

Republic of the Philippines
Department of Science and Technology Information
SCIENCE AND TECHNOLOGY INFORMATION INSTITUTE
DOST Complex, Gen. Santos Ave., Bicutan, Taguig City, Metro Manila

CONTRACT AGREEMENT
2021-006

KNOW ALL MEN BY THESE PRESENTS:

This Contract made and executed by and between:

SCIENCE AND TECHNOLOGY INFORMATION INSTITUTE (STII), a government institution under the Department of Science and Technology (DOST) with principal office and place of business at STII Building, DOST Complex, Gen. Santos Ave., Bicutan, Taguig City, represented herein by its Director, **RICHARD P. BURGOS**, who is duly authorized for this purpose, hereinafter referred to as "**DOST-STII**";

-and-

MICRODATA SYSTEMS AND MANAGEMENT, INC., a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office and place of business at Crystal Bldg. 199 CM Recto St., San Juan City, represented herein by its DPO Director, Ms. **BERNIE GUTAY-JAJALLA**, who is duly authorized for this purpose, hereinafter referred to as the "**CONTRACTOR**".

DOST-STII and **CONTRACTOR** are referred as a "Party", or collectively the "Parties".

WITNESSETH: That

WHEREAS, **DOST-STII** is desirous that the **CONTRACTOR** execute the project, **PROCUREMENT OF VARIOUS ICT SOFTWARE SUBSCRIPTIONS** hereinafter referred to as "**Project**" and **DOST-STII** accepted the Bid for **ONE MILLION ONE HUNDRED SEVENTY-NINE THOUSAND NINE HUNDRED PESOS ONLY (PHP 1,179,900.00)** by the **CONTRACTOR** for the completion of such **SCOPE of SERVICES** with complete and accurate **TECHNICAL SPECIFICATIONS**;

NOW, THEREFORE, the parties hereby agree as follows:

ARTICLE I
DEFINITION OF TERMS

- A. **DOST-STII** or **STII** shall be one and the same representing the aforementioned institute or government entity and may be referred to as **DOST-STII**.
- B. **Project** refers to the **PROCUREMENT OF VARIOUS ICT SOFTWARE SUBSCRIPTIONS**.
- C. **Contract** refers to this agreement including the contract documents.
- D. **Contract Documents** refer to the documents specified in Article III of this Contract.

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- E. **Contract Amount** refers to the consideration which the **CONTRACTOR** shall be entitled to receive from **DOST-STII** under Article IV of this Contract. This amount is gross of taxes, fees and all other expenses to be shouldered/incurred by the **CONTRACTOR** in relation to the contract.
- F. **Contractor** refers to **MICRODATA SYSTEMS AND MANAGEMENT, INC.**
- G. **Force Majeure** refers to strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, landslides, earthquakes, storms, floods, pandemic, epidemic, civil disturbances, explosions or the issuance of any Government policy, rule or regulation, and other similar events, which are beyond the control of either party or which, with the exercise of due diligence, neither party can overcome.
- H. **Service** refers to the services to be performed by the **CONTRACTOR** in accordance with the terms and conditions of this Contract and the Contract Documents.

ARTICLE II SCOPE OF WORK

The **CONTRACTOR** must supply and deliver the following:

Microsoft Windows

- 40 licenses
- WinPro 10 SNGL OLP NL Legalization GetGenuine

Microsoft Office

- 40 licenses
- Microsoft 365 Business Standard
- 2 Years Subscription

Schedule of Delivery: **90 Calendar Days** from receipt of Notice to Proceed (NTP)

ARTICLE III CONTRACT DOCUMENTS

- A. The following documents shall be made integral parts of this Contract, as fully as if the contents of the said documents were reproduced, incorporated and set forth herein, and shall govern and control in full force and effect the rights and obligations of the Parties, except as otherwise modified by the terms and conditions of this Contract, or by mutual agreement of both Parties in writing:
1. Invitation to Bid
 2. Bid Form
 3. Instruction to Bidders
 4. General and Special Conditions of Contract
 5. Technical Specifications
 6. Bid Data Sheet
 7. Bid Bulletins/Supplemental Notices (if there is any)
 8. Proof of Publication of Invitation to Bid
 9. **CONTRACTOR's** Bid Proposal containing the following:
 - a. PhilGEPS Platinum Registration
 - b. Statement of all ongoing government and private contracts, including contracts and single largest completed contract
 - c. NET Financial Contracting Capacity (NFCC) computation of committed Line of Credit

- d. Bid Security Form
 - i. Bid Security Declaration
- e. Omnibus Sworn Statement
- f. Bid Prices in the Bid Schedule
- 10. Notice of Award of contract and **CONTRACTOR**'s conformity thereto
- 11. Performance Security
- 12. **DOST-STII**'s Certificate of Availability of Funds

- B. All Contract documents are and shall remain the properties of **DOST-STII**.
- C. The Contract Documents shall be complementary to each other and what is called for or prescribed by one shall be considered as if called for or prescribed by all. In case of any discrepancy between any of the Contract Documents or any defective description, error, omission or ambiguity in any of the Contract Documents, the **CONTRACTOR** shall, within thirty (30) days from the signing of the contract, submit the matter in writing to **DOST-STII**. **DOST-STII** shall, within a reasonable time, make a decision thereon in writing. Such decision by **DOST-STII** shall be final and binding upon the **CONTRACTOR** which shall proceed with the services strictly in accordance with such decision.
- D. **DOST-STII** shall have the right to furnish the **CONTRACTOR** during the progress of the work such instructions and documents as **DOST-STII** may deem necessary for the proper accomplishment of the work. All such instructions and documents, as well as any decision made by **DOST-STII** shall form integral parts of this Contract.
- E. In case of any irreconcilable conflict between this Contract Agreement and the provisions of any of the Contract Documents, the former shall prevail.

ARTICLE IV CONSIDERATION

For and in consideration of the full, satisfactory and faithful performance by the **CONTRACTOR** of all its obligations under this Contract, **DOST-STII** shall pay the **CONTRACTOR** the total amount of **ONE MILLION ONE HUNDRED SEVENTY-NINE THOUSAND NINE HUNDRED PESOS ONLY (PHP 1,179,900.00)**, inclusive of Value-Added Tax (VAT), as well as all expenses, fees and taxes, for obtaining the necessary licenses, permits and clearances from concerned government agencies.

ARTICLE V MANNER OF PAYMENT

A. Billing

- 1. Payments for billing submitted by the **CONTRACTOR** to **DOST-STII** shall be based on **actual items satisfactorily delivered** by the **CONTRACTOR** for the period covered **as certified by the TWG and BAC** and on the agreed lump sum or unit price for each item. The following shall be deducted from the billing statement:
 - a. Other deductions prescribed by existing laws, government rules and regulations in the manner set forth under such laws, rules and regulations.

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- b. In case of failure to make full delivery within the time specified, a penalty of 1/10 of 1% of the amount of the Contract for everyday of delay shall be imposed.
2. A one-time payment shall be processed upon receipt of Certificate of Acceptance from the Head of Procuring Entity (HoPE) for the **CONTRACTOR's final completion of delivery and billing.**

ARTICLE VI COVENANTS OF STII AND CONTRACTOR

A. DOST-STII covenants to do and perform the following:

1. Make available the amount representing total cost for all items of work stipulated in Article II - Scope of Services for payment in accordance with Article IV - Consideration and Article V - Manner of Payment.
2. Review, evaluate and approve or disapprove (as applicable) proposals and recommendations submitted by the **CONTRACTOR.**

B. CONTRACTOR covenants to do and perform the following:

1. Comply for the quality and workmanship of the Project consistent with technical specifications and other contract documents.
2. Acts at all times to protect the interest of **DOST-STII** and take all reasonable steps to complete the Project within the schedule and within the contract amount.

ARTICLE VII BONDS AND INSURANCES

A. Performance Security

Within ten (10) days from the **CONTRACTOR'S** receipt of the Notice of Award from **DOST-STII**, the **CONTRACTOR** shall provide performance security in favor of **DOST-STII** in the manner, amount and form specified below, which shall be valid until issuance of the Certificate of Final Acceptance of the Project and which shall guarantee the faithful and complete performance by the **CONTRACTOR** of the Services as well as the other obligations of the **CONTRACTOR** under this Contract:

1. Thirty percent (30%) of the Contract Amount, if in the form of a surety bond issued by a reputable surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.
2. Ten percent (10%) of the Contract Amount, if in the form of an irrevocable letter of credit issued by a universal or commercial bank.
3. Ten percent (10%) of the Contract Amount, if in the form of cash, cashier's/manager's check, bank draft/guarantee confirmed by a universal or commercial bank.

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B. Renewal of Bonds and Securities

In the execution of the performance security/surety under Article VII of the Contract, the effectivity of the surety bonds shall be co-terminus with the final completion of the project. The **CONTRACTOR** shall cause the renewal of any of the bonds and securities herein require whenever such security shall be necessary and applicable as determined by **DOST-STII**.

C. Replacement of Bonds and Securities

Should any security and surety bond for the performance of this Contract expire or become unacceptable to **DOST-STII** during the effectivity of the Contract, the **CONTRACTOR** shall promptly furnish such replacement security as may be required from time to time up to the sum equal to the amount of the original surety.

D. Release of Bonds and Securities

The performance security and other surety bonds under this contract may be released by **DOST-STII** after the issuance of the Certificate of Completion of the contract, provided that there are no claims for services, labor, and materials filed against the **CONTRACTOR** or the surety company.

ARTICLE VIII LIQUIDATED DAMAGES

- A. The pertinent provisions of RA 9184 and its IRR on liquidated damages and or breach in any of the provisions of the contract shall be applicable in case of inexcusable delay in the completion of the Project.
- B. **DOST-STII** need not prove that it has incurred damages to be entitled to liquidated damages. Furthermore, **DOST-STII** 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 performance security filed by the **CONTRACTOR**, as **DOST-STII** may deem convenient and expeditious under the prevailing circumstances.

ARTICLE IX DISPUTE RESOLUTION

- A. If any dispute or difference of any kind whatsoever shall arise between the parties in connection with the implementation of this Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- B. During the pendency of any such dispute, the **CONTRACTOR** shall proceed diligently with the performance of its obligations and undertakings under this Contract as directed by **DOST-STII**.
- C. Any and all disputes arising from the implementation of this Contract shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law" and Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004":

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ARTICLE X NON-WAIVER

No failure or delay on the part of either party to exercise any right, power or privilege hereunder shall operate as a waiver thereof, neither shall any single or partial exercise of any right, power or privilege hereunder preclude any other, or further exercise thereof, or the exercise of any other right, power or privilege.

ARTICLE XI EFFECTIVITY

This Contract shall run and be effective as indicated in the Notice to Proceed to be issued by **DOST-STII** upon the execution of this Contract, up to and until the issuance by **DOST-STII** of a Certificate of Final Acceptance, unless sooner terminated by **DOST-STII** upon the occurrence of any of the grounds for termination specified under Article XII hereof. The representations and warranties of the **CONTRACTOR** shall survive the termination or expiration of this Contract.

ARTICLE XII SUSPENSION OF WORK / TERMINATION OF CONTRACT

- A. **DOST-STII** 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 and non-compliance to any of the provisions stipulated herein. Further, **DOST-STII** shall have the right to procure/engage, upon such terms and manner as **DOST-STII** 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**.
- B. **DOST-STII** 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 **DOST-STII** that the **CONTRACTOR** has engaged, before or during the implementation of this **Contract**, in unlawful deeds and behaviours relative to **Contract** acquisition and implementation. Unlawful acts shall include, but not necessarily be limited to, the following:
1. Corrupt, fraudulent, and coercive practices as defined under R.A 9184 otherwise known as the "Government Procurement Reform Act."
 2. Drawing up or using forged documents.
 3. Any other act analogous to the foregoing.
- C. Both **DOST-STII** and the **CONTRACTOR** is entitled to agree to cancel/terminate the contract (in whole or in part) in the occurrence of **Force Majeure**, provided that the event (under definition of Force Majeure stated in the **CONTRACT**) has a direct effect on the deliverance of output/s stated on **ARTICLE II**.
- D. The **CONTRACTOR** hereby agrees that the termination referred to herein shall be understood to be without prejudice to other rights and remedies available to **DOST-STII** under this **Contract** or the applicable laws.
- E. Subject to compliance with all documentary requirements, the provisions of RA 9184 and its IRR on suspension of work by the **CONTRACTOR** in case of non-payment by **DOST-STII** of certified payments within forty-five (45) calendar days shall apply.

ARTICLE XIII INDEMNITY

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

ARTICLE XIV RELATION TO OTHER 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 **DOST-STII** or bind **DOST-STII** in any manner whatsoever. The **CONTRACTOR**'s personnel, representatives or staff shall not be construed as employees of **DOST-STII**. The **CONTRACTOR** is being engaged herein as an independent contractor. Nothing herein shall be construed as creating an employer/employee relationship between the **CONTRACTOR**'s employees, representatives or staffs and **DOST-STII**.

ARTICLE XV GENERAL PROVISION

- A. **Separability** - If any stipulation, clause, term or condition of this Contract is held invalid or contrary to law, the validity of the other stipulations, clauses, terms and conditions hereof shall not be affected thereby.
- B. **Modification** - The parties hereby agree to amend or modify any provision of this Contract, which might be declared invalid or contrary to law, to conform to the subject and objective thereof.

ARTICLE XVI MISCELLANEOUS PROVISIONS

- A. The parties represent that they have the requisite power, authority, and capacity to enter into this Contract and to perform their obligations and undertakings according to the terms and conditions hereof.
- 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 manner, directly or indirectly, assign, or transfer its rights and obligations under this **Contract** without the written approval of **DOST-STII**.
- C. **Governing Law and Language** – The rights and obligation of the parties hereto shall be governed and interpreted in accordance with the laws of the Republic of the Philippines, specifically, the provisions of R.A. 9184 otherwise known as the "Government Procurement Reform Act" and other applicable laws, rules and regulations.
- D. **Observance and usage of non-sexist/gender-sensitive language** in all official documents and communications under this project shall be enforced all the time.

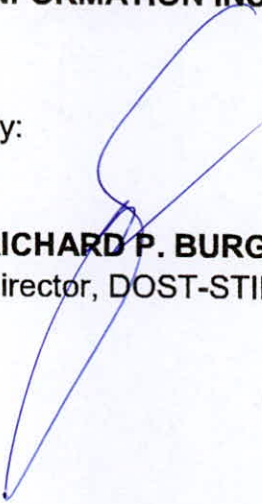
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- E. Documents Incorporated – The provisions of this **Contract** shall be read in harmony with the Terms of Reference and other related bid documents. In case of conflict, the provisions of this Contract shall prevail.
- F. Venue of Action - It is 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 Taguig only.
- G. Attorney's Fees - In the event that **DOST-STII** 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 expenses incidental thereto.
- H. Nothing herein shall in any way be construed to limit the over-all responsibility of the CONTRACTOR for the performance of the obligations herein and CONTRACTOR's liability for any violation of this Contract.

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their signatures this ____ day of _____, 2021, Taguig City, Metro Manila.

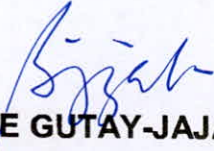
**DOST-SCIENCE AND TECHNOLOGY
INFORMATION INSTITUTE (DOST-STII)**

By:


RICHARD P. BURGOS
Director, DOST-STII

**MICRODATA SYSTEMS AND
MANAGEMENT, INC.**

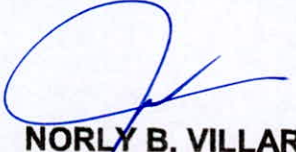
By:


BERNIE GUTAY-JAJALLA
DPO Director

SIGNED IN THE PRESENCE OF:


ARLENE E. CENTENO
Chief, Finance & Administrative Division


ALAN C. TAULE
Chairperson,
Bids and Awards Committee


NORLY B. VILLAR
Chief, Communication Resources and Production Division

CERTIFIED AVAILABILITY OF FUNDS:

JAQUELINE C. BALLESTEROS
Administrative Officer V

MA. AURORA FE L. DAYANGCO
Accountant III

ACKNOWLEDGMENT

Republic of the Philippines)
TAGUIG CITY) S.S.

BEFORE ME, Notary Public for and in TAGUIG CITY, Philippines personally appeared:

RICHARD P. BURGOS Valid ID No. _____ Date/Place of Issue _____
BERNIE GUTAY-JAJALLA Valid ID No. _____ Date/Place of Issue _____

known to me and to me known to be the same persons who executed the foregoing Contract and they acknowledged to me that the same is their free and voluntary act and deed in the capacity in which they appeared.

The foregoing Contract consists of _____ () pages including this page on which the acknowledgment is written and duly signed by the parties and its witnesses of the instrument and on the left margin of the other pages.

IN WITNESS WHEREOF, I have hereunto affixed my signature and notarial seal at TAGUIG CITY this 10 FEB 2021 day of _____ 2021.

NOTARY PUBLIC

Doc. No. 71 ;
Page No. 16 ;
Book No. III ;
Series of 2021.

RACHEL GINAPANG W. COPANUT-PANGWI
NOTARY PUBLIC UNTIL DEC. 31, 2021
Notarial Commission Appt. No. 10 (2020-2021)
2/F Pacura Bldg. #427 ML Quezon Ave., Lower Bicutan, T.C.
PTR No. A-5063211/1-4-21, Taguig City
IBP O.R. No. 137056/12-29-2020, RSM
MCLE Comp. No. VI-0019686/3-1-2019, ROLL No. 61627