENT DIGITAL SERVICE PROVIDERS. - THE NONRESIDENT DIGITAL 2 SERVICE PROVIDER SHALL DESIGNATE A REPRESENTATIVE OFFICE OR 3 AGENT, WHICH SHALL BE A RESIDENT CORPORATION REGISTERED UNDER 4 PHILIPPINE LAW. FOR PURPOSES OF THE PROVISIONS OF THIS CODE, SUCH 5 AGENT MAY BE APPOINTED TO ASSIST ONLY IN COMPLIANCE WITH THE 6 **PROVISIONS OF THIS CODE.** 7

8 SEC. 12. *Transitory Clause*. – Nonresident digital service providers shall immediately be
9 subject to value-added tax under this Act after one hundred eighty (180) days from the effectivity
10 of this Act.

SEC. 13. *Implementing Rules and Regulations.* – The Department of Finance (DOF), upon the recommendation of the BIR, and in coordination with the Department of Information and Communications Technology (DICT) AND THE NATIONAL TELECOMMUNICATIONS COMMISSION (NTC), shall issue rules and regulations for the effective implementation of this Act not later than ninety (90) days after its approval.

16 SEC. 14. Separability Clause. – Should any provision of this Act or any part thereof be 17 declared invalid, the other provisions, so far as they are separable from the invalid ones, shall 18 remain in force and effect.

SEC. 15. *Repealing Clause.* – All laws, decrees, orders, and issuances, or portions thereof,
 which are inconsistent with the provisions of this Act, are hereby repealed, amended, or modified
 accordingly.

SEC. 16. *Effectivity*. – This Act shall take effect fifteen (15) days after its publication in
 the *Official Gazette* or in a newspaper of general circulation.

Approved,