

MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Agreement made and entered by and between:

The **SECURITIES AND EXCHANGE COMMISSION**, a government instrumentality duly organized and existing by virtue of Commonwealth Act No. 83 or the Securities Act with principal office address at the Secretariat Bldg., PICC Complex, Pasay City duly represented herein by its General Counsel, **Atty. Romuald C. Padilla**, and hereinafter referred to as the "**SEC**";

- and -

The **DBP DATA CENTER, INC.**, a wholly-owned subsidiary of the Development Bank of the Philippines and a government-owned and controlled corporation (GOCC) registered with the Securities and Exchange Commission, with principal office at the 9th Floor, DBP Building, Sen. Gil Puyat Avenue corner Makati Avenue, Makati City, Philippines, duly represented by its President and Chief Executive Officer, **Atty. Emmanuel P. Galicia, Jr.**, and hereinafter referred to as the "**DCI**"

WITNESSETH:

WHEREAS, DCI is engaged in the business of providing information technology goods and services to government and/or private entities;

WHEREAS, the SEC requires the Supply, Delivery, Installation, and Maintenance of a Web-based Integrated Human Resource Information System (iHRIS) with customization to SEC Software and Hardware Requirements (hereinafter referred to as "the Project");

WHEREAS, the SEC has approved an Agency to Agency Agreement with DCI thru its Bids and Awards Committee (BAC) Resolution No. 2020-075;

WHEREAS, the SEC approved the recommendation of the BAC under its Resolution No. 2020-075 dated January 27, 2021 endorsing the approval of award to DCI for the Project, in the contract price of **Fourteen Million Seven Hundred Twenty-Nine Thousand Five Hundred Ninety Pesos and Forty Cents (Php14,729,590.40)**, VAT inclusive;


WHEREAS, the SEC sent a Notice of Award to DCI dated January 27, 2021, which was received and acknowledged by the latter on March 2, 2021;

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties agree as follows: 

1. **Project Description and Objective.**

- 1.1 The DCI shall provide the SEC with the necessary system and services on the iHRIS.
- 1.2 The iHRIS aims to deliver an integrated, robust, and flexible information system, optimized specifically to address the strategic requirements of the SEC Human Resource Sub-sector towards becoming a center of excellence in human capital management. Details of the iHRIS are specified in the Terms of Reference, attached herewith as Annex A.

2. **Duration of the Project**

- 2.1. The Project shall be completed within one (1) year from the date stipulated in the Notice to Proceed (NTP) to be issued by SEC.
 - 2.2. Either party shall promptly report to each other the occurrence of any event or condition which might delay or prevent the timely completion of the services embraced herein, specifying in writing the amount of time involved, the causes of the delay, and its subsequent implications on the entire timetable, work schedule, and budget of the Project. Any extension of contract time shall not involve any additional cost on the part of SEC.
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3. Obligations of the Parties

DCI shall:

3.1. Grants to SEC a right and license to use the Integrated HR Information System (iHRIS) with the following license coverage:

- ❖ Perpetual License
- ❖ Unlimited Employee, Unlimited Users, Unlimited Branch or remote offices
- ❖ Single Production Deployment
- ❖ Unlimited Test environment

The SEC is allowed to deploy the iHRIS to its headquarter, with unlimited access to all office locations including new branches. This license does not allow SEC to sell, lease, or sub-license the iHRIS to other Agencies.

The Deliverables include the following modules:

3.1.1. **Integrated HR Information System (iHRIS)**

- Planning and Organizing
- Talent Acquisition
- Records Management
- Benefits
- Attendance
- Payroll
- Learning Management System
- Career and Performance Management
- Health and Wellness
- Employee Relations
- Systems Administration

3.1.2. **Self-Service Information System**

- Employee Self service
- Managerial Services
- Career Portal System

3.2. Organize a Project Management Team to commit to requirements and timelines set on the project and work in coordination with the SEC Project Management Team;

3.3. Submit the required reports and documents as follows:

- 3.3.1. Project Charter;
- 3.3.2. Project Plan including Responsibility and Assignment Matrix (RAM), Gantt Chart and Schedules, Work Breakdown Structure;
- 3.3.3. Risk Management and Contingency Plans;
- 3.3.4. Implementation and Acceptance Plan;
- 3.3.5. Design, configuration, and test scripts; and
- 3.3.6. Progress Reports

3.4. Conduct meetings and workshops as preparatory activities before the actual implementation of the iHRIS;

3.5. Be responsible for all related activities and services in providing, installing, and implementing the iHRIS;

3.6. Conduct user and technical training, and provide manuals and documentations on the use of the new iHRIS;

3.7. Monitor and resolve system performance issues;

3.8. Provide six (6) months comprehensive warranty which shall commence after the acceptance of the system and closure of the project; and

3.9. Perform all other activities as indicated in the Terms of Reference as Annex A.



The SEC shall:

- 3.10. Set-up a Project Management Team to coordinate with DCI and other stakeholders;
- 3.11. Coordinate and implement all activities related to the pre-, during, and post-implementation of the iHRIS Project as indicated in Annex A;
- 3.12. Provide all pertinent documents, materials, and data to enable DCI to perform its work;
- 3.13. Ensure that all required stakeholders for the workshops, training, and meetings are present on the agreed schedule of activities;
- 3.14. Evaluate all deliverables under this Agreement and as indicated in Annex A within a period of seven (7) working days from receipt of submission of the deliverables; and
- 3.15. Issue Final Acceptance and Completion Certificate upon delivery and completion of the implementation of iHRIS Project.

4. Total Contract Price and Payment Schedule

Contract Price

- 4.1. The SEC hereby covenants to pay DCI, in consideration of the provision of the services and installation of the software package and the remedying of defects/system issues therein, the total amount of **Fourteen Million Seven Hundred Twenty-Nine Thousand Five Hundred Ninety Pesos and Forty Cents (Php 14,729,590.40)**, VAT inclusive.

Payment

- 4.2. Payments shall be made only upon a certification by the SEC or its authorized representatives to the effect that the services have been rendered or delivered in accordance with the terms of this Agreement, and have been duly inspected and accepted.
- 4.3. The DCI's request(s) for payment shall be made to the SEC in writing, accompanied by an invoice describing, as appropriate, the services performed, and by documents submitted and upon fulfillment of other obligations stipulated in this Agreement.
- 4.4. Payments shall be made promptly by the SEC, but in no case shall be later than thirty (30) calendar days after submission of an invoice or claim by DCI.
- 4.5. Payments on the Contract Price shall be made as follows:

Deliverable	Percentage of Payment
SOFTWARE LICENSE	
1. Project Initiation and Mobilization Completion of the following 1.1. Contract Signing and Project Kick-off	10% of contract amount
2. Initial Deployment 2.1. Project plan submission 2.2. Deployment of initial Cloud infrastructure 2.3. Upon Delivery and Installation of Base Solution 2.4. Delivery and Deployment of Biometrics Device	10% of contract amount
Implementation – Phase 1 Modules	
3. Requirements Documentations and Initial Setup 3.1. Workshops and documentations of requirements. 3.2. Submission of customization requirements report for Phase 1 Modules 3.3. Installation of base software and migration of initial data for data buildup and cleanup. 3.4. User Orientation for 201 Build-up	10% of contract amount



Deliverable	Percentage of Payment
4. Customization and Testing 4.1. Development and Customization base on initial requirements. 4.2. Deployment of Initial Customized version. 4.3. User Acceptance Test (UAT) for Phase 1 Modules. 4.4. Deployment of initial customized version.	15% of contract amount
5. Pilot Run, Parallel Run 5.1. Conduct Pilot and/or Parallel Run. 5.2. System Calibration for pilot results.	10% of contract amount
6. Cut-over and Production 6.1. Deploy production version for Phase 1 Modules 6.2. Cut-over support for data, system and training of users and trainer trainings for ESS and MS users.	10% of contract amount
Implementation – Phase 2 Modules	
7. Requirements Documentations and Initial Setup 7.1. Workshops and documentations of requirements. 7.2. Submission of customization requirements report for Phase 2 Modules 7.3. Installation of base software and migration of initial data for data buildup and cleanup. 7.4. User Orientation for Phase 2 Data Build-up and Cleanup	10% of contract amount
8. Customization and Testing 8.1. Development and Customization base on initial requirements. 8.2. Deployment of Initial Customized version. 8.3. User Acceptance Test (UAT) for Phase 2 Modules. 8.4. Deployment of Customized version.	15% of contract amount
9. Retention – Released at the end of 6 Months Warranty Warranty Support Maintenance support to address additional requirements / reports / templates / troubleshooting	10% of contract amount.



5. **Liquidated Damages.** The SEC shall impose liquidated damages, not by way of penalty, in an amount equivalent to 1/10 of 1% of the total value of the unperformed portion for every day of delay until actual delivery or performance, collectible from any money due or which may become due to the DCI, or in the absence or insufficiency thereof, from the performance security, at the option of the SEC. The maximum deduction shall be ten percent (10%) of the amount of contract. For purposes of computing liquidated damages, the day of delay shall be reckoned from the commencement date stated in this Agreement, in the Notice/s to Proceed/Notice/s to Deploy, whichever is applicable, inclusive of duly granted time extensions if any.



6. **Confidentiality and Ownership**

6.1. The Parties agree that any confidential information obtained during the term of this agreement shall not be disclosed by one party to a third party.

6.2. The DCI shall not, except for purposes of performing the obligations in this Agreement, without the SEC's prior written consent, disclose this Agreement, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the SEC. Any such disclosure shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance. Upon demand of the SEC, the DCI shall promptly, return, delete, or destroy all such materials and information, and shall not retain any hard or soft copies thereof wherever they may be stored.



6.3. This confidentiality agreement shall be perpetually adhered to by the parties.

6.4. Ownership of the tools, outputs, reports, and other materials under the iHRIS Project shall be vested exclusively to SEC.

6.5. DCI owns and retains all right, title and interest, including all intellectual property rights, in and to all software and technologies related thereto, including any and all algorithms or processes developed by DCI and all derivatives, modifications, or improvements of or to any of the

foregoing made by or for DCI, whether or not created or developed in connection with this Agreement.

Both Parties warrant that it shall treat and hold any and all Confidential Information in strict confidence, in accordance with the provisions of Republic Act 10173 or the Data Privacy Act of 2012, its Implementing Rules and Regulations, and other rules and regulations relating to data privacy.

7. **Effectivity of the Agreement.** This Agreement shall take effect upon signing thereof by the Parties and DCI shall commence performance of its obligations upon issuance by SEC of a Notice to Proceed. The Agreement shall then continue to be in full force and effect for a period of one (1) year from the date of signing of this Contract.

8. **Governing Law.** Republic Act No. 9184 and its Revised Implementing Rules and Regulations, as well as the applicable issuances of the Government Procurement Policy Board shall apply to this Agreement.

9. **Other Terms and Conditions:**

9.1 **Personnel.** The employees of DCI are not employees of the SEC; neither is there an employer-employee relationship between SEC and DCI.

9.2 **Source-Code**

9.2.1 The term "Source-Code" in this Agreement refers to the iHRIS and related systems components collection of files needed to convert from human-readable form to computer-executable form. The Source-Code may be converted into executable files and libraries.

9.2.2 The whole rights over the intellectual property of the original iHRIS product including its components and trademarks remain with the DCI and do not provide any right or ownership of the product or Source-Code, in part or in whole to the SEC.

9.2.3 Copy of the Source-Code is provided only as sustainability measure for the SEC in the event the DCI defaults in its responsibility to maintain or support the product in the future, excluding failure of both parties to come into agreement for a maintenance contract of any form. The SEC shall be allowed to access and modify source and the related products in the following conditions:

9.2.3.1 DCI or its representative declares, in writing, that it is no longer capable to render or extend maintenance and support to the product for whatever reason, excluding failure to come into agreement for a maintenance contract.

9.2.3.2 DCI fails to render the services with no valid explanation or reasons despite receipt of a demand letter for product support.

9.2.3.3 DCI is dissolved or closed-down and fail to assign its rights and responsibilities over the product to a new representative.

9.2.3.4 DCI is acquired by a new entity, which issues a stoppage of product support.

9.2.3.5 The SEC purchases the Source-Code, for maintenance purposes, at a sum subject to negotiations and prevailing rates; provided that, such purchase does not include transfer of Intellectual Property ownership of the product, in part or as a whole, and does not authorize the SEC to sell, rent, or distribute the product.

9.2.4 After Final Acceptance has been declared effective, the DCI shall file Software Source-Codes under third party ESCROW services. Cost for this arrangement shall be shouldered by the SEC.

9.3 **Inspection and Tests**

9.3.1 The SEC or its authorized representatives shall have the right to inspect the iHRIS to confirm their conformity to the Technical Specifications (Annex B). The SEC shall specify what inspections it requires and where they are to be conducted. The SEC shall notify the DCI in writing, in a timely manner, of the identity of the authorized representatives for these purposes.

9.3.2 The SEC may reject the iHRIS or any part thereof that fails to pass any inspection or do not conform to the Technical Specifications. The DCI shall either rectify or make alterations necessary to meet the Technical Specifications at no cost to the SEC, and shall repeat the test and/or inspection, at no cost to the SEC, upon giving a written notice.

9.3.3 The DCI agrees that neither the inspection of the iHRIS or any part thereof, nor the attendance by the SEC or its authorized representatives during the said inspection, shall release DCI from its warranties or other obligations under this Agreement.

9.4 **Indemnity.** Both parties agree to hold each other free and harmless from any and all claims or causes of action of third parties arising from a negligent or otherwise wrongful act, or omission by one party/and or their respective employees or representatives to such third parties.

9.5 **Warranty and Maintenance**

9.5.1 The DCI warrants that the iHRIS under this Agreement comply with the Technical Specifications under Annex B hereof.

9.5.2 In order to assure that the manufacturing defects shall be corrected by the DCI, a warranty shall be required from DCI for a minimum period of six (6) months. The obligation for the warranty shall be covered by, at DCI's option, either retention money or a special bank guarantee in the amount equivalent to at least ten percent (10%) of the Contract Price. The said amounts shall only be released after the lapse of the warranty period; provided, however, that the iHRIS delivered are free any from patent and latent defects and all the conditions imposed under this Agreement have been fully met.

9.5.3 The SEC shall promptly notify the DCI in writing of any claims arising under this warranty. Upon receipt of such notice, DCI shall, within the warranty period and with all reasonable speed, repair or replace the defective iHRIS without cost to the SEC.

9.5.4 If DCI, having been notified, fails to remedy the defect(s) within the warranty period, the SEC may proceed to take such remedial action as may be necessary, at DCI's risk and expense, and without prejudice to any other rights which the SEC may have against DCI under the Agreement and under the applicable law.

9.6 **Settlement of Disputes.** Any dispute or controversy of any kind whatsoever between SEC and DCI (referred to herein as a "Dispute") which may arise out of or in connection with this Agreement, in the first instance shall be settled through amicable means within thirty (30) days from written notice to the party at fault. Such period may be extended upon the agreement of both parties.

Should the dispute remain unresolved by the end of the aforementioned period, the dispute shall be submitted to the Office of the Secretary of Justice pursuant to the provisions of Sections 66, 67, 68, 69, 70 and 71, Chapter 14, Book IV, Title III of the Administrative Code of 1987 (Executive Order 292), in relation to Presidential Decree 242 (Prescribing the Procedure for the Administrative Settlement of Claims and Controversies Between or Among Government Offices, Agencies and Instrumentalities, including Government-Owned and Controlled Corporations, and for Other Purposes).

9.7 **Force Majeure.** No Party shall be liable to the other party for the delay or non-performance of its obligations under this Agreement arising from any cause or causes beyond its reasonable control, including, without limitation, any of the following: act of God, government act, war, fire, flood, explosion or civil commotion.

9.8 **Termination.** This Agreement may be terminated in accordance with the Guidelines on Termination of Contracts, Appendix "4," Revised Implementing Rules and Regulations of Republic Act No. 9184.




- 9.9 **Severability.** If any part of this Agreement is declared unenforceable or void, the rest of the Agreement shall nevertheless remain in full force and effect.
- 9.10 **Waiver.** No failure, omission or delay of any of the parties in exercising any of its right, privileges, and remedies hereunder shall operate as a waiver thereof. No waiver or departure from the terms of this Agreement shall be valid unless made in writing and signed by the party's authorized representative. Such waiver shall be effective only in specific instance and for the purpose for which it is given.
- 9.11 **Assignment of Rights.** The benefit of this Agreement may not be assigned in whole or in part by a party without the prior written consent of the other party.
- 9.12 The following contract and project documents are hereby made and acknowledged by the parties hereto to be integral parts of this Contract:
- 9.12.1 Terms of Reference (Annex A); and
9.12.2 Technical Specifications (Annex B)
- 9.13 **Amendment.** Subject to applicable laws, no variation in or modification of the terms of this Agreement shall be made except by written amendment signed by the parties.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures this _____ day of _____ 2021 at _____.

**SECURITIES AND EXCHANGE
COMMISSION**

By:



ATTY. ROMUALD C. PADILLA
SEC General Counsel

DBP DATA CENTER, INC.

By:



ATTY. EMMANUEL P. GALICIA, JR.
President & CEO

SIGNED IN THE PRESENCE OF:



Assistant Director Ricky M. Abundo
Witness



Mr. Regino R. Trinidad
Witness

Certified Funds Available:



Ms. Adelaida C. Navarro-Banaria
FMD Director

Funds Available:
ORS No.: OG-20642-2021-08-001287
Date: August 3, 2021

Republic of the Philippines) SS.
Makati **QUEZON CITY**)


ACKNOWLEDGEMENT

BEFORE ME, a Notary Public for and in the City of Makati, Philippines, this **QUEZON CITY** **AUG 05 2021** day of **2021**, personally appeared **ATTY. ROMUALD C. PADILLA** for and on behalf of Securities and Exchange Commission (TIN No. ~~10 266 059~~) with SEC I.D. No. 1448, issued on _____ in _____, and **ATTY. EMMANUEL P. GALICIA, JR.** for and on behalf of DBP Data Center, Inc. (TIN No. _____), with DBP ID No. _____ issued on _____ in _____, known to me and to me known to be that same persons who executed the foregoing Agreement 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. It was acknowledged to me that the execution of this Agreement is the free and voluntary act and deed of the entities represented and that herein representatives have the authority to sign in behalf of their principals.

This Agreement consists of _____ pages including the page where this Acknowledgement is written and its Annexes, signed by the Parties and their witnesses on each and every page.

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Book No. 2
Series of 2021.


Atty. JASMINE CHARO L. CAYCAY-ATIENZA
Administering Officer
Asst. Commission Secretary
Securities and Exchange Commission
Republic of the Philippines


ATTY. RUBEN M. AZAÑES, JR.
NOTARY PUBLIC
UNTIL DECEMBER 31, 2021
PTR NO. 0694960, QUEZON CITY
IBP NO. 132791-Quezon City CHAPTER
Roll of Attorney's No. 46427
Admin Matter No. 004
MCLE-VI-0030360-2-19-2020
TIN: 140-394-386-000
UNIT 2 UGF-2 Opulent Bldg., EDSA, Q.C.

