

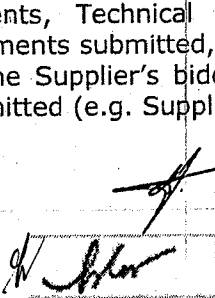
## A G R E E M E N T

THIS AGREEMENT (the "Agreement") made the \_\_\_\_ day of \_\_\_\_\_ 2022 between **DEVELOPMENT BANK OF THE PHILIPPINES**, a government financial institution duly created and existing under the provisions of Executive Order No. 81, the 1986 Revised Charter of DBP, as amended by Republic Act No. 8523 dated February 14, 1998, with principal office at DBP Building, Sen. Gil Puyat Ali corner Makati Avenue, Makati City, Philippines, herein represented by its President and Chief Executive Officer, MR. EMMANUEL G. HERBOSA (hereinafter called "the Entity") of the one part and **TRENDS AND TECHNOLOGIES, INC.**, a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 6<sup>th</sup> Floor, Trafalgar Plaza 105 H.V. Dela Costa St., Salcedo Village, Makati City, herein represented by its Sales Manager, MS. MARY ROSE S. HERNANDEZ, duly authorized for this purpose as shown in the attached Secretary's Certificate for Board Resolution [attached as Annex "F" hereof] (hereinafter called "the Supplier") of the other part:

WHEREAS, the Entity invited Bids for certain goods and ancillary services, viz., **CyberDefense Solution (the "Project")**. After the conduct of public bidding, the Supplier was declared as the Lowest Calculated and Responsive Bidder and whose Bid was evaluated to be the most advantageous to the government and thus, the Entity has accepted the Bid by the Supplier for the supply of those goods and services in the sum of Pesos: **Seventy Nine Million Eight Hundred Ninety Eight Thousand (PhP79,898,000.00)**, inclusive of all applicable taxes and fees (hereinafter called "the Contract Price").

### NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. This Agreement shall take effect upon signing hereby of the Parties, and the Supplier shall commence performance of its obligations upon issuance by the Entity of a Notice to Proceed. This Agreement shall continue to be in full force and effect from the date of signing of this Agreement until completion of herein services or until terminated in accordance with the provisions on *Termination* under the RA No. 9184 and its 2016 Revised Implementing Rules and Regulations or at any time upon the instruction of the Bangko Sentral ng Pilipinas (BSP).
2. The Contract Price shall be paid by the Entity in accordance with the bidding documents and the terms and conditions stated herein.
3. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
4. The following documents, as required by the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184, shall be deemed to form and be read and construed as integral part of this Agreement, viz.:
  - (a) Philippine Bidding Documents (PBDs);
    - (i) Schedule of Requirements;
    - (ii) Terms of Reference or Technical Specifications (Annex A);
    - (iii) General and Special Conditions of Contract; and
    - (iv) Supplemental or Bid Bulletins, if any.
  - (b) Supplier's Bid, including the Eligibility requirements, Technical and Financial Proposals, and all other documents or statements submitted, Bid form, including all documents/stated contained in the Supplier's bidding envelopes, as annexes, and all other documents submitted (e.g. Supplier's

  
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Sales Manager  
TRENDS AND TECHNOLOGIES, INC.  
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response to request for clarifications on the bid), including corrections to the bid, if any, resulting from the Entity's bid valuation;

- (c) Performance Security (Annex B);
- (d) Notice of Award of Contract and the Supplier's conforme thereto (Annex C);
- (e) Performance Evaluation of 3rd Party Contracts/Agreements (Annex D);
- (f) Data Privacy Consent Form (Annex E);
- (g) Supplier's Secretary's Certificate for Board Resolution (Annex F); and
- (h) Documents required in Section 37.2 of the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184, and other contract documents that may be required by existing laws and/or the Entity in the PBDs. Supplier agrees that additional contract documents or information prescribed by the Government Procurement Policy Board (GPPB) that are subsequently required for submission after the Agreement's execution, such as the Notice to Proceed, Variation Orders, and Warranty Security, shall likewise form part of the Agreement.

The Parties shall endeavor to harmonize the provisions of this Agreement and the Annexes so that each shall be effective. In the event of any inconsistency between the terms of this Agreement and the Annexes, the terms of the Annexes shall prevail to the extent necessary to resolve such inconsistency. In the event of any conflict between the provisions of this Agreement including the annexes and the Terms of Reference or Technical Specifications, as the case may be, the terms of the Terms of Reference/Technical Specifications shall prevail.

5. In consideration for the sum of Pesos: Seventy Nine Million Eight Hundred Ninety Eight Thousand (PhP79,898,000.00) or such other sums as may be ascertained, inclusive of all applicable taxes and costs, the Supplier agrees to provide a two (2)-year Cyber Defense Solution in accordance with its Bid and the terms and conditions of this Agreement.

6. The Entity agrees to pay the above-mentioned sum in accordance with the terms of the Bidding and of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have signed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 in \_\_\_\_\_.

**DEVELOPMENT BANK OF THE PHILIPPINES**

By:

**EMMANUEL G. HERBOSA**  
President and Chief Executive Officer

**TRENDS & TECHNOLOGIES, INC.**

By:

**MARY ROSE S. HERNANDEZ**  
Sales Manager

Signed in the presence of:

SVP EMMANUEL Z. MUÑIZ III

MS. GIGI L. VELEZ

**ACKNOWLEDGMENT**

REPUBLIC OF THE PHILIPPINES)  
Makati City ) SS.

**BEFORE ME**, a Notary Public for and in the City of Makati, Philippines, this day of JUL 15 2022 2022, personally appeared the following:

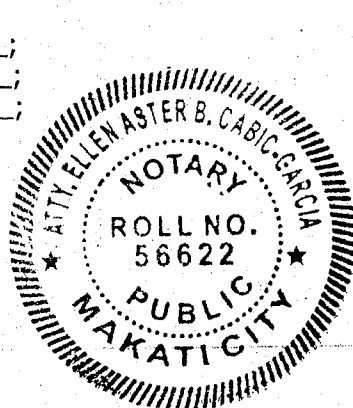
Name	Government ID Presented	Place and Date Issued
<b>Trends and Technologies, Inc.</b> Represented by:		
MARY ROSE S. HERNANDEZ	Passport ID P772898A	DFA/NCR South June 29, 2018
<b>Development Bank of the Philippines</b> Represented by:		
EMMANUEL G. HERBOSA	Passport No. P00038751A	DFA/NCR South August 25, 2016

known to me and to me known to be the same persons who executed the foregoing document and identified by me through competent evidence of identity, to be the same persons in the foregoing document who exhibited to me the above IDs bearing their respective signatures and photographs, that each party acknowledged to me that the execution of this document is the free and voluntary act and deed of the entities represented and that they have the authority to sign in behalf of their respective principals.

The foregoing document is an **Agreement** which consists of sixty-one (61) pages, including herein Annexes and the page where this Acknowledgment is written. This acknowledgment forms an integral part of the said document.

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

Doc. No. 173 ;  
Page No. 36 ;  
Book No. xv ;  
Series of 2022.



Atty. ELLEN ASTER CABIC-GARCIA  
Notary Public  
Appointment No. M-126  
Makati City, Until December 31, 201 22  
10<sup>th</sup> Flr. DBP Bldg., Sen. Gil Puyat Ave., Makati City  
Roll No. 56622, IBP No. 1747321  
PTR Exempt Under RA7160

## **GENERAL CONDITIONS OF CONTRACT**

### **1. Scope of Contract**

This Contract shall include all such items, although not specifically mentioned, that can be reasonably inferred as being required for its completion as if such items were expressly mentioned herein. All the provisions of RA No. 9184 and its 2016 revised IRR, including the Generic Procurement Manual, and associated issuances, constitute the primary source for the terms and conditions of the Contract, and thus, applicable in contract implementation. Herein clauses shall serve as the secondary source for the terms and conditions of the Contract.

This is without prejudice to Sections 74.1 and 74.2 of the 2016 revised IRR of RA No. 9184 allowing the GPPB to amend the IRR, which shall be applied to all procurement activities, the advertisement, posting, or invitation of which were issued after the effectivity of the said amendment.

Additional requirements for the completion of this Contract shall be provided in the **Special Conditions of Contract (SCC)**.

### **2. Advance Payment and Terms of Payment**

2.1. Advance payment of the contract amount is provided under Annex "D" of the revised 2016 IRR of RA No. 9184.

2.2. The Procuring Entity is allowed to determine the terms of payment on the partial or staggered delivery of the Goods procured, provided such partial payment shall correspond to the value of the goods delivered and accepted in accordance with prevailing accounting and auditing rules and regulations. The terms of payment are indicated in the **SCC**.

### **3. Performance Security**

Within ten (10) calendar days from receipt of the Notice of Award by the Bidder from the Procuring Entity but in no case later than prior to the signing of the Contract by both parties, the successful Bidder shall furnish the performance security in any of the forms prescribed in Section 39 of the 2016 revised IRR of RA No. 9184.

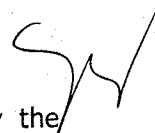



### **4. Inspection and Tests**

The Procuring Entity or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Project specifications at no extra cost to the Procuring Entity in accordance with the Generic Procurement Manual. In addition to tests in the **SCC, Section IV (Technical Specifications)** shall specify what inspections and/or tests the Procuring Entity requires, and where they are to be conducted. The Procuring Entity shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.

All reasonable facilities and assistance for the inspection and testing of Goods, including access to drawings and production data, shall be provided by the Supplier to the authorized inspectors at no charge to the Procuring Entity.

### **5. Warranty**

6.1. In order to assure that manufacturing defects shall be corrected by the Supplier, a warranty shall be required from the Supplier as provided under

  
    
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Section 62.1 of the 2016 revised IRR of RA No. 9184.

6.2. The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty. Upon receipt of such notice, the Supplier shall, repair or replace the defective Goods or parts thereof without cost to the Procuring Entity, pursuant to the Generic Procurement Manual.

**6. Liability of the Supplier**

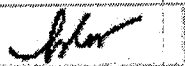
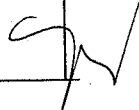




The Supplier's liability under this Contract shall be as provided by the laws of the Republic of the Philippines.

If the Supplier is a joint venture, all partners to the joint venture shall be jointly and severally liable to the Procuring Entity.

  
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**SPECIAL CONDITIONS OF CONTRACT**

GCC Clause	
1	<p><b>Delivery and Documents -</b></p> <p>For purposes of the Contract, "EXW," "FOB," "FCA," "CIF," "CIP," "DDP" and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of INCOTERMS published by the International Chamber of Commerce, Paris. The Delivery terms of this Contract shall be as follows:</p> <p>Whenever applicable, the delivery terms of Goods applicable to the Contract are DDP delivered in the Procuring Entity's place of business in accordance with INCOTERMS. Risk and title will pass from the Supplier to the Procuring Entity upon receipt and final acceptance of the Goods at their final destination. Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in Section VI (Schedule of Requirements).</p> <p>For purposes of this Clause the Procuring Entity's Representative at the Project Site is at its Head Office.</p> <p><b>Incidental Services -</b></p> <p>The Supplier is required to provide the following services (as applicable), including additional services, if any, specified in Section VI. Schedule of Requirements:</p> <ul style="list-style-type: none"> <li>a. performance or supervision of on-site assembly and/or start-up of the supplied Goods;</li> <li>b. furnishing of tools required for assembly and/or maintenance of the supplied Goods;</li> <li>c. furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;</li> <li>d. performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and</li> <li>e. training of the Procuring Entity's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.</li> </ul>
	<p>The Contract price for the Goods shall include the prices charged by the Supplier for incidental services and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.</p> <p><b>Spare Parts -</b></p> <p>Whenever applicable, the Supplier is required to provide the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:</p>

- a. such spare parts as the Procuring Entity may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under this Contract; and
- b. in the event of termination of production of the spare parts:
  - i. advance notification to the Procuring Entity of the pending termination, in sufficient time to permit the Procuring Entity to procure needed requirements; and
  - ii. following such termination, furnishing at no cost to the Procuring Entity, the blueprints, drawings, and specifications of the spare parts, if requested.

The spare parts and other components required are listed in **Section VI (Schedule of Requirements)** and the cost thereof are included in the contract price.

The Supplier shall carry sufficient inventories to assure ex-stock supply of consumable spare parts or components for the Goods for a period as may be indicated in the Terms of Reference.

Spare parts or components shall be supplied as promptly as possible, but in any case, within the period as may be indicated in the Terms of Reference.

#### **Transportation**

Where the Supplier is required under Contract to deliver the Goods CIF, CIP or DDP, Goods are to be transported on carriers of Philippine registry. In the event that no carrier of Philippine registry is available, Goods may be shipped by a carrier which is not of Philippine registry provided that the Supplier obtains and presents to the Procuring Entity certification to this effect from the nearest Philippine consulate to the port of dispatch. In the event that carriers of Philippine registry are available but their schedule delays the Supplier in its performance of this Contract the period from when the Goods were first ready for shipment and the actual date of shipment the period of delay will be considered force majeure.

The Procuring Entity accepts no liability for the damage of Goods during transit other than those prescribed by INCOTERMS for DDP deliveries. In the case of Goods supplied from within the Philippines or supplied by domestic Suppliers risk and title will not be deemed to have passed to the Procuring Entity until their receipt and final acceptance at the final destination.

#### **Intellectual Property Rights -**

The Supplier shall indemnify the Procuring Entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof.

#### **Right to Audit and Corrective Action Clauses -**

The Supplier agrees that it shall give Procuring Entity, the Bangko Sentral ng Pilipinas (BSP), and other regulatory agencies the right to audit/examine the/access to the (i) necessary information regarding the Services in order for Procuring Entity, BSP, or such other regulatory agencies to fulfill their

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respective responsibilities; (ii) the operations of the Supplier in order to review the same in relation to the Services; and, (iii) necessary financial information of the Supplier.

The Supplier agrees that Procuring Entity shall have the right to conduct Supplier's performance assessment with respect to its Services based on established metrics, which shall be provided to the Supplier upon signing of this Contract.

The Supplier warrants that it shall be required to immediately take the necessary corrective measures to satisfy the findings and recommendations of the BSP examiners and those of the internal and/or external auditors of Procuring Entity.

#### **Transition Assistance -**

In the event of termination for any cause, the Supplier hereby agrees and guarantees that should Procuring Entity decide to transfer the Services to another provider or other arrangements, it shall provide the Procuring Entity the necessary level of assistance during the transition.

In case of merger, consolidation and/or change in name, change in ownership, assignment, attachment of assets, insolvency, or receivership of the SUPPLIER, the SUPPLIER shall likewise provide DBP the necessary level of assistance to ensure a smooth transition. For the avoidance of doubt, the surviving or consolidated corporation shall assume all liabilities and obligations under the terms of this Agreement, provided that the SUPPLIER and/or the surviving or consolidated corporation submits proof of such merger or consolidation acceptable to DBP.

#### **Business Continuity Plan -**

The Supplier warrants that it has existing Business Continuity Plan which includes continuity service and disaster recovery plans that minimize the probability and impact of interruptions to Procuring Entity and an exit plan to be implemented upon termination of this Contract that provides, among others, for transition assistance should the Supplier convert to other service providers or other arrangements.

#### **Governing Law and Venue of Action -**

This Agreement shall be governed and construed in accordance with the provisions of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act and other applicable laws of the Republic of the Philippines. Venue of all actions arising from this Agreement shall be brought exclusively to the jurisdiction of the appropriate courts of Makati City, Philippines.

#### **Acknowledgment of Transparency of Transaction -**

The Supplier acknowledges that in addition to other prevailing/applicable Philippine laws, rules and regulations, DBP has an existing Code of Ethics, which prohibits any gift, fee, commission or benefit in favor of any of DBP's officers and/or employees and/or any other persons to be given as a condition to, or as an additional consideration for, the award of the Contract to the Supplier. The Supplier further acknowledges that under DBP's Code of Ethics and other prevailing rules and regulations, DBP's personnel have the duty to

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report to superior officers any possible violation of the policy. Furthermore, the Supplier commits itself to conduct its business professionally and ethically by equally abiding by the provisions of DBP's Code of Ethics, particularly the norms of conduct and the rules on conflict of interest, insofar as applicable to the Supplier's nature of business and for the duration of its business relationship with the DBP.

Furthermore, in compliance with the Section 47 of R.A. 9184 or the "Government Procurement Reform Act" as well as the provisions on Conflict of Interest under DBP's Code of Ethics, the Supplier warrants that it is not related to any of the directors of DBP, members of the Bids and Awards Committee, the Technical Working Group (if any), the head of DBP's project management office and project consultants (if any), end-user or implementing unit, by consanguinity or affinity up to the third civil degree.

The Supplier is aware that DBP is a government-owned corporation and that the receipt by any of DBP's officers and/or employees and/or other persons, as well as the giving by the Supplier, unless opportunely disclosed pursuant to the provisions of (Presidential Decree No. 749) of such gift, fee or commission, are crimes punishable under the provisions of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019), Title VII of the Revised Penal Code on Crimes Committed by Public Officers, the Code of Conduct and Ethical Standards for Public Officers and Employees (R.A. No. 6713), the Plunder Law (R.A. No. 7080), as well as under other applicable laws and governing presidential decrees.

The Supplier further acknowledges DBP's policy to refer any such violation to the proper government agency for criminal prosecution.

#### **Source Code Escrow -**

In order to ensure that Procuring Entity obtains access to the Source Code of the Software should the Supplier cease to do business or fail to maintain and update the Software in accordance with its obligations under this Contract, the Parties agree to enter into a Source Code escrow agreement ("Escrow Agreement") with an independent third party escrow agent whose principal business is providing intellectual property escrow services ("Escrow Agent"), to be mutually selected by the Parties within the period as agreed by the Parties.

#### **Disaster Recovery -**

In the event of a Disaster, Procuring Entity shall have authority to avail of the Services at its Disaster Recovery site. If the circumstances warrant, Procuring Entity shall provide an initial oral notification on the request for the performance of the Services at the Procuring Entity's Disaster Recovery site, but such oral notice must be followed by a written Disaster Notification within twenty-four (24) hours after initial notification, provided that, the twenty four (24) hours written notice period may be extended depending on the circumstances. The availment of Services at the Disaster Recovery site shall also be allowed in case of a Disaster Recovery Testing.

#### **Confidentiality -**

Each Party, and its respective stockholders, officers, directors, employees, representatives, and/or transferees (collectively referred to in this Clause as the "Recipient") shall have the obligation not to divulge in any manner, directly or otherwise, confidential information that said Recipient may receive,

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be privy to, learn of, and/or obtain from the other party, and/or the other Party's stockholders, directors, officers, employees, representatives, transferees, and/or other disclosing parties associated or doing business with the other party (collectively referred to in this clause as the "Disclosing Party"). The Recipient shall exercise the highest degree of care in safeguarding and ensuring the confidentiality and non-disclosure of all Confidential Information and said Recipient shall not make and/or retain any copy of confidential documents and communications, or in any way use the same, without the written consent of the Disclosing Party. As used herein, the term "Confidential Information" refers to information, in any form, which the Disclosing Party considers secret, private, privileged, classified, or proprietary, including but not limited to written, oral, visual, audio information, or those produced by electronic media or through any other means. Confidential Information includes the Disclosing Party's finances, business, clients, and operations, trade secrets, confidential discussions and documents prepared by the Disclosing Party, and the terms of this Contract.

Notwithstanding anything to the contrary in this Contract, a Party shall not be obligated to erase Confidential Information that is contained in an archived computer system backup made in accordance with such Party's security and/or disaster recovery procedures provided that such archived copy will (i) eventually be erased or destroyed in the ordinary course of such Party's data processing procedures; and (ii) such copy shall remain fully subject to the obligations of confidentiality stated herein, until the earlier of the erasure or destruction of such copy.

This obligation shall survive the expiration or termination of this Contract.

This confidentiality obligation does not apply to information where a Party can prove that:

1. It was legitimately received or is being legitimately received from a third party with no restrictions on disclosure;
2. It was already generally known upon completion of the Contract or subsequent thereto, without infringement of the obligations contained in this Contract;
3. It forms part of information which is independently acquired or developed by a party on its own without violating the provisions of this Contract;
4. Either Party is required by law, court order or other governmental action to disclose all or any part of the confidential information provided, however, that when either Party reasonably anticipates or has reasonable cause to anticipate that such Party may be so required, the concerned Party must notify the other Party within twenty four (24) hours of such actual or anticipated requirement and must use its best endeavors, as may be consistent with the concerned Party's legal obligations, to delay and withhold such disclosure until the other Party has had an opportunity to oppose such disclosure by lawful means.

#### **Data Protection and Segregation -**

Unless prohibited by applicable law, the SUPPLIER may disclose DBP Information to third parties providing services on its behalf who may collect, use, transfer, store or otherwise process it (collectively "Process") in the various jurisdictions in which they operate either for purposes related to the

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provisions of the Services, and/or to comply with regulatory requirements, to check conflicts, for quality, risk management or financial accounting purposes and/or the provision of other administrative support services (collectively "Process Purposes"), provided that the written consent of DBP has been secured, and provided further that the SUPPLIER, its affiliates and third parties to whom the confidential information were disclosed shall strictly adhere to the confidentiality of the information. The SUPPLIER shall be responsible for maintaining the confidentiality of DBP Information.

Whenever applicable in performing its obligations under this Agreement, the SUPPLIER shall, at all times, comply with the provisions of Republic Act No. 10173 or "the Data Privacy Act of 2012," its Implementing Rules and Regulations, and all other laws and government issuances which are now or will be promulgated relating to data privacy, segregation and the protection of personal information.

#### **Modification and Amendment -**

No modification/amendment or waiver of any provision of this Agreement shall in any event be effective unless the same be in writing and duly signed by the Parties.

#### **Submission of Tax Clearance -**

As required under Executive Order (EO) 398, the SUPPLIER shall submit income and business tax returns duly stamped and received by the Bureau of Internal Revenue before entering into and during the effectivity of this Agreement. The SUPPLIER, through its responsible officer/s, shall also certify under oath that it is free and clear of all tax liabilities to the government. The SUPPLIER shall pay taxes in full and on time and that failure to do so will entitle DBP to suspend or terminate this Agreement.

#### **Inconsistency and Severability -**

The Parties shall endeavor to harmonize the provisions of this covering agreement and the Annexes so that each shall be effective. In the event of any inconsistency between the terms of this covering agreement and the Annexes, the terms of the Annexes shall prevail to the extent necessary to resolve such inconsistency.

In the event of any conflict between the provisions of this Agreement including the annexes and the Terms of Reference, the terms of the Terms of Reference shall prevail.

Should any provision of this Agreement be declared or become illegal, the legality and validity of the other provisions of this Agreement shall not be affected.

#### **No Waiver -**

No waiver of any Party with respect to a breach or default of any right or remedy and no course of dealing shall be deemed to constitute a continuing waiver of another breach or default or of another right or remedy, unless such waiver be expressed in writing and signed by the Party to be bound.

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**OGCC Review -**

The Parties agree to supplement/amend/restate this Agreement, including all its amendments/supplements, to incorporate the comments/revisions, if any, of the Office of the Government Corporate Counsel, with effect from the date of signing thereof.

**Dispute Resolution -**

The Parties herein shall exert their best effort to settle amicably all disputes arising out of or in connection with this Agreement, or in the interpretations, enforcement and implementation thereof. Any dispute among the Parties as to matter arising pursuant to this Agreement which cannot be settled amicably within thirty (30) days after receipt by a Party's request for such amicable settlement may be submitted by the Parties for arbitration in accordance with Republic Act (RA) No. 876 in relation to RA No. 9285 and its implementing Rules and Regulations.

By executing this Agreement, the Parties consent to the submission of all disputes arising from the interpretation, enforcement and implementation of this Agreement to arbitration.

**Interpretation -**

This Agreement shall be deemed to be made under the, and shall be governed by, the laws of the Republic of the Philippines in all respects, including matters of construction, validity and performance.

2.2	<p>The Procuring Entity shall pay the Contract Price to the Supplier via credit to its deposit account with Procuring Entity within fifteen (15) calendar days from its receipt of the Supplier's official receipt and the issuance by Procuring Entity of the Certificate of Acceptance, as well as the Supplier's submission of the documentary requirements enumerated under the Terms of Reference (as may be applicable) hereof, if any, subject to the usual government audit/accounting/procurement policies, provided the Supplier has generated a positive performance assessment to be conducted by Procuring Entity in accordance with established metrics provided by the Procuring Entity.</p> <p>The Expanded Withholding Tax (EWT) due to the government shall be withheld by the Procuring Entity from any payment made to the Supplier. The EWT deducted by the Procuring Entity shall be at the rate prescribed by the Bureau of Internal Revenue (BIR) and shall be remitted directly to the BIR. It shall be indicated in the creditable withholding tax return to be filed with the BIR that the tax being withheld is to be credited to the Supplier. The Certificate of Creditable Tax Withheld at Source shall be submitted by the Procuring Entity to the Supplier within fifteen (15) calendar days from receipt of payment by the Supplier.</p>
3.	<p>To guarantee the faithful performance of the Supplier of its obligations under the Contract, the Supplier shall post, in favor of the Procuring Entity, the required amount of the Performance Security in accordance with the following schedule:</p>

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<b>Form of Security</b>	<b>Minimum % of Total Contract Price</b>	<b>Minimum Amount</b>
Cash, cashier's check, manager's check, issued by a Universal or Commercial Bank, or Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank; provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank	Five percent (5%)	PhP 3,994,900.00
Surety bond callable upon demand issued by a surety or insurance company together with certificate issued by Insurance Commission certifying the surety or insurance company is authorized to issue such surety bond	Thirty percent (30%)	PhP 23,969,400.00
<p>The Performance Security shall be effective and in full force and effect for a period of one (1) year from date of signing of the Contract, which shall be extended every year until the expiration of the term of this Contract. In the event of any extension of the term of this Contract, the Performance Security shall be renewed accordingly.</p> <p>Should the Supplier, based on any of the conditions stipulated for Termination, default on its obligations under this Contract or terminate this Contract, (except if the cause of termination is default or breach by the Procuring Entity), the Performance Security shall be forfeited in favor of the Procuring Entity without any need of judicial action. Furthermore, any changes in this Contract shall not require the prior approval of the surety and shall in no way annul, release or limit the liability of the Supplier.</p>		

**6. Liability of Supplier and Indemnification**

- A. In case the SUPPLIER is unable to comply with the terms and conditions of this Agreement or fails to satisfactorily deliver the Services on time inclusive of duly granted time extensions, if any, DBP shall, without prejudice to its other remedies under this Agreement and under the applicable law, deduct from the Contract Price, as liquidated damages, the applicable rate of one tenth (1/10) of one (1) percent of the cost of the unperformed portion for every day of delay until actual delivery or performance. Once the amount of liquidated damages reaches ten percent (10%), DBP may rescind or terminate this Agreement pursuant to Section 5 hereof, without prejudice to other courses of action and remedies open to it.
- B. Any and all claims, liabilities, damages, suits, or causes of action of whatever nature or kind, now or hereafter arising from or in connection with this Agreement, including but not limited to those resulting out of or

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as a consequence of the acts of employees, personnel, or representatives of the SUPPLIER, shall be for the account of the SUPPLIER. The SUPPLIER shall indemnify DBP, its directors, officers, employees, successors, and assigns against, and hold them free and harmless therefrom. The obligations of the SUPPLIER under this provision shall survive the termination of this Agreement.

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