DISASTER RECOVERY SERVICES AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Disaster Recovery Services Agreement ("Agreement"), made and entered into, by and between:

PHILIPPINE DEPOSIT INSURANCE CORPORATION, a government instrumentality organized and existing under Republic Act No. 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, and hereinafter referred to as "PDIC"

- and -

TOTAL INFORMATION MANAGEMENT CORPORATION, a corporation duly organized and existing under the Philippine laws with principal office address at 5600 President Osmeña Highway, Palanan, Makati City, represented herein by its President, **Mr. SALVADOR P. AQUE**, hereinafter referred to as the "CONTRACTOR"

WITNESSETH-That:

WHEREAS, PDIC aims to develop an IT-focused plan designed to restore operability of the corporate application and systems at an alternate site in the event of an occurrence of a disaster, both natural and man-made, including, but not limited to, political unrest, strike, security risk within the vicinity of PDIC's Data Center, hardware or software failure or any other cause which may render the hardware and applications inside PDIC's Data Center inoperable or inaccessible;

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

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

NOW, THEREFORE, for and in consideration of the foregoing premises and mutual covenants hereinafter set forth, the parties hereby agree as follows:

7

x //

I. SCOPE OF SERVICE

The CONTRACTOR agrees to provide PDIC with Disaster Recovery Service, which aims to develop an IT-focused plan designed to restore the operability of the corporate applications and system of PDIC at an alternate site in the event of the occurrence of a disaster or any event which would render the hardware and applications inside PDIC's Data Center inoperable or inaccessible. It shall include the establishment of a Disaster Recovery Site, with the necessary hardware and office space, which shall be made available for the use of PDIC in order to ensure the continuity of operation of PDIC's computer services and other critical applications and system in case of disaster. It shall also include an Incident Response Plan, which would specify in detail the recovery and resumption procedures to be undertaken while PDIC, through its Information Technology Group, works on the recovery of the mission-critical IT systems.

II. TERM

This Agreement shall be for a period of three (3) years, reckoned from the date of the issuance of the Certificate of Set-up Completion and Acceptance by **PDIC**. **PDIC** reserves the right to terminate this Agreement at any time for any reasonable cause, such as, but not limited to unsatisfactory performance by the **CONTRACTOR** of its obligations under this Agreement.

This Agreement may be renewed or extended under such terms and conditions mutually acceptable to both parties.

III. OBLIGATIONS AND RESPONSIBILITIES

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

- a. The CONTRACTOR shall provide PDIC with a three-year subscription to a Disaster Recovery Site (DRS), which shall have the capacity to restore PDIC's applications and systems in the event of the occurrence of any disaster, both natural and man-made, or any event or security risk which may render the hardware and applications inside PDIC Data Center partially or fully inaccessible or non-operational.
- b. The **CONTRACTOR** shall ensure that the DRS shall be placed at least ten (10) kilometers, on a straight-line distance, from the **PDIC** Head Office situated at SSS Bldg., 6782 Ayala Avenue cor. Rufino St., Makati City.

For this purpose, the parties hereby agree that the "straight-line distance" shall be measured using a scaled map and a ruler. The distance shall be measured on the map using the ruler. This measurement shall then be converted into the approximate real world distance by using the map's scale as multiplier.

A

* 1



- c. The DRS must have an alternative Disaster Recovery Site in case the main site is hit by a disaster. The alternative DRS should be accessible and operational in case the primary DRS becomes inaccessible by **PDIC** including all facilities and services that should have been provided for by the primary DRS as specified herein. Accordingly, any reference hereinafter to the DRS, most specifically with respect to the provisions, specifications, equipment and all other requirements shall be understood to refer and apply to both the DRS and the alternate DRS.
- d. The alternative DRS must be located in a different island group from where the main DRS is located.
- e. The **CONTRACTOR** shall also ensure that both the DRS and the alternative DRS shall have the following provision/equipment, which shall be devoted for the exclusive use of **PDIC**, to wit:
 - i. At least ten (10) units of Intel-based servers with the following specifications:
 - At least 2 x quad core intel xeon; 21 GHz processor; 10MB Cache
 - At least 16GB of DDR3 Memory
 - At least 500GB of usable hard disk space
 - Support for RAID 0,1,5,10 implementation
 - At least four (4) 1000 Base-T/100 Base-TX Network Interface Cards (NIC)
 - At least 24x CD-ROM drive.
 - ii. At least one (1) unit of LTO tape drive that should be compatible with the tape drive being used by **PDIC**
 - iii. At least one (1) set of KVM switch (if needed), monitor, keyboard and mouse for each server rack
 - iv. At least one (1) network laser printer
- f. The **CONTRACTOR** shall likewise ensure that the DRS and the alternative DRS shall have the following installations/facilities:
 - Precision Airconditioning Units/Systems
 - Uninterruptible Power Supply
 - Generator Sets
 - Fire Suppression System
 - CCTV Surveillance System
 - Access Control System
- g. The **CONTRACTOR** guarantees that the DRS shall have a secured Tape Storage Room which can accommodate the storage of at least one hundred twenty five fifty (125) LTO tapes at a time.
- h. The **CONTRACTOR** also guarantees that the DRS shall have the following office amenities, to wit: --

2



- Reception and meeting/conference rooms
- Manager and staff offices
- Phone lines
- 1 mbs bandwidth of internet service
- Fax machines
- Photocopiers
- Toilets/restrooms
- 24/7 lounge
- i. The **CONTRACTOR** shall include a Disaster Recovery Process Simulation of at least 240 hours, which shall be manned by at least one (1) technical engineer during testing.
- The CONTRACTOR shall guarantee that the DRS shall have at least two
 telecommunications facilities from the major telecommunications companies in the country.
- k. The **CONTRACTOR** shall prepare an Incident Response Plan, which shall document the procedure to be followed during the occurrence of a disaster. It shall also designate/name the contact person(s) whom **PDIC** could get in touch with in case of a disaster.
- I. The **CONTRACTOR** shall include in the DRS provisions for work space which can accommodate at least twenty (20) users and with provision for individual LAN/Voice ports.
- m. The **CONTRACTOR** shall allow **PDIC** to make use of the DRS free of charge for a period of thirty (30) days per occurrence of disaster.

The use of the DRS by **PDIC** for a period in excess of thirty (30) days shall allow **TIMC** to charge **PDIC** a daily rate of not more than 1.5% of the annual cost.

- n. The **CONTRACTOR** shall ensure that the DRS will be able to respond within two (2) hours from notice by **PDIC** upon the occurrence of a disaster.
- o. The CONTRACTOR shall complete the set-up of the DRS within sixty (60) days upon signing of this Contract. The set-up shall be deemed complete when all the hardware and software required to run the critical business applications of PDIC are already installed, the Incident Response Plan submitted and accepted by PDIC and the Certificate of Set-up Completion and Acceptance has been issued by PDIC.
- p. The **CONTRACTOR** shall be responsible for the pick-up of Linear Tape Open (LTO) back-up tapes from PDIC Head Office to the Tape Storage Room where the DRS is located

For this purpose, it shall be the responsibility of **TIMC** to maintain an inventory of the LTO Back-up tapes in the DRS.

The pick-up of LTO back-up tapes shall be made only during regular

K

7

76/

working hours from 8:00 am to 5:00 pm.

- q. The loading of the Back-up tapes as needed to facilitate partial restoration or recovery of backed-up information and data from the tapes shall be the responsibility of the CONTRACTOR.
- r. The **CONTRACTOR** shall provide **PDIC** with the needed assistance in the dissemination of information concerning the implementation of the DRS.
- s. The **CONTRACTOR** shall also provide **PDIC** whatever assistance deemed necessary for purposes of ensuring that the Disaster Recovery Plan will be responsive and will be operational in case of an actual disaster.
- t. The CONTRACTOR represents, warrants and undertakes to have rightful possession over the property where the DRS and the alternate DRS are situated throughout the entire duration of this Agreement towards the fulfillment and complete performance of the services contracted herein.

IV. SERVICE FEE

- a. For and in consideration of the services to be provided/rendered under this Agreement, PDIC agrees to pay the CONTRACTOR an Annual Service Fee of TWO MILLION EIGHT HUNDRED NINETY SIX THOUSAND EIGHT HUNDRED PESOS, Philippine currency (Php2,896,800), 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, for any and all services that the CONTRACTOR will provide under this Agreement.
- b. The Annual Service Fee shall be divided into four (4) equal payments and each payment shall be released at the end of every quarter starting from the effectivity of this Agreement and upon issuance by PDIC of the certificate of satisfactory completion and acceptance of all the outputs/deliverables turned in by the CONTRACTOR pursuant to this Agreement as well as compliance by the CONTRACTOR with any and all the terms and conditions of this Agreement. Satisfactory completion shall be understood to mean compliance by the CONTRACTOR with all of the standards/requirements set by PDIC in the performance of the CONTRACTOR's obligation under this Agreement. For purposes of this provision, the CONTRACTOR hereby acknowledge that PDIC shall be the final arbiter on the acceptability and sufficiency of the CONTRACTOR's deliverables and completed outputs.
- c. Additional services performed by the **CONTRACTOR** upon request of **PDIC** which are not within the scope of service as required in this Agreement, shall be billed separately by the **CONTRACTOR**.

K y

John John

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

V. CONFIDENTIALITY

The **CONTRACTOR** agrees that the services covered by this Agreement are strictly confidential and that a breach of any of the terms and conditions thereof by the **CONTRACTOR** may subject **PDIC** to financial, material and operational loss, and therefore, the **CONTRACTOR** hereby agree as follows:

- a. The CONTRACTOR, its employees, staffs or agents, shall not, either during the term of this Agreement or at anytime thereafter, reveal, disclose or furnish, in any manner, to any person, firm or corporation any information relating to PDIC which the CONTRACTOR or other members of its work staff / team, may have acquired or which came to its / their knowledge or possession during their work with PDIC.
- b. The **CONTRACTOR**, its employees, staffs or agents, shall not, during the effectivity of this Agreement and extending for a period of one (1) year reckoned from the termination of this Agreement, be directly or indirectly engaged or have an interest in any business undertaking or operation of other group, office or company which, in the normal course of operation, would necessitate the use of the information or knowledge gained or acquired during its engagement as Contractor for **PDIC**, unless it is granted written consent by **PDIC**;
- c. The **CONTRACTOR** agrees to assume sole responsibility and hereby undertakes to indemnify **PDIC**, for any damage, which **PDIC** may sustain by reason of breach of the above conditions.

VI. RELATIONS 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 **PDIC** or bind **PDIC** in any manner whatsoever. The **CONTRACTOR's** personnel shall not be construed as employees of **PDIC**. 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** employee and **PDIC**.

VII. PERFORMANCE SECURITY

a. To guarantee the faithful performance of the obligations and services required under this Agreement, the **CONTRACTOR** shall,



2

upon execution of this Agreement, post in favor of **PDIC** a Performance Security in the form of surety bond in an amount equivalent to thirty percent (30%) of the total contract price or PhP896,040.00.

- b. In the event that the Performance Security offered by the CONTRACTOR would be deemed inadequate or otherwise rendered unacceptable, PDIC shall have the right to require the CONTRACTOR to post a performance security in the form and amount determined by PDIC and allowed under existing laws and regulations.
- c. The Performance Security shall be released within 15 days from the end of this Agreement's term and upon PDIC's issuance of the certification of the CONTRACTOR's faithful and complete performance of its obligations under this Agreement. The Performance Security shall answer for any damage that PDIC may suffer by reason of the CONTRACTOR's default of any of its obligations and/or breach of the terms and conditions of this Agreement. It shall likewise guarantee payment for any loss, damage or injury that may be caused by the CONTRACTOR to PDIC, its employees and guests.
- d. The Performance Security shall be forfeited in favor of **PDIC** in the event that the **CONTRACTOR** is in default or breach of its obligation under this Agreement. Any changes made in this Agreement 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 Agreement 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 Agreement, 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 PDIC liquidated damages in an amount equivalent to one-tenth (1/10) of one (1%) percent of the total contract price for every day of delay or breach, in addition to other remedies that PDIC may exercise under this Agreement, pertinent laws, rules and regulations, until such services are finally delivered and accepted by PDIC. In the event that the total sum of liquidated damages or the total cost to PDIC of any such delay or inability by the Contractor to deliver its obligations exceeds 10% of the contract



price, **PDIC** may terminate this Agreement upon giving the **CONTRACTOR** written notice at least fifteen (15) calendar days prior to the intended date of termination and impose other appropriate sanctions over and above the liquidated damages.

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

IX. SUSPENSION OF PAYMENT/TERMINATION FOR DEFAULT

PDIC 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, **PDIC** shall have the right to procure/engage, upon such terms and manner as **PDIC** shall deem appropriate, the services of another contractor to undertake the unperformed/undelivered service(s) of the **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, PDIC 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, PDIC 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 PDIC 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 **PDIC** may exercise under this Contract, applicable laws, rules and regulations.

X. TERMINATION FOR UNLAWFUL ACTS

PDIC 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 **PDIC** that the **CONTRACTOR** has engaged, before or during the implementation of this Contract, in

F

704



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 adulterated materials, means or methods, or engaging in production 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 **PDIC** under this Contract or the applicable laws.

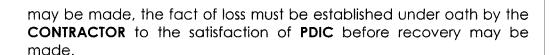
XI. OTHER GROUNDS FOR TERMINATION

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

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

Provided, further, if the **CONTRACTOR** suffers loss in its initial performance of the terminated contract, such as purchase of raw materials for goods specially manufactured for **PDIC** which cannot be sold in the open market, the **CONTRACTOR** shall be allowed to recover partially from the Contract on a *quantum meruit* basis. Before recovery

*



XII. INDEMNITY

The **CONTRACTOR** shall indemnify **PDIC** against any loss, injury or damage either to person or property which **PDIC** 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.

XIII. NON-WAIVER OF RIGHTS

The failure of **PDIC** 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 **PDIC** 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 **PDIC** of any of its rights under this Contract shall be deemed to have been made unless expressed in writing and signed by **PDIC**.

XIV. 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 PDIC.
- 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.

A X D

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

To the Contractor: Salvador P. Aque

c/o Alexis Jose C.Espino Senior Account Manager

5600 President Osmeña Highway,

Palanan, Makati 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 dates and in places indicated below their respective signatures.

PHILIPPINE DEPOSIT INSURANCE CORPORATION

TOTAL INFORMATION MANAGEMENT CORPORATION

By:

MARIA BELINDA C. SAN JOSE

Vice President
Information Technology Group

Date: _____Place: _____

By:

SALVADOR P. AQUE
President

Date: ______ Place: _____

CERTIFICATION

This is to certify that pursuant to PDIC Board Resolution No. 2013-03-067 dated March 27, 2013, the amount of PhP2,896,800.00 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 disaster recovery service 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

K

76/

SIGNED IN THE PRESENCE OF:

RENAR M. GONZALES

Manager

Technical Support Department

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES) City of Makati) S.S.			
BEFORE ME, a Notary Public for and in the City of Makati on thisday of, 201, personally appeared the following:				
Name	CTC No.	Date/Place Issued		
Maria Belinda C. San Jose PDIC	POIC 10 H	1348		

known to me and to me known to be the same person who executed the foregoing instrument and who acknowledged to me that the same is her free and voluntary act and deed and that of the Corporations which she represent; and that she is duly authorized for the purpose.

This instrument refers to a *Disaster Recovery Services Agreement* consisting of fourteen (14) pages including this page whereon the Acknowledgment is written, signed by the party and her witness on each and every page thereof.

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

NOTARY PUBLIC

Doc. No. $\frac{17}{2}$; Page No. $\frac{1}{2}$; Book No. $\frac{1}{2}$; Series of 201 $\frac{1}{2}$.

ATTY, MARIA POLA F. SORIANO-LUANZON NOTARY PUBLIC FOR MAKATI CITY, PHILIPPINES Appointment No. M-232 Uniti Dec. 31, 2014 Roll No. 38342 / IBP Lifetime No. 00488 6782 SSS Bldg., Ayala Ave., Makati City SIGNED IN THE PRESENCE OF:

ALEXIS JOSE C. ESPINO Senior Account Manager

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES) MAK ATI CITY) SS.	
BEFORE ME, a Notary day of JAN 1 6 2014	Public for and in , 201 persor	the City of MAKATICITY, this nally appeared:
Name	CTC No.	Date/Place issued
SALVADOR P. AQUE TIMC		

known to me to be the same person who executed the foregoing instrument and acknowledged to me that he is duly authorized to execute this instrument and that the same is his free and voluntary act and deed, as well as that of the entity he represents.

This document refers to *Disaster Recovery Services Agreement* consisting of fourteen (14) pages, including this page on which this Acknowledgment is written, signed by the party and his witness on each and every page thereof and thereafter sealed with my notarial seal.

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

Doc. No. <u>49/</u>; Page No. <u>100</u>; Book No. <u>68</u>; Series of 2014 UniNOTARY PUBLIC
Appl. No. M. A. Hakali City
IBP #3-1-330, No. 12, 2013-RSM
PTR #4225-2-1 Ja; -22, 2014-Makali
S.G. Foll I.A. 35597
MCLE Occupionce No. IV-0011330
Unit 6E Cityland Herrers Tower
#38 Rufino St. cor. Valero St.
Salcedo Village, Makati City

M