

CONSIGNMENT CONTRACT

KNOW ALL MEN BY THESE PRESENTS:

This Consignment Contract (“Contract”) made and entered into by and between:

PROCUREMENT SERVICE-DEPARTMENT OF BUDGET AND MANAGEMENT, a government agency created by virtue of Letter of Instructions No. 755 dated 18 October 1978 with office address at PS Complex, Cristobal Street, Paco, Manila, represented by its **Director IV for Operations Group, Atty. Philip Josef T. Vera Cruz**, hereinafter referred to as “**PS-DBM / CONSIGNEE**”;

-and-

SOFTWAREONE PHILIPPINES CORPORATION, an entity duly organized and existing under the laws of the Republic of the Philippines and a Licensing Solution Provider Partner of Microsoft Philippines, Inc., having its principal office at 11th Floor 6780 Bldg., Ayala Avenue, Makati City, represented by its Country Manager, **Paul Peter S. Garcia**, hereinafter referred to as “**FULLFILLER / CONSIGNOR**”;

PS-DBM and the Fulfiller are collectively referred to as “**PARTIES**” to this Contract.

WITNESSETH THAT:

WHEREAS, PS-DBM and Microsoft Philippines, Inc. (MPI) entered into a Memorandum of Agreement for the provision of Microsoft Licenses, Software, and Subscription Services (MS Software and Licenses) for National Government Agencies, Government Financial Institutions, Government-Owned and Controlled Corporations, State Universities and Colleges, and Local Government Units (“Government Agencies”);

WHEREAS, PS-DBM invited all Microsoft certified and authorized domestic Licensing Solution Provider (LSPs) and Volume Licensing Distributor (VLDs) to participate in the selection process;

WHEREAS, after the conduct of the selection process, SoftwareOne Philippines Corporation, a domestic partner of Microsoft and authorized provider of MS Software and Licenses classified as LSP, was determined to have submitted the lowest LSP proposal;

WHEREAS, the Notice to Execute Consignment Contract was issued to SoftwareOne Philippines Corporation on 15 December 2022;

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

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ARTICLE 1
DURATION OF THE CONTRACT

- 1.1. The duration of this Contract shall be for two (2) years from the date of execution. Upon expiration of the period, the terms of this Contract shall not be automatically extended or renewed unless otherwise agreed in writing by the parties hereto.
- 1.2. Notwithstanding any provisions in this Contract to the contrary, any party may cause the pre-termination of this Contract by furnishing the other party a written notice at least two (2) months prior to the date of termination.
- 1.3. Termination of this Contract shall not affect any existing licensing agreement for Microsoft Software and Licenses entered into between Government Agencies and the applicable Microsoft Entity ("Licensing Agreement(s)") subject to the said parties' adherence to the terms and conditions of Licensing Agreement.
- 1.4. In case the **CONSIGNOR** causes the early termination of this Contract, the **CONSIGNOR** shall serve all remaining Order Forms submitted within the above-mentioned two (2) month period until the date of effectivity of the termination.

ARTICLE 2
SCOPE AND COVERAGE OF THE CONTRACT

- 2.1. This Contract shall cover the Consignment of MS Software and Licenses, listed in the Electronic Catalogue in accordance with GPPB Resolution No. 11-2019, between **PS-DBM** and the **CONSIGNOR**.

ARTICLE 3
OWNERSHIP

- 3.1 Use rights and ownership of MS Software and Licenses covered by this Contract shall be subject to the terms of the applicable Microsoft Licensing Agreement. **PS-DBM** hereby acknowledges that it takes possession of the consigned MS Software and Licenses only on a consignment basis and it does not acquire any property right or security interest in such consigned MS Software and Licenses.

ARTICLE 4
PRICES

- 4.1. The price for the MS Software and Licenses shall be in accordance with the proposal/offer submitted to and approved by **PS-DBM**. The net margin percentage committed for this arrangement by the **CONSIGNOR** is **3.75% of the Net Buy Price from Microsoft**, in accordance with its Financial Proposal attached hereto as Annex "A" and made an integral part of this Contract.

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- 4.2. The **CONSIGNOR** shall obtain the government price list for MS Software and Licenses from Microsoft Corporation, on a monthly basis. The price list issued by the **CONSIGNOR**, which is understood to be inclusive of the net margin percentage, taxes and other applicable incidental costs, shall be made available to **PS-DBM** at the beginning of each month. The prices of MS Software and Licenses shall be based on the monthly pricing scheme of Microsoft Corporation converted at US Dollar – Philippines Peso exchange rate at the last working day of the immediately preceding month. Requisitions shall be made through an Order Form to be issued by **PS-DBM** and shall bear the prices indicated in the **CONSIGNOR'S** price list as revised on a monthly basis or based on the quotation/proposal submitted by the **CONSIGNOR** to **PS-DBM**, taking into account the discounts given by MPI, if any.
- 4.3. For purposes of foreign currency exchange in this Contract, the conversion rates posted in the website of the Bangko Sentral ng Pilipinas, as described in the immediately preceding section, shall be made as the official reference.
- 4.4. The net margin percentage quoted by the **CONSIGNOR** shall be fixed for the duration of this Consignment Contract and shall not be subject to variation or percentage escalation.
- 4.5. The **CONSIGNOR** shall pay a service fee equivalent to four percent (4%) based on the **CONSIGNOR'S** net buy price from Microsoft, exclusive of taxes, for each and every purchase made by end-user agencies.
- 4.6. The prices being provided to **PS-DBM** for the MS Software and Licenses are guaranteed by the **CONSIGNOR** to be the lowest prices available in the market.

ARTICLE 5
ISSUANCE OF ORDER FORM/S

- 5.1. **PS-DBM** shall issue Order Form/s based on the quantity of licenses indicated in the Agency Procurement Requests (APRs) for MS Software and Licenses as often as the need arises.
- 5.2. The quantity and data provided in the Order Form/s shall also be the basis of the **CONSIGNOR** in the delivery of the MS Software and Licenses to the concerned government agencies.
- 5.3. For purposes of counting the delivery period, the Order Form/s shall be deemed received by the **CONSIGNOR** as soon as the same is transmitted physically to the **CONSIGNOR**, through its Account Manager, designated in the premises of PS-DBM, or through electronic mail.

ARTICLE 6
DELIVERY PERIOD

- 6.1. The **CONSIGNOR** shall have a period of thirty (30) calendar days upon receipt of the Order Form/s to deliver and/or assist in the installation of the ordered MS Software and Licenses to the end-user agency.
- 6.2. In case the **CONSIGNOR** fails to deliver and/or assist in the installation of the ordered MS Software and Licenses to the end-user agency within the period specified, inclusive of duly

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granted time extensions, PS-DBM shall deduct from the remittance proceeds, as liquidated damages, the applicable rate of one tenth (1/10) of one percent (1%) of the price of ordered MS Software and Licenses, per Order Form, for every day of delay until actual delivery and/or assistance in the installation.

ARTICLE 7
REMITTANCE OF COLLECTIONS

- 7.1. Remittance of collections for the purchases made by end-user agencies of the consigned MS Software and Licenses shall be made by **PS-DBM** to the **CONSIGNOR**, after submission of its Statement of Account and deducting the 4% service fee, subject to pertinent accounting and auditing rules and regulations.
- 7.2. Remittance shall be made promptly by PS-DBM within sixty (60) calendar days after submission of the Statement of Account by the **CONSIGNOR** and confirmation of the delivery and/or assistance in the installation of MS Software and Licenses by the concerned end-user agency.
- 7.3. The currency of the proceeds to be remitted to the **CONSIGNOR** under this Contract shall be in Philippine Peso.

ARTICLE 8
RIGHTS AND RESPONSIBILITIES

- 8.1. **PS-DBM** shall designate a dedicated workspace and shall provide for the needed facilities and resources to the representative/s of the **CONSIGNOR**, who shall receive the Order Forms issued pursuant to this Contract and shall act as the account manager for the delivery and assistance in the installation of MS Software and Licenses.
- 8.2. The **CONSIGNOR** shall guarantee that the Licensing Service Agreement (LSA) or Microsoft Standard Contract (MSC) to be issued to and signed by end-user agencies shall be the prescribed LSA or MSC of Microsoft Corporation.
- 8.3. The **CONSIGNOR** shall allow Microsoft Philippines, Inc. to provide to **PS-DBM** the government price list for MS Software and Licenses to enable PS-DBM to verify if the base price used during the consignment period is consistent with the Microsoft Corporation provided government price list.
- 8.4. The **CONSIGNOR** shall be responsible for the provision and delivery of the MS Software and Licenses and shall have available support for the installation and configuration of the same.
- 8.5. **PS-DBM** shall be responsible for the verification and checking of the loading and installation of the ordered MS Software and Licenses to the end-user agencies.
- 8.6. The **CONSIGNOR** shall provide technical support and solutions to client agencies in all regions throughout the duration of the subscription pursuant to Section III. Terms of Reference.

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- 8.7. The **CONSIGNOR** warrants faithful compliance with the obligations set forth in this Contract, including the provisions in the Selection Documents and Supplemental Bulletins, if any.
- 8.8. The **obligation** for the warranty, as stated in the Terms of Reference, shall be covered by retention money in an amount equivalent to one percent (1%) of every remittance collections. The retention money shall only be released after the lapse of the three (3) month period from actual delivery and/or assistance in the installation; provided, however, that the delivered MS Software and Licenses are free from defects, and all the conditions imposed under this Contract have been fully met.
- 8.9. The **CONSIGNOR** shall not assign any of their rights, or delegate the performance of any of the obligations or duties hereunder, and any attempt or act by the **CONSIGNOR** to assign, transfer, and subcontract any rights, duties, or obligations arising under this Contract without the prior written consent of **PS-DBM** shall be void and of no force and effect.

ARTICLE 9
MISCELLANEOUS PROVISIONS

- 9.1. This Contract shall be governed by the applicable laws of the Republic of the Philippines.
- 9.2. The provisions in the Selection Documents and Supplemental Bulletin, if any, shall be deemed incorporated to this Contract and made an integral part thereof.

ARTICLE 10
ARBITRATION

- 10.1. The Parties shall, as often as practicable, mutually consult with each other with respect to the performance of their respective obligations under this Contract. The Parties shall exert their best efforts to properly resolve any differences or disagreement with respect to any dispute that may arise in connection with this Contract. All disputes under this Contract shall be settled by arbitration pursuant to the provisions of Alternative Dispute Resolution under Republic Act No. 9285. Arbitration may be commenced at any time by any party hereto giving written notice to the other party to a dispute that such dispute has been referred to arbitration. Any award rendered by the arbitrator shall be conclusive and binding upon the parties hereto. However, if such agreements or differences persist despite efforts of the parties to settle the same, it is mutually agreed that the dispute shall be resolved, exclusively, by the appropriate courts of the City of Manila.

ARTICLE 11
SEVERABILITY

- 11.1 If any provision or part of this Contract shall be held to be illegal, invalid, or unenforceable, such provisions shall be fully severable, and this Contract shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been part of this Contract; and, the remaining provisions of this Contract shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties have hereunto affixed their signatures this ____ day of _____ 2022 in _____, Philippines.

FOR THE PROCUREMENT SERVICE-
DEPARTMENT OF BUDGET AND
MANAGEMENT

Signature Redacted

Atty. Philip Josef Y. Vera Cruz,
Director IV for Operations Group

FOR SOFTWAREONE PHILIPPINES
CORPORATION

Signature Redacted

Paul Peter S. Garcia,
Country Manager

SIGNED IN THE PRESENCE OF:

Signature Redacted

GENMAR INC *EMERENCIANO-CRONS*

Signature Redacted

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ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)

Manila) S.S.

DEC 20 2022

BEFORE ME, a Notary Public for and in the Manila, this ___ day of ___ 20 ___ appeared the following persons presenting to me their respective identifications, to wit:

Name	Competent Evidence of Identity and Validity Date
_____	_____
_____	_____

known to me and to me known to be the same persons who executed and voluntarily signed the foregoing Contract which they acknowledged before me as their own free and voluntary act and deed and with full authority to sign in that capacity.

This instrument refers to the Consignment Contract and consists of seven (7) pages including this page where the Acknowledgment is written, duly signed by the parties and their instrumental witnesses thereof.

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

Doc. : 218
Page : 44
Book : 1X
Series of 2022.

(Signature)
ATTY. MA. ELISA JOY A. BARQUEZ, CPA
Notary Public, City of Manila
Commission No. 2022-053/valid from 7/1/2022 until 12/31/23
YMCA Manila Complex, No. 350 J. Villegas St., Ermita, Manila
Roll of Attorney No. 62394
IBP Lifetime No. 019343, 01-15-2017 IBP Manila 1
MCLE Compliance No. VII-0002920, 04-26-2021, MCLEO-Pasig
PTR No. MLA 0146943, 01-03-2022, Manila City
Contact No. (02)8400-9519

(Handwritten initials)

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