

CONTRACT FOR SAP SOFTWARE MAINTENANCE SUPPORT FOR THE INTEGRATED FINANCIAL SYSTEM

KNOW ALL MEN BY THESE PRESENTS:

This Contract for SAP Software Maintenance Support for the Integrated Financial System (the "**Contract**"), made and entered into, by and between:

PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC), 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 "**LICENSEE**"

- 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 "**LICENSOR**"

WITNESSETH: That –

WHEREAS, the **LICENSEE** has in its computer system SAP Enterprise Control Component (ECC) 6.0 Software (the "**SAP Software**"), a software necessary to run the critical applications of the **LICENSEE's** Integrated Financial System (IFS), which is the Licensee's financial and investment system;

WHEREAS, SAP Software requires comprehensive maintenance support in order to ensure the continuous operation of the **LICENSEE's** IFS and thus, promote the **LICENSEE's** over-all operational efficiency;

WHEREAS, in line with the foregoing, the **LICENSEE** conducted a public bidding pursuant to the provisions of R.A. 9184 otherwise known as the "*Government Procurement Reform Act*";

WHEREAS, upon careful examination and evaluation of the technical specifications and financial proposals of the service providers who responded to the **LICENSEE's** notice under a public bidding mode of procurement, the proposal of the **LICENSOR** was found to be the lowest and the most responsive.

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

I. SCOPE OF SERVICE

The **LICENSOR** agrees to fully and faithfully render, accomplish and provide, to the satisfaction of the **LICENSEE**, maintenance support to the **LICENSEE's** SAP Software in order to ensure the continuous operation of the **LICENSEE's** IFS, which maintenance support shall include, but not limited to, the following:

a. Provide maintenance support for the following modules of the **LICENSEE's** SAP Software:

- One (1) Enterprise Foundation Package (including 5 professional users)
- Two (2) SAP Treasury and Risk Management, Public Sector
- Three (3) SAP Application Developer User
- Thirty-Seven (37) SAP Application Professional Users
- Four (4) SAP Application Limited Professional Users

b. Undertake continuous improvement and innovation for:

- New software releases of the licensed Enterprise Supported Solution.
- Support packages - These are correction packages necessary to reduce the effort of implementing single corrections or changes to existing functionality. Support packages also contain corrections to adapt to existing functionality to change legal and regulatory requirements.
- Technology updates to support third-party operating systems and databases.
- Available Advance Business Application Programming (ABAP) source code for SAP applications and additional releases and supported function modules.
- Software change management such as changed configuration settings or software upgrades.

c. Provide global support backbone for:

- SAP Service Marketplace – refers to SAP's knowledge database and SAP's extranet which transfer the SAP content and services to licensees and partners of SAP.
- SAP Notes on the SAP Service Marketplace Document Software Errors – refers to information on how to remedy, avoid and bypass errors, coding corrections that customers can implement into their SAP system, document related issues, customer questions, and recommended solutions (e.g. customizing settings).
- SAP Note Assistant – enables the installation of specific corrections and improvements to SAP components.
- SAP Manager Enterprise Edition – for Licensee's interactions with the Value Added Reseller (VAR) in accordance with the terms and conditions defined by SAP.

- d. Provide mission critical support for:
- VAR Support Advisory
 - Technical Quality Check
 - Advanced Proactive Remote Service – for the prevention of technical problems before they occur (e.g. SAP Early Watch Alert). The Licensee must be able to activate SAP Early Watch Alert as mandatory part of SAP Enterprise Support for data transfer to VAR. The Licensee acknowledges and confirms that VAR might hand over SAP Early Watch Alert data to SAP critical situations for further analysis.
 - Global message handling by VAR and SAP for incidents related software with high priority.
 - Global 24x7 Root Cause Analysis and Procedures –to get access to resources needed to provide solutions to severe problems.
 - Global Top-issue Procedures – This would provide access to resources available to the Licensee during critical escalations.
- e. Render on-site/off-site technical support, as follows:
- 16 Man-days of Service Level Agreement (SLA) which includes:
 - i. Root-Cause Analysis.
 - ii. System Configuration.
 - iii. Status Reporting.
 - iv. Support Documentation.
 - v. Unit Testing.

All unused/excess Man-days shall be converted into training hours thru Academy (classroom-type session) or eAcademy (on-line session) as determined by the Licensee.
 - Services and support shall be covered by the following authorized SAP Consultants:
 - i. SAP ECC Modules Consultants for:
 - Financials
 - Treasury
 - ii. Advanced Business Application Programming (ABAP)
 - iii. System Administration
 - 1 SAP eAcademy training for any eAcademy available course
 - Submission of detailed and current information on new versions of the SAP Software, its latest releases and other relevant information and topics.
 - Assistance in the analysis, isolation and troubleshooting of any SAP-IFS incidents/problems.
 - Standard 24x7 on-site/off-site troubleshooting and repair of SAP software within 2-hour response time, including weekends and holidays
 - Configuration, health check or fine tuning of the SAP-IFS or respond to request for technical assistance.
 - Email and phone support for technical assistance.
 - Prepare recommendations in fine tuning the SAP-IFS
 - Supply of qualified SAP Basis/ System Administrator to perform support services as may be required by the Licensee.

- Ensure that a 24/7 maintenance support services via telephone, web, email, fax or any similar media is available to the Licensee at no extra charge.
- Conduct a comprehensive and thorough analysis of the current set up, provide inputs on areas of improvement, as well as the impact of the changes to the operability and efficiency of the system. And, in line with the foregoing, submit to the Licensee an analysis report on the results thereof.
- Such other services/assistance necessary to ensure the continuous operation and availability of the Licensee's SAP-IFS based on SAP Software applications/systems.

II. COVERAGE

This Contract shall be for a period of one (1) year, commencing on _____ and ending on _____. The **LICENSEE** reserves the right to terminate this Contract at any time for any reasonable cause such as, but not limited to, unsatisfactory performance by the **LICENSOR** of its obligations under this Contract, subject only to fifteen (15) calendar day prior notice to the **LICENSOR**.

For purposes of this Contract, the **LICENSOR** shall perform any and all updates or processes necessary for the non-interruption or proper transition of software maintenance and/or support services on the **LICENSEE's** SAF-IFS, thereby covering the period adjoining the expiration date of the previous maintenance contract for the **LICENSEE's** SAP-IFS and the effectivity date of this Contract, for an aggregate maintenance service equivalent to one (1) calendar year.

III. MAINTENANCE FEE

For and in consideration of the services to be provided/rendered under this Contract, as well as compliance by the **LICENSOR** with all the terms and conditions specified herein, the **LICENSEE** agrees to pay the **LICENSOR** the sum total of **Pesos:** _____ (**Php** _____ **.00**), 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.

IV. PAYMENT SCHEDULE

The Maintenance Fee, net of the 10% retention fee under Section XIV of this Contract, shall be released within _____ (__) working days after issuance by the **LICENSEE** of the certificate of acceptance, which shall be issued only upon acceptance by the **LICENSEE** from the **LICENSOR** of the certificate of coverage to maintenance support herein required.

V. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

The **LICENSOR** represents warrants and undertakes to the **LICENSEE** 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. It 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 **LICENSOR**, 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 **LICENSOR** or the **LICENSOR's** ability to comply with the terms and conditions of this Contract.

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

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

- f. It warrants the integrity, competency, independence, professionalism and qualifications of the personnel, staff or representative that it will assign to undertake the services required herein.

The **LICENSEE** reserves the right to demand at anytime, without need to present proof to substantiate its request, the immediate replacement of any of the **LICENSOR's** personnel, staff or representative assigned to the services herein required who is wanting in competence, honesty, integrity, or whose services is deemed to be or will otherwise be prejudicial to the interest of the **LICENSEE**.

- g. It undertakes to provide the **LICENSEE** with the needed technical documentations and such other related documentations which indicate the process flows of resolution.
- h. It warrants that all product updates/upgrades shall be performed by a certified SAP personnel.

- i. It warrants that it shall have the right or authority to provide the services herein required; and that, it shall render the **LICENSEE** free and harmless from any claim that may arise between SAP and the **LICENSOR**.
- j. It warrants the quotations for the cost of man-day in excess of the required 16 man-day specified in the Terms of Reference.

VI. CONFIDENTIALITY

The **LICENSOR** agrees and acknowledges that the services covered by this Contract may expose the **LICENSOR** to confidential information and that any disclosure of such information may subject the **LICENSEE** to financial, material and operational loss, and therefore, the **LICENSOR** hereby agrees as follows:

- a. The **LICENSOR**, or any of its employees, agents or representatives, shall not, either during the term of this Contract or at anytime thereafter, reveal, disclose or furnish, in any manner, to any person, firm or corporation any information relating to the **LICENSEE** which it or other members of the work staff/team, may have acquired or which came to its/ their knowledge or possession during the subsistence of this Contract.
- b. The **LICENSOR** shall not, during the effectivity of this Contract and extending for a period of one (1) year reckoned from the termination of this Contract, 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 herein, unless it is granted written consent by the **LICENSEE**;
- c. The **LICENSOR** agrees to assume sole responsibility and hereby undertakes to indemnify the **LICENSEE**, for any damage, which the **LICENSEE** may sustain by reason of breach of any of the above conditions.

VII. RELATION OF THE PARTIES

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

VIII. PERFORMANCE SECURITY

- a. To guarantee the faithful performance of the obligations and services required under this Contract, the **LICENSOR** shall, upon execution of this

Contract, post in favor of the **LICENSEE** a Performance Security in the form of _____ in an amount equivalent to _____ (___%) of the total contract price.

- b. In the event that the Performance Security offered by the **LICENSOR** would be deemed inadequate or otherwise rendered unacceptable, the **LICENSEE** shall have the right to require the **LICENSOR** to post additional performance security in the form and amount determined by the **LICENSEE** and allowed under existing laws and regulations.
- c. The Performance Security shall be released not later than seven (7) working days from the end of this Contract's term and upon issuance by the **LICENSEE** of the Certificate of Satisfactory and Complete Performance of its obligations and acceptance by the **LICENSEE** of all the outputs/deliverables pursuant to this Contract. The Performance Security shall answer for any damage that the **LICENSEE** may suffer by reason of the **LICENSOR'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 **LICENSOR** to the **LICENSEE**, its employees and guests.
- d. The Performance Security shall be forfeited in favor of the **LICENSEE** in the event that the **LICENSOR** 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 **LICENSOR** and the surety.
- e. Failure of the **LICENSOR** to comply with any of the terms and conditions of this Contract shall result in the forfeiture of the Performance Security.

IX. LIQUIDATED DAMAGES

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

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

X. SUSPENSION OF WORK/TERMINATION FOR DEFAULT

The **LICENSEE** shall have the right to suspend, in whole or in part, the work subject of this Contract in the event there is delay, default, failure or refusal on the part of the **LICENSOR** to perform its obligations under this Contract in an acceptable manner. Further, the **LICENSEE** shall have the right to procure/engage, upon such terms and manner as the **LICENSEE** shall deem appropriate, the services of another contractor to undertake the unperformed/undelivered service(s) of the **LICENSOR**. Any and all expenses that may be incurred in relation thereto shall be for the exclusive account of the **LICENSOR**.

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

The **LICENSOR** hereby agrees that the remedies mentioned above shall be understood to be without prejudice to other rights and remedies that the **LICENSEE** may exercise under this Contract, applicable laws, rules and regulations such as, but not limited to, the forfeiture of the Performance Security and imposition of liability for Liquidated Damages under Section VIII & IX of the Contract, respectively, as well as blacklisting of the **LICENSOR** in the manner provided for under R.A No. 9184 and its IRR.

XI. TERMINATION FOR UNLAWFUL ACTS

The **LICENSEE** may terminate this Contract, after giving the **LICENSOR** written notice at least five calendar (5) days prior to the intended date of termination, whenever it is determined by the **LICENSEE** that the **LICENSOR** 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; and
- c. Any other act analogous to the foregoing.

The **LICENSOR** hereby agrees that the termination referred to herein shall be understood to be without prejudice to other rights and remedies available to the **LICENSEE** under this Contract or the applicable laws such as, but not limited to, blacklisting of the **LICENSOR** in the manner provided for under R.A. No. 9184 and its IRR.

XII. OTHER GROUNDS FOR TERMINATION

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

XIII. INDEMNITY

The **LICENSOR** shall indemnify the **LICENSEE** against any loss, injury or damage either to person or property which **LICENSEE** may suffer by reason of the willful, unlawful or negligent act or omission of the **LICENSOR** or any of its personnel or representative. The indemnity required herein shall be in addition to the forfeiture of Performance Security.

XIV. RETENTION MONEY

To ensure the full and faithful compliance by the **LICENSOR** of all the terms and conditions of this Contract, a retention money equivalent to ten percent (10%) of the total Maintenance Fee shall be retained by the **LICENSEE**.

The retention money shall be released to the **LICENSOR** not later than seven (7) working days from the end of this Contract's term and upon issuance by the **LICENSEE** of the Certificate of Satisfactory and Complete Performance of the **LICENSOR's** obligations under this Contract.

XV. NON-WAIVER OF RIGHTS

The failure of the **LICENSEE** 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 **LICENSEE** 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 **LICENSEE** of any of its rights under this

Contract shall be deemed to have been made unless expressed in writing and signed by the **LICENSEE**.

XVI. 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 **LICENSOR**, its partners, successors-in-interest, its legal representatives and assigns. Foregoing notwithstanding, the **LICENSOR** shall not in any way assign, or transfer its rights and obligations under this Contract without the written approval of the **LICENSEE**.
- 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 in harmony with the Terms of Reference and other related documents. In case of conflict, the provisions of this Contract shall prevail.
- f. **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.
- g. **Attorney's Fees** - In the event that the **LICENSEE** 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.
- h. **Effectivity** – This Contract shall take effect immediately upon its execution.

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

**PHILIPPINE DEPOSIT
INSURANCE CORPORATION**
Licensee

By:

MARIA BELINDA C. SAN JOSE
Vice President
Information Technology Group
Date: _____
Place: _____

Licensor

By:

Date: _____
Place: _____

CERTIFICATION

This is to certify that pursuant to PDIC Board Resolution No. _____ dated _____, the amount of PhP _____ 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 *Software Maintenance of SAP Software for the Integrated Financial System (IFS)* 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:

A C K N O W L E D G M E N T

REPUBLIC OF THE PHILIPPINES)
City of Makati) S.S.

BEFORE ME, a Notary Public for and in the City of Makati on this __ day of _____, 2015, personally appeared the following:

Name	CTC No.	Date/Place Issued
<i>Maria Belinda C. San Jose</i> <i>PDIC</i>		

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 *Contract for SAP Software Maintenance Support for the Integrated Financial System (IFS) consisting of xxxx (xx) 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. _____;
Page No. _____;
Book No. _____;
Series of 2015.

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)

_____) SS.

BEFORE ME, a Notary Public for and in the City of _____, this _____ day of _____, 2015 personally appeared:

Name	CTC No.	Date/Place Issued
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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 *Contract for SAP Software Maintenance Support for the Integrated Financial System (IFS) consisting of xxxxx (xx) 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.

NOTARY PUBLIC

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