

**CONTRACT FOR THE PURCHASE OF
ADDITIONAL SAP SOFTWARE USER LICENSES WITH
MAINTENANCE SUPPORT**

KNOW ALL MEN BY THESE PRESENTS:

This Contract made and entered into by and between:

PHILIPPINE DEPOSIT INSURANCE CORPORATION, a government instrumentality created and existing under and by virtue of R.A. 3591, as amended, with principal office address at SSS Bldg., 6782 Ayala Avenue cor. Rufino St., Makati City, Metro Manila, represented herein by its Vice President for Information Technology Group, **Ms. MARIA BELINDA C. SAN JOSE**, hereinafter referred to as the "**CLIENT**"

- and -

KAISA CONSULTING COMPANY, INC., a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 5F Ramcar Center, 80-82 Roces Avenue, Diliman, Quezon City, represented herein by its Executive Director, **Mr. CARLOS R. VILLEGAS, JR.**, and hereinafter referred to as the "**CONTRACTOR**"

WITNESSETH: That –

WHEREAS, there is a need for the **CLIENT** to procure additional SAP user licenses in order to address the requirements of the current users of the **CLIENT's** SAP-Integrated Financial System (SAF-IFS), with the end in view of promoting a more efficient and effective use of the Integrated Financial System, which is the **CLIENT's** financial and investment system;

WHEREAS, on August 8, 2014, the **CLIENT** conducted a public bidding for the purpose pursuant to the provisions of Republic Act No. 9184 (*The Government Procurement Reform Act*);

WHEREAS, in said public bidding, the **CONTRACTOR** submitted the most responsive bid, offering the most advantageous terms and conditions;

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

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1. SUBJECT MATTER

The **CONTRACTOR** agrees to provide the **CLIENT** the following SAP user licenses, subject to the terms and conditions set forth herein and in accordance with the specifications herein below indicated:

- CA SAP Application Developer; 2 Users
- CB SAP Application Professional; 2 Users
- CC SAP Application Limited Professional; 16 Users

(Hereinafter referred to as the "**Additional SAP User Licenses**")

II. OBLIGATIONS AND UNDERTAKING

The **CONTRACTOR** shall fully and faithfully perform the following:

- Provide the Additional SAP User Licenses within thirty (30) calendar days upon issuance of the Notice to Proceed (NTP).
- Within the same period mentioned in the immediately preceding paragraph, the **CONTRACTOR** likewise agree to provide the **CLIENT** with the following services:
 - Provide free maintenance support for the Additional SAP User Licenses from the date of the issuance of the NTP until March 14, 2015.
 - Synchronize/reconcile the Additional SAP User Licenses with the provisions and terms of the existing software maintenance agreement of the **CLIENT** with SAP.
 - Ensure that the Additional SAP User Licenses are compatible with the **CLIENT's** existing SAP ERC ECC 6.6 Software Enterprise.
 - Provide the **CLIENT** the necessary technical support for activation and installation of the Additional SAP User Licenses.
- For the duration of the maintenance support for the Additional SAP User Licenses, the **CONTRACTOR** shall also provide, at no extra cost to the **CLIENT**, the following services:
 - Provide any and all requirements not specified herein but are deemed necessary for the effective and efficient use of the Additional SAP User Licenses,
 - Promptly respond to technical consultations as may be propounded by the **CLIENT** regarding the Additional SAP User Licenses from 9:00 a.m. to 5:00 p.m., Monday to Friday, except during legal holidays. The **CONTRACTOR's** Technical and Support

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Group/s shall respond no later than 4 hours after receipt of call or request for assistance from the **CLIENT**.

III. REPRESENTATIONS AND WARRANTIES

The **CONTRACTOR** represents and warrants to the **CLIENT** that:

- a. It is a domestic corporation duly registered and existing under and by virtue of the laws of the Republic of the Philippines.
- b. It has full legal power, authority and right to carry on its present business. The **CONTRACTOR** further warrants that its representative Mr. Villegas has full legal power to sign, execute and deliver this Contract and that it will comply, perform and observe the terms and conditions hereof.
- c. All corporate and other actions necessary to validate or authorize the execution and delivery of this Contract have been taken.
- d. This Contract, when executed and delivered, will be legal, valid and enforceable in accordance with its terms.
- e. To the knowledge of the **CONTRACTOR**, there are no pending or threatened actions or proceedings before any court or administrative agency of any jurisdiction, which may materially or adversely affect the financial condition or operation of the **CONTRACTOR** or the **CONTRACTOR's** ability to comply with the terms and conditions of this Contract.

If the **CONTRACTOR** should thereafter learn of the existence or occurrence of the same, the **CONTRACTOR** undertakes to report such fact to the **CLIENT** within five (5) days therefrom.

Failure to do so shall constitute a sufficient ground for the cancellation of this Contract and the enforcement of remedies which the **CLIENT** may exercise under this Contract, pertinent laws, rules and regulations.

- f. It warrants that the Additional SAP User Licenses are of the most recent versions and contain all recent improvements or upgrades; And that, it has the authority to supply the same to the **CLIENT**.
- g. It warrants to the **CLIENT**, in an unconditional, unqualified, absolute, full and direct manner the Additional SAP User Licenses against incompatibilities or any defect, hidden, inherent or otherwise, which would render them unfit for the use for which they were intended, or which would diminish the fitness of their use to the extent that, had the **CLIENT** been aware thereof, it would not have acquired the same.

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The acceptance of the project by the **CLIENT** shall not, at any given time, be deemed a waiver of any of the causes of action which the **CLIENT** may subsequently exercise by reason of any defect mentioned in the immediately preceding paragraph.

- i. The obligation of the **CONTRACTOR** under this Contract, and other ancillary documents which may be executed in connection herewith, shall constitute its direct, absolute and unconditional obligation.

IV. **CONSIDERATION/CONTRACT PRICE**

For and in consideration of the supply and delivery of the Additional SAP User Licenses referred to in this Contract, as well as the services required to be provided thereon, and the compliance by the **CONTRACTOR** with any and all the terms and conditions specified herein, the **CLIENT** agrees to pay the **CONTRACTOR** the sum total of **THREE MILLION FOUR HUNDRED NINETY EIGHT (Php3,498,000)**, Philippine currency, inclusive of any and all taxes (including, but not limited to, the applicable Value Added Tax), fees, duties and such other imposts or levies which may be required by the government, both national and local.

V. **PAYMENT SCHEDULE**

The amount of consideration referred to in the immediately preceding Section shall be paid by the **CLIENT** to the **CONTRACTOR** not earlier than seven (7) working days after the issuance by the **CLIENT** of a certificate of completion in favor of the **CONTRACTOR**.

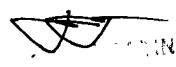
All payments made under this Contract shall be subject to the auditing and accounting rules of the **CLIENT** and the Commission on Audit.

VI. **RELATION OF THE PARTIES**

The **CONTRACTOR** shall have no authority, express or implied, to assume or create any obligation or responsibility on behalf of or in the name of the **CLIENT** or bind the **CLIENT** in any manner whatsoever. The **CONTRACTOR's** personnel, representatives or staff shall not be construed as employees of the **CLIENT**. The **CONTRACTOR** is being engaged herein as an independent contractor. Nothing herein shall be construed as creating an employer/employee relationship between the **CONTRACTOR's** employees, representatives or staffs and the **CLIENT**.

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DATE: 11-10-14

VII. PERFORMANCE SECURITY

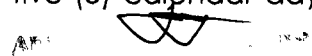
- a. To guarantee the faithful performance of the obligations and services required under this Contract, the **CONTRACTOR** shall, upon execution of this Contract, post in favor of the **CLIENT** a Performance Security in the form of surety bond in an amount equivalent to 30% of the total contract price or PhP1,049,400.
- b. In the event that the Performance Security offered by the **CONTRACTOR** would be deemed inadequate or otherwise rendered unacceptable, the **CLIENT** shall have the right to require the **CONTRACTOR** to post additional performance security in the form and amount determined by the **CLIENT** and allowed under existing laws and regulations.
- c. The Performance Security shall be released not earlier than seven (7) days from the end of this Contract's term upon the **CLIENT's** issuance of the certificate of completion. The Performance Security shall answer for any damage that the **CLIENT** may suffer by reason of the **CONTRACTOR's** default of any of its obligations and/or breach of the terms and conditions of this Contract. It shall likewise guarantee payment for any loss, damage or injury that may be caused by the **CONTRACTOR** to the **CLIENT**, its employees and guests.
- d. The Performance Security shall be forfeited in favor of the **CLIENT** in the event that the **CONTRACTOR** 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 **CONTRACTOR** and the surety.
- e. Failure of the **CONTRACTOR** to comply with any of the terms and conditions of this Contract shall result in the forfeiture of the Performance Security.

VIII. LIQUIDATED DAMAGES

- a. In the event that the **CONTRACTOR** 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 **CONTRACTOR** shall be liable for damages for such failure and shall pay the **CLIENT** 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 the **CLIENT** may exercise under this Contract, pertinent laws, rules and regulations, until such services are finally delivered and accepted by the **CLIENT**. In the event that the total sum of liquidated damages or the total cost to the **CLIENT** of any such delay or inability by the Contractor to deliver its obligations exceeds 10% of the contract price, the **CLIENT** may terminate this Contract upon giving the **CONTRACTOR** written notice at least five (5) calendar days prior to the

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intended date of termination. The **CLIENT** may also impose other appropriate sanctions over and above the liquidated damages.

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

X. INDEMNITY

The **CONTRACTOR** shall indemnify the **CLIENT** against any loss, injury or damage either to person or property which the **CLIENT** may suffer by reason of the willful, unlawful or negligent act or omission of the **CONTRACTOR** or any of its personnel or representative.

The indemnity required herein shall be in addition to the forfeiture of the Performance Security

XI. SUSPENSION OF PAYMENT/TERMINATION FOR DEFAULT


The **CLIENT** shall have the right to suspend, in whole or in part, any payment due to the **CONTRACTOR** under this Contract in the event there is delay, default, failure or refusal on the part of the **CONTRACTOR** to perform its obligations under this Contract in an acceptable manner. Further, the **CLIENT** 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 **CONTRACTOR**. Any and all expenses that may be incurred in relation thereto shall be for the exclusive account of the **CONTRACTOR**.

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, the **CLIENT** shall have the right to terminate this Contract upon giving the **CONTRACTOR** written notice at least five (5) calendar days prior to the intended date of termination. In addition, the **CLIENT** shall have the right to procure/engage the services of another contractor to complete the services required of the **CONTRACTOR** under this Contract. Any and all expenses that the **CLIENT** may incur in connection thereto shall be for the sole account of the **CONTRACTOR**.

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

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XII. TERMINATION FOR UNLAWFUL ACTS

The **CLIENT** may terminate this Contract, after giving the **CONTRACTOR** written notice at least five (5) days prior to the intended date of termination, whenever it is determined by the **CLIENT** that the **CONTRACTOR** 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:

- a. Corrupt, fraudulent, and coercive practices as defined under R.A 9184 otherwise known as the "Government Procurement Reform Act;"
- b. Drawing up or using forged document;
- c. Using unauthorized or illegal license/materials, means or methods, or engaging in something contrary to rules of science or the trade; and
- d. Any other act analogous to the foregoing.

The **CONTRACTOR** hereby agrees that the termination referred to herein shall be understood to be without prejudice to other rights and remedies available to the **CLIENT** under this Contract or the applicable laws.

XIII. OTHER GROUNDS FOR TERMINATION

The **CLIENT** may terminate this Contract, in whole or in part, at any time for its convenience, after giving written notice to the **CONTRACTOR** at least five (5) calendar days prior to the intended date of termination, if it has been determined by the **CLIENT** that the continuance of this Contract would be economically, financially or technically impractical and/or unnecessary on the part of the **CLIENT** such as, but not limited to, fortuitous event(s), changes in law or the **CLIENT's** or national government policies.

XIV. NON-WAIVER OF RIGHTS

The failure of the **CLIENT** to insist upon the strict performance of any of the terms and conditions of this Contract shall not be deemed a relinquishment or waiver of any right or remedy that the **CLIENT** may have nor shall it be construed as a waiver of any subsequent breach or default of the terms and conditions hereof, which in turn, shall continue to be in full force and effect. No waiver by the **CLIENT** of any of its rights under this Contract shall be deemed to have been made unless expressed in writing and signed by the **CLIENT**.

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APPROVED BY:  CONTRACTING

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XV. MISCELLANEOUS PROVISIONS

- a. **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.
- b. **Binding Effect/Assignment of Rights** – This Contract shall be binding upon the **CONTRACTOR**, its partners, successors-in-interest, its legal representatives and assigns. Foregoing notwithstanding, the **CONTRACTOR** shall not in any way assign, or transfer its rights and obligations under this Contract without the written approval of the **CLIENT**.
- c. **Amendment** - This Contract may be amended or modified only in writing upon mutual agreement of the parties hereto.
- d. **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.

- e. **Documents Incorporated** – The provisions of this Contract shall be read together with the Terms of Reference and other related bid documents, which documents shall be considered integral part of the provisions and requirements of this Contract.
- f. **Notices** – Any notice, request or consent required or permitted to be given hereunder shall be in writing and shall be personally delivered or transmitted by registered mail with postage prepaid to the parties as follows:

To PDIC : Maria Belinda C. San Jose
c/o Renar M. Gonzales
Department Manager, TSD
6th Floor SSS Bldg.
6782 Ayala cor. V.A. Rufino
Makati City, 1226

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To KAISA : Carlos R. Villegas, Jr.
c/o Teresa Maureen H. Bancod
Sales Director
5F Ramcar Center
80-82 Roces Avenue
Diliman, Quezon City

- g. **Venue of Action** - It is hereby agreed that any and all actions that shall arise from this Contract shall be instituted and tried before the proper court (s) of the City of Makati only.
- h. **Attorney's Fees** - In the event that either party is compelled to seek judicial relief to enforce the provisions of this Contract, it shall be entitled to attorney's fees and liquidated damages equivalent to ten percent (10%) and fifteen percent (15%), respectively, of the contract price or the amount claimed in the judicial action, whichever is higher, aside from the costs of litigation and other incidental expenses thereto.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures on the date and place as stated below their respective signatures.

**PHILIPPINE DEPOSIT
INSURANCE CORPORATION**
Client

By:



MARIA BELINDA C. SAN JOSE
Vice President,
Information Technology Group

Date: _____

Place: _____

APPROVED FOR POSTING

11-10-14

KAISA CONSULTING COMPANY, INC.
Contractor

By:



CARLOS R. VILLEGAS, JR
Executive Director

Date: _____

Place: _____

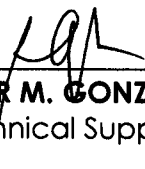
CERTIFICATION

This is to certify that pursuant to PDIC Board Resolution No. 2013-03-067 dated 03/27/13, the amount of P3,498,000 has been set aside and made available in the Corporate Operating Budget (COB) of the PDIC for the year 2014 to cover the implementation of the approved procurement of additional SAP licenses for the year 2014. The remaining amount of the contract, if any, shall be made available in the COB of the PDIC for the succeeding year.



IRENE DL ARROYO
Vice President, Treasury Group

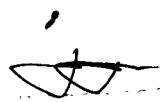
SIGNED IN THE PRESENCE OF:



RENAR M. GONZALES
Manager, Technical Support Department



TERESA MAUREEN H. BANCOD
Sales Director



11-10-14

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
MAKATI CITY) S.S

OCT 20 2014

BEFORE ME, a Notary Public, for and in the City of Makati on this __ day of _____, 2014, personally appeared Ms. Maria Belinda C. San Jose with Community Tax Certificate/identification No. PDIC 1398, issued on _____ at _____.


Known to me and to me known to be the same person who executed the foregoing document and she acknowledged to me that the same is her own free and voluntary act and deed as well as the Corporation which she represents, and that she is duly authorized to sign the same.

This instrument refers to a *Contract for the Purchase of Additional SAP Software User Licenses with Maintenance Support*, consisting of twelve (12) pages, including this page where the Acknowledgment is written, signed on each and every page thereof by the party and the instrumental witness and thereafter sealed with my notarial seal.

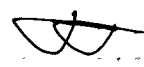
WITNESS MY HAND AND SEAL on the date and place first above-written.

Notary Public

Doc. No. 41 ;
Page No. 9 ;
Book No. VI ;
Series of 2014.


ATTY. MA. FRECEILYN I. MEJIA-HAW
Notary Public for Makati City, Philippines
App. No. 1 No. 14-2014, dt. 31 December 2014
Roll No. 4206 / ENL. No. 06208
672 508 B13, Ayala Avenue, Makati City

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ACKNOWLEDGEMENT

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

BEFORE ME, a Notary Public for and in QUEZON CITY on this NOV 07 2014
day of _____, 2014, personally appeared Mr. Carlos R. Villegas, Jr.
_____ with Community Tax Certificate/Identification No.
_____ issued on _____ at _____.
PASPORT NO. XX4244169

Known to me and to me known to be the same person who executed the foregoing instrument and he/she acknowledged to me that the same is his/her free and voluntary act and deed as well as of the corporation he/she represents, and that he/she is duly authorized to sign the same.

This instrument refers to *Contract for the Purchase of Additional SAP Software User Licenses with Maintenance Support*, consisting of twelve (12) pages, including this page where the acknowledgement is written, signed on each and every page thereof by the parties and their witness and thereafter sealed with my notarial seal.

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

Doc. No. 487;
Page No. 98;
Book No. 1035
Series of 2014.

Notary Public
FORNIA MASF. [Signature]
Notary Public until Dec. 31, 2014
Adm. Matter No. NP-061/2013-2014
PTR No. 9042383/1-2-2014/QC
IBP No. 915073 C-Y 2014/QC
Roll No. 16583/03/13-61
TIN No. 410225916
No. 92 Legaspi St., Project 4, QC
MCLE No. Exempted No. 000838

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