

CONTRACT FOR THE SUPPLY AND DELIVERY OF DESKTOP COMPUTERS

KNOW ALL MEN BY THESE PRESENTS:

This *Contract for the Supply and Delivery of Desktop Computers* (the "**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 -

_____ 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 _____, represented herein by its _____, M _____, and hereinafter referred to as the "**CONTRACTOR**"

WITNESSETH: That -

WHEREAS, the **CLIENT** needs to update its computer equipment in order to address the increased requirements of its personnel and contribute to the over-all-efficiency of its operations;

WHEREAS, on _____, 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:

I. SUBJECT MATTER

The **CONTRACTOR** agrees to supply and deliver to the **CLIENT** fifty four (54) units of desktop computers (hereinafter referred to as "**Computers**"), subject to the terms and conditions set forth herein and in accordance with the specifications herein below indicated:

a. Processor	Intel Core i7
b. Hard disk	500 GB SATA
c. Memory	4 GB DDR3
d. Monitor	21" LED; same brand as the CPU
e. Video Card	High definition audio; with internal speaker/Intel Dynamic Video Technology
f. OS/Bundled software	<ul style="list-style-type: none">▪ Windows 8 Professional with free license certificate for each notebook computer, including free downgrade license to Windows 7 Professional▪ 32-bit▪ 1 media kit for Windows 8 Professional
g. Optical drive	DVD-ROM drive; same brand as the CPU
h. Input devices	USB Keyboard, USB Optimal mouse; same brand as the CPU
i. I/O ports	1 serial, 1 parallel, port and at least 4 USB 2.0 or higher
j. Network card	10/100/1000 Ethernet network card
k. Expansion slots	Minimum of 2 available slots
l. Warranty	Three (3) year warranty on all parts and labor on-site, including mouse and battery
m. Other features	<ul style="list-style-type: none">▪ Hard disk formatted to NTFS and partitioned in two logical drive▪ HW and SW drivers for Windows 7▪ Internationally-known and ISO certified brand with capability to provide international warranty

II. OBLIGATIONS AND UNDERTAKING

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

- a. The **CONTRACTOR** shall deliver and supply the Computers within forty-five (45) calendar days upon the execution of this Contract.
- b. In case any of the computers referred to in this Contract is in need of repair within the warranty period hereinabove specified, the **CONTRACTOR** shall make the necessary repair within 24 hours after the problem is reported. If the **CONTRACTOR** fails to do the necessary repair within the 24-hour period, the **CONTRACTOR** shall provide the **CLIENT** with a service unit of the same or higher specification before the expiration of the 24-hour grace period provided for herein.

- c. The **CONTRACTOR** shall, throughout the period of warranty, promptly respond to technical consultations as may be propounded by the **CLIENT** regarding the Computers from 9:00 a.m. to 5:00 p.m., Monday to Friday, except during legal holidays. The **CONTRACTOR's** Technical and Support Group/s shall respond no later than 2 hours after receipt of call or request for assistance from the **CLIENT**.
- d. The **CONTRACTOR** shall undertake and provide the **CLIENT**, through its Technical Support Department, the necessary training pertaining to the operation of the Computers.

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 _____ 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 Computers are brand new, unused, of the most recent models, and that they incorporate all recent improvements in design and materials.

- g. It warrants to the **CLIENT**, in an unconditional, unqualified, absolute, full and direct manner, the Computers 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.

The acceptance of the Computers 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.

- h. It shall undertake to repair and/or replace during the warranty period any of the computers subject of this Contract within the period stated in Section II, (b) &(c) hereof at no extra charge to the **CLIENT**. Should the **CONTRACTOR** fail to undertake the necessary remedial action within the required period, the **CLIENT** shall have the right to proceed to take such remedial action as may be necessary at the **CONTRACTOR's** risk and expense, and without prejudice to other rights which the **CLIENT** may have against the **CONTRACTOR** under the Contract and the applicable law.
- 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 Computers, 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 _____ **PESOS (Php_____)**, 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 preliminary 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 staff and the **CLIENT**.

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 (Form of Security) in an amount equivalent to (Minimum Amount in % of Total Contract Price).
- 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) working 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 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.

IX. RETENTION MONEY

To ensure the full and faithful compliance by the **CONTRACTOR** of all the terms and conditions of this Contract as well as to cover for any defects on the Computers, a retention money or a special bank guarantee equivalent to ten percent (10%) of the total amount due to the **CONTRACTOR** shall be deducted/retained or posted in favor of the **CLIENT** by the **CONTRACTOR**.

The retention money or the special bank guarantee shall be released to the **CONTRACTOR** only after the **CLIENT** shall have issued a final certificate of full acceptance of the Computers, which certificate shall be issued only after the lapse of the warranty period provided under Section I of this Contract; and provided, further, that the Computers supplied/delivered under this Contract are free from patent and latent defects and all conditions imposed under this Contract have been fully met.

X. INDEMNITY

The **CONTRACTOR** assumes full and complete responsibility as well as assumes any and all risks attendant or incidental to the selection of the Computers to achieve the intended result and for the installation, use and results obtained from it. The **CONTRACTOR** shall be directly, fully and solely liable to the **CLIENT** for any loss or damage that the **CLIENT** may sustain, and for any claim made against the **CLIENT** by a third party arising out of the use of a defective or malfunctioned equipment or inability to use such

equipment. The loss or damage may be in the form of, but shall not be limited to, loss of profits, revenue, data, records or costs of substitute goods or services, property damage, personal injury, interruption of business, loss of business information or for any special, direct, indirect, incidental, economic, cover, punitive, special or consequential damages, arising out of the use of or inability to use the equipment as intended.

The **CONTRACTOR** agrees to fully compensate, indemnify and hold harmless the **CLIENT** and its officers, directors, employees, and agents for any loss, damage, cost, expense, liability or claim suffered or incurred by, or made against the **CLIENT** arising out of the **CONTRACTOR's** fraud, misrepresentation, negligence, omission or willful misconduct or breach of its warranty as provided herein.

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 the **CLIENT** 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.

XII. TERMINATION FOR UNLAWFUL ACTS

The **CLIENT** may terminate this Contract, after giving the **CONTRACTOR** written notice at least five (5) calendar 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 be 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/s;
- c. 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**.

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 the 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 _____ :

- 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.

- i. **Effectivity** – This Contract shall take effect immediately upon its execution.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures on the dates and in the places as stated below their respective signatures.

**PHILIPPINE DEPOSIT
INSURANCE CORPORATION**

Client

By:

MARIA BELINDA C. SAN JOSE

Vice President,
Information Technology Group

Date: _____

Place: _____

Contractor

By:

Date: _____

Place: _____

CERTIFICATION

This is to certify that pursuant to PDIC Board Resolution No. _____ dated _____, the amount of P _____ has been set aside and made available in the Corporate Operating Budget (COB) of the PDIC for the year _____ to cover the implementation of the approved _____ (name of the procurement project) for the year _____. 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

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
MAKATI CITY) S.S

BEFORE ME, a Notary Public, for and in the City of Makati on this ___ day of _____, 2015, personally appeared Ms. Maria Belinda C. San Jose with Community Tax Certificate/identification No. _____, 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 Supply and Delivery of Notebook Computers*, consisting of thirteen (13) 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. _____;
Page No. _____;
Book No. _____;
Series of 2015.

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
_____) S.S.

BEFORE ME, a Notary Public for and in Makati City, on this _____ day of _____, 2015, personally appeared M _____, with Community Tax Certificate/Identification No. _____ issued on _____ at _____.

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 Supply and Delivery of Notebook Computers*, 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.

Notary Public

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 2015.

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