

# Selection of Fulfillers

FOR THE PROVISION OF MICROSOFT  
SOFTWARE AND LICENSES FOR  
GOVERNMENT AGENCIES AND  
ACADEMIC INSTITUTIONS

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## ***Section I. Request for Proposals***

# REQUEST FOR PROPOSAL FOR THE

## SELECTION OF FULFILLERS FOR THE PROVISION OF MICROSOFT SOFTWARE AND LICENSES FOR GOVERNMENT AGENCIES AND ACADEMIC INSTITUTIONS

1. The **PROCUREMENT SERVICE – DEPARTMENT OF BUDGET AND MANAGEMENT (“PS-DBM”)** invites **MICROSOFT CERTIFIED AND AUTHORIZED LICENSING SOLUTION PROVIDERS (“LSPs”)** and **VOLUME LICENSE DISTRIBUTORS (“VLDs”)** (collectively referred to as **“FULFILLERS”**) for the consignment of Microsoft licenses, software, solution technologies, and subscription services (**“MS Software and Licenses”**) in PS-DBM.
2. The schedule of the selection proceedings activities is as follows:

Posting of Request for Proposal	<b>21 November 2022</b>
Pre-Selection Conference	<b>24 November 2022, 2:00 PM</b>
Last day of Submission of Written Clarification	<b>25 November 2022</b>
Last day of Issuance of Proposal Bulletin	<b>28 November 2022</b>
Deadline for Submission and Opening of Proposals	<b>01 December 2022, 10:00 AM</b>
Contract Signing with the Fulfillers	<b>06 December 2022</b>

3. Selection will be conducted through competitive screening procedures using a non-discretionary “pass/fail” criterion consistent with the requirements of PS-DBM. Under the non-discretionary “pass/fail” criterion, Fulfillers who submit the required document shall be rated “passed” for that particular requirement. Proposals that fail to include any requirement or are incomplete or patently insufficient shall be considered as “failed.” For clarity, the “pass/fail” criterion adopted herein is the same as the criterion in Republic Act No. 9184, the Government Procurement Reform Act, and its associated 2016 revised Implementing Rules and Regulations.
4. The interested Fulfillers may obtain further information from the PS-DBM and inspect the Selection Documents through the designated BAC Secretariat (Barby Ann Villamor or Czarina Christine Pelayo) at the 2nd Floor of PS-DBM Main Building, PS-DBM Complex, Cristobal St., Paco, Manila.
5. A complete set of Selection Documents may be acquired by the interested Fulfillers for free from the designated BAC Secretariat. It may also be downloaded from the official website of the PS-DBM.
6. PS-DBM will hold a Pre-Selection Conference on **24 November 2022 at 2:00 PM** which shall be open only to Microsoft certified and authorized Fulfillers.

7. Proposals must be duly received by the BAC Secretariat through manual submission at the office address indicated below on or before **01 December 2022 at 10:00 AM**. Late proposals shall not be accepted.
8. Opening of proposals shall be on **01 December 2022 at 10:00 AM**, at the PS-DBM Conference Room. Proposals will be opened in the presence of representatives from the Fulfillers who choose to attend the activity.
9. PS-DBM reserves the right to reject any and all proposals or not to enter into a Consignment Contract without incurring any liability to the affected Fulfillers.
10. For further information, please refer to:

***Bids and Awards Committee III/  
Bids and Awards Committee Secretariat  
2nd Floor, PS-DBM Main Building,  
RR Road, Cristobal St., Paco, Manila  
8290-6300 loc. 8033/8060  
bvillamor@ps-philgeps.gov.ph  
cpelayo@ps-philgeps.gov.ph***

**SGD.**

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***JAIME M. NAVARRETE, JR.  
Chairperson, Bids and Awards Committee III***

## *Section II. Instructions to Fulfillers*

## 1. Scope of Selection

PS-DBM invites proposals for the *Selection of Fulfillers for the Provision of MS Software and Licenses* for government agencies and academic institutions under Consignment Contract.

Consignment refers to an arrangement where the following requisites are present: (a) delivery of goods by their owner (consignor), without sale, to a government agency (consignee); (b) consignee must try to sell the goods and remit the price of the sold goods to the consignor; (c) consignee accepts without any liability except for failure to reasonably protect them from damage; (d) no disbursement of government funds is involved; and (e) at terms not disadvantageous to the GoP.

## 2. Selection Requirements

The Fulfillers, by the act of submitting its proposal, shall be deemed to have read, verified, understood, and accepted all the selection requirements, including other factors that may affect the cost, duration, and execution or implementation of the Consignment Contract, and examined all instructions, forms, terms, and conditions in the Selection Documents.

## 3. Corrupt, Fraudulent, Collusive, and Coercive Practices

PS-DBM, as well as the Fulfillers, shall observe the highest standard of ethics during the selection process and execution of the Consignment Contract. PS-DBM, Fulfillers, and its agents shall not engage in corrupt, fraudulent, collusive, coercive, and obstructive practices defined hereunder or other integrity violations in competing for the consignment contract.

For purposes of this provision, the terms set forth below as follows:

- (i) “Corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution. It also means entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profits or will profit thereby; and similar acts as provided in Republic Act 3019.
- (ii) “Fraudulent practice” means a misrepresentation of facts in order to influence the selection process to the detriment of the PS-DBM.
- (iii) “Collusive practices” means a scheme or arrangement, including practice among Fulfillers (prior to or after proposal submission), designed to establish proposal prices at artificial non-competitive levels to prevent free and competitive selection.

- (iv) “Coercive practices” means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in the selection process and affect the execution of the consignment contract.

PS-DBM will reject a proposal for recommendation to execute the Consignment Contract if it determines that the recommended Fulfiller has engaged in any of the practices mentioned in this Clause for purposes of competing for the Consignment Contract.

Further, PS-DBM will seek to impose the maximum civil, administrative, and/or criminal penalties available under applicable laws on individuals and organizations involved in any of the practices mentioned in this Clause.

#### **4. Eligible Fulfillers**

- 4.1 Only proposals from Microsoft Certified and Authorized Fulfillers will be accepted and evaluated, subject to the requirements set forth hereunder.
- 4.2. The Fulfillers must be:
  - a. Duly licensed Filipino nationals;
  - b. Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines; or
  - c. Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines; or
  - d. Persons/entities forming themselves into a joint venture, i.e., a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, That Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.
- 4.3 The Fulfillers must have a valid and updated PhilGEPS Registration Certificate (Platinum Membership). The following documents must also be attached to the certificate:
  - a. Registration Certificate from the Department of Trade and Industry/Securities and Exchange Commission, including Articles of Incorporation and General Information Sheet submitted for fiscal/calendar year 2021;
  - b. Valid Mayor’s/Business permit issued by the city or municipality where the principal place of business of the Fulfiller is located;



In cases of recently expired Mayor's/Business permits, it shall be accepted together with the official receipt as proof that the Fulfiller has applied for renewal within the period prescribed by the concerned local government unit, provided that the renewed permit shall be submitted prior the execution of the consignment contract; and

- c. Tax clearance per E.O. 398, s. 2005, issued by the Bureau of Internal Revenue (BIR).
  
- 4.4 The Fulfillers must provide a certification from Microsoft Philippines proving that they are certified and authorized domestic partners in good standing for MS Software and Licenses.
  
- 4.5 The Fulfillers must submit a Statement of its Top Ten (10) contracts for the supply of MS Software and Licenses, as described under Section III. Terms of Reference, in terms of value, reflecting the number of users, executed within the last five (5) years from the deadline for submission and opening of proposals.
  
- 4.6 The Fulfillers must submit its audited financial statements, showing, among others, the total and current assets and liabilities, stamped "received" by the BIR or its duly accredited and authorized institutions, for the preceding calendar year which should not be earlier than two (2) years from the date of proposal submission.
  
- 4.7 The Fulfillers shall submit its latest Income Tax Returns for year 2021 (BIR Form 1701 or 1702) and Latest Value Added Tax Returns (Forms 2550M and 2550Q) or Percentage Tax Returns (Form 2551M), filed and paid through the BIR Electronic Filing and Payment System (eFPS) covering the last six (6) months prior to opening of proposals.
  
- 4.8 The Fulfillers shall submit an Undertaking stating that it shall: (a) provide technical support and solutions to end-user agencies in all regions for the duration of the consignment contract; and (b) warrant the strict conformity to the terms and conditions of the Terms of Reference.

## **5. Pre-Selection Conference**

PS-DBM will hold a pre-selection conference on the specified date and time in its physical address as indicated in the RFP, to clarify and address the Fulfillers' questions on the technical and financial components of the Project, if any.

## **6. Clarification and Amendment of Selection Documents**

Fulfillers may request for clarification and/or interpretation of any part of the Selection Documents. Such request must be in writing and received by PS-DBM, either at its given address or through electronic mail on or before **25 November 2022**.

## **7. Fulfiller's Responsibilities**

7.1 The Fulfillers, through its duly authorized representative, shall submit a sworn statement in the form prescribed in Section IV of the Selection Documents.

7.2 The Fulfillers are responsible for the following:

(a) Having taken steps to carefully read, review and examine all of the Selection Documents;

(b) Having acknowledged all conditions, local or otherwise, affecting the implementation of the consignment contract;

(c) Having made an estimate of the facilities available and needed for the consignment contract, if any;

(d) Ensuring that each of the documents submitted in satisfaction of the selection requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;

(e) Authorizing the PS-DBM or its duly authorized representative/s to verify all the documents submitted;

(f) Ensuring that it did not give or pay directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity; and

(g) Ensuring that the signatory is the duly authorized representative of the Fulfiller, and granted full power and authority to do, execute and perform any and all acts necessary to participate, submit the proposal, and to sign and execute the Consignment Contract with the PS-DBM, as evidenced by a duly notarized Secretary's Certificate or Board Resolution attesting to such fact, if the Fulfiller is a corporation, partnership, cooperative, or joint venture.

7.3 The Fulfillers are expected to examine and understand all instructions, forms, terms, and specifications in the Selection Documents.

## **8. Documents comprising the Proposal: Technical and Financial Components**

Unless otherwise stated in the RFP, the first envelope, i.e., technical component envelope, shall include the legal, technical, and financial eligibility documents, including the technical proposal as specified in Section IV (Checklist of Eligibility and Technical Documents).

The second envelope shall contain the financial component of the proposal. The financial component of the proposal shall be in the Proposal Form (Annex "A") which shall reflect the net margin percentage based on the net buy price from Microsoft Corporation as specified in Clause 10 of Section II. Instructions to Fulfillers.

## **9. Alternative Proposals**

Alternative proposals shall be rejected. For this purpose, an alternative proposal is an offer made by a Fulfiller in addition or as a substitute to its original proposal which may be included as part of its original proposal or submitted separately therewith for purposes of selection. A proposal with options is considered an alternative proposal.

## **10. Proposal Value / Criterion**

10.1 The criterion to identify the selected Fulfillers includes the lowest net margin percentage and its legal, technical, and financial capability to supply and deliver MS Software and Licenses in accordance with the terms and conditions set forth in the Consignment Contract.

10.2 The Fulfillers shall submit its proposal by completing the appropriate Proposal Form indicating the net margin percentage based on the net buy price from Microsoft Corporation of MS Software and Licenses.

The Fulfillers shall fill in the net margin percentage up to two decimal places. The net margin percentage format to be submitted is XX.XX%.

10.3 Proposals not addressing or providing all of the required information in the Proposal Form shall be considered "failed". However, specifying a "00.00%" (zero) as the value of margin percentage would mean that it is being offered without any margin to the Government.

10.4 The net margin percentage is the percentage to be applied on top of the net buy price from Microsoft. To illustrate:

**Breakdown of Fulfiller's Net Margin Percentage**

Fulfiller's Margin (% of net buy price from Microsoft)	05.50%
Less: Fulfiller's Discount (at least 1% of the net buy price from Microsoft)	<u>01.00%</u>
<b>Net Margin Percentage</b>	04.50%

**THE NET MARGIN PERCENTAGE SHALL NOT EXCEED 4.5% OF THE NET BUY PRICE FROM MICROSOFT.**

The Fulfiller's price shall be comprised of the net buy price from Microsoft plus the net margin. The consignment price of MS Software and Licenses shall be the total of the Fulfiller's price and applicable taxes. To illustrate:

Net Buy Price from Microsoft	\$100.00
Plus: Net Margin (Net Margin Percentage x Net Buy Price from Microsoft)	\$4.50
Fulfiller's Price (exclusive of taxes)	\$104.50
Value Added Tax (12% of the Fulfiller's price)	\$12.54
Consignment price of MS Software and Licenses	\$117.04

- 10.5 The net margin percentage quoted by the Fulfillers shall be fixed for the duration of the Consignment Contract and shall not be subject to variation or percentage escalation. A proposal submitted with an adjustable net margin percentage shall be rejected.
- 10.6 PS-DBM shall impose a four percent (4%) service fee based on the Fulfiller's price, exclusive of taxes, for every purchase made by end-user agencies.

**11. Proposal Validity**

Proposals shall remain valid for one hundred twenty (120) calendar days from the date of the opening of proposals.

**12. Sealing and Marking of Proposals**

Each Fulfiller shall submit one (1) original and one (1) copy of the first and second components of its proposal. In the event of any discrepancy between the original and the copies, the original shall prevail.

PS-DBM may request additional hard copies of the proposal. However, failure of the concerned Fulfillers to comply with the said request shall not be a ground for disqualification.

### **13. Deadline for Submission of Proposals**

The Fulfillers shall submit the proposals on or before **01 December 2022 at 10:00 AM** at 2nd Floor, PS-DBM Main Building, RR Road, Cristobal St., Paco, Manila.

### **14. Late Proposals**

Any proposals submitted after the deadline for submission and receipt of proposals shall be declared “LATE” and shall not be accepted by PS-DBM.

### **15. Opening and Preliminary Examination of Proposals**

The BAC shall open the proposals in public at the time, on the date, and at the place specified in Clause 8 of the RFP. The Fulfillers’ representatives who are present shall sign a register evidencing their attendance.

In case the proposals cannot be opened as scheduled due to justifiable reasons, the BAC shall take custody of the proposals submitted and reschedule the opening of proposals on the next working day or at the soonest possible time through the issuance of a Notice of Postponement to be posted in the PS-DBM website.

The preliminary examination of proposals shall be governed by the non-discretionary “pass/fail” criterion as described in Clause 3 of the RFP.

### **16. Detailed Evaluation and Comparison of Proposals**

16.1 The BAC shall immediately conduct a detailed evaluation of all proposals rated “*passed*,” using the non-discretionary criterion in order to determine the lowest net margin percentage submitted.

In case one or more of the requirements in the proposal is missing, incomplete or insufficient, the PS-DBM shall mark the proposal as “FAILED”.

16.2 The lowest net margin percentage shall be determined by ranking all submitted proposals from the lowest to the highest. The proposal with the lowest net margin percentage among the LSPs shall be identified as the Lowest LSP Proposal; while the proposal with the lowest net margin percentage among the VLDs shall be identified as the Lowest VLD Proposal.

16.3 The evaluation of proposals shall be based on the net margin percentage quoted in the Proposal Form.

16.4 In the event that two or more Fulfillers have submitted similar net margin percentages and determined as the lowest proposals, the PS-DBM shall use a non-discretionary and non-discriminatory measure that should be based on sheer luck or chance (i.e., draw lots). PS-DBM shall use the Government Procurement Policy Board Circular No. 06-2005 on tie-breaking method.

- 16.5 The PS-DBM is prohibited from making or accepting any kind of communications with any Fulfiller regarding the evaluation of their proposals until the issuance of the Notice to Execute Consignment Contract. However, the BAC, through its Secretariat, may ask in writing the Fulfiller for a clarification of its proposal. All responses to the requests for clarification shall be in writing.
- 16.6 Any effort by a Fulfiller to influence the PS-DBM in their decision in respect of evaluation, proposal comparison, and awarding of Lowest LSP Proposal and Lowest VLD Proposal shall result in the rejection of the Fulfiller's proposal.

## **17. Post-Qualification**

- 17.1. The Lowest LSP Proposal and Lowest VLD Proposal shall undergo post-qualification. The submitted eligibility documents, technical documents, and financial component (net margin percentage) shall be subjected to verification, validation, ascertainment and arithmetical computations.
- 17.2. If the Lowest LSP Proposal and Lowest VLD Proposal fail the criteria for post-qualification, PS-DBM shall inform the LSP or VLD initially identified as the Lowest LSP Proposal or Lowest VLD Proposal of the disqualification. The procedure for post-qualification shall be repeated on the next Lowest LSP Proposal or Lowest VLD Proposal until a Selected LSP Proposal and Selected VLD Proposal has been identified.

A Request for Reconsideration may be filed by the Fulfiller with the BAC within three (3) calendar days from receipt of the Notice of Post Disqualification. Denial of the Request for Reconsideration by the BAC may be protested to the PS-DBM Executive Director or the duly authorized approving authority within seven (7) calendar days from receipt thereof. A non-refundable protest fee in the amount of One Million Pesos (Php 1,000,000.00) shall be paid in cash upon the submission of a written protest in the form of a verified position paper. The rules to be followed in the filing and resolution of protest shall be in accordance with Rule XVII on Protest Mechanism under Republic Act No. 9184 and its associated 2016 revised Implementing Rules and Regulations.

- 17.3 After verification, validation, ascertainment and arithmetical computations of the Lowest LSP Proposal and Lowest VLD Proposal, the BAC shall consider the same as the Selected LSP Proposal and the Selected VLD Proposal, and shall recommend to the PS-DBM Executive Director or the duly authorized approving authority, the award and execution of the Consignment Contract. Upon approval, PS-DBM shall issue the Notice to Execute Consignment Contract to the Selected LSP and Selected VLD.

## **18. Reservation Clause**

18.1 PS-DBM reserves the right to reject any and all proposals, or declare a Failure of Selection at any time prior to the issuance of the Notice to Execute Consignment Contract, without thereby incurring any liability, and make no assurance that a contract shall be entered into as a result of the selection based on, but not limited to, the following grounds:

- (a) If there is *prima facie* evidence of collusion between appropriate officers or employees of PS-DBM, and any of the Fulfillers, or if the collusion is between or among the Fulfillers themselves, or between a Fulfiller and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
- (b) If found that the BAC has failed in following the prescribed selection procedures; or
- (c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the Government, as follows:
  - (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible, as determined by the PS-DBM; or
  - (ii) if the project is no longer necessary as determined by the PS-DBM.

21.2 In addition, PS-DBM may likewise declare a failure of selection when:

- (a) No proposals are received;
- (b) All proposals fail to comply with all the requirements;

## **19. Signing of the Contract**

19.1. Prior to the execution of the Consignment Contract, the Selected LSP and Selected VLD shall submit the Performance Securing Declaration in the form provided under Annex “G” of Section IV of the Selection Documents.

19.2 PS-DBM shall enter into Consignment Contract with the Selected LSP and Selected VLD, following the template provided under Annex “H” of Section IV of the Selection Documents, within ten (10) calendar days from the approval by the PS-DBM Executive Director or the duly authorized approving authority of the BAC recommendation to award and execute the Consignment Contract.

### *Section III. Terms of Reference*



## **TERMS OF REFERENCE**

### **CONSIGNMENT OF MS SOFTWARE AND LICENSES FOR GOVERNMENT AGENCIES AND ACADEMIC INSTITUTIONS**

#### **I. INTRODUCTION**

The PS-DBM supports the government's direction for technology innovation that will fundamentally improve the delivery of public services. Being the central procuring agent of the government for its common-use supplies and equipment, PS-DBM intends to facilitate the provision of software and license packages to government agencies used in its day-to-day operations. The PS-DBM aims to strengthen and improve the supply process through agency-friendly ordering methods and after-sales support for the provision of MS Software and Licenses for National Government Agencies, Government-Owned and Controlled Corporations, Government Financial Institutions, State Universities and Colleges, and Local Government Units (Government Agencies) through consignment approach pursuant to Section 7.3.2 of the 2016 revised Implementing Rules and Regulation of Republic Act No. 9184.

#### **II. OBJECTIVES**

The Consignment Contract aims to facilitate the provision of software and license packages from Microsoft certified and authorized domestic partners having a wide range of software and licenses products, services, and solutions designed to meet the government need for productivity software and tools for business processing and public services.

#### **III. SCOPE OF AGREEMENT**

The Consignment Contract shall cover the provision of MS Software and Licenses to government agencies. The Selected LSP shall offer the following commercially available Microsoft licensing programs, or their successor programs: Microsoft Product and Service Agreement (MPSA), Enterprise Agreement (EA), Enterprise Agreement Subscription (EAS), Enterprise Enrollment (EE) and Microsoft Support Services, namely Premier Support or Unified Support, which covers large organizations understood to be those with two hundred fifty (250) users or more. On the other hand, the Selected VLD shall offer the following commercially available Microsoft licensing programs, or its successor program: Open Value Subscription which covers small organizations understood to be those with less than two hundred fifty (250) users. Infrastructure-as-a-Service ("IaaS") and Platform-as-a-Service ("PaaS") Cloud Solutions are not included in the Consignment Contract.

#### **IV. DELIVERY PERIOD**

The Consignor shall have a period of fifteen (15) calendar days upon receipt of the Order Form/s to deliver and/or install the ordered MS Software and Licenses to the end-user agency.

## **V. WARRANTY AND SUPPORT SERVICES**

The Consignor shall provide the following warranty and support services at no cost to the government.

### **General Support:**

The Consignor shall have available support *vis-a-vis* the requirements of the end-user agency for the delivery and installation of purchased MS Software and Licenses.

All MS Software and Licenses shall be guaranteed against defects or errors for the duration of the subscription period. Repairs, re-program, or re-installation shall be provided by the Consignor within 24 hours upon receipt of the notification by the end-user agency for online and onsite support at no additional charge.

### **Account Support:**

The Consignor shall provide one (1) Full Time Account Manager that will support the Consignment framework who shall receive the Order Forms issued pursuant to the Consignment Contract in the dedicated workspace in PS-DBM. The Full Time Account Manager shall be responsible for, but not limited to, the following:

- a. Manage and attend to sales orders endorsed by the Marketing and Sales Division of PS-DBM related for the Project;
- b. Conduct regular sales status meetings with PS-DBM and Microsoft Philippines, Inc.; and
- c. Serve as the focal person for the duration of the Consignment Contract and act as liaison with PS-DBM on all sales, marketing activities, and end-user agency concerns.

### **Marketing Support:**

- a. The Consignor shall conduct a minimum of one (1) face-to-face roadshow per semester for the four (4) geographical areas (NCR, Luzon, Visayas, Mindanao), or a total of eight (8) roadshows a year for PS-DBM customers;
- b. The Consignor shall conduct a minimum of one (1) face-to-face Technology Update session per quarter, or a total of four (4) sessions in a year for PS-DBM customers;
- c. The Consignor shall conduct a minimum of six (6) face-to-face Customer Immersion Experience (CIE) sessions per quarter, or a total of twenty-four (24) sessions in a year for PS-DBM customers;

- d. The Consignor shall publish a minimum of six (6) Email Direct Marketing (EDM) per quarter promoting and announcing any ongoing marketing activity, promotion, or event, or a total of twenty-four (24) EDM in a year for PS-DBM customers;
- e. The Consignor shall submit a quarterly report on the delivery/completion of the required Marketing Support to the PS-DBM; and
- f. The Consignor shall regularly submit the updated price list based on the requested information and timeline (monthly basis) of PS-DBM.

Microsoft Philippines, Inc. and/or the Consignor shall develop and regularly update a Marketing Website under the PS-DBM and PhilGEPS websites that will contain marketing promotions and events.

**Operational Support:**

The Consignor shall assign one (1) full time Sales Operations resource that will qualify, track, and close all sales orders once the documents of the ordering client agency arrive at PS-DBM.

**After-Sales Support:**

The Consignor shall check and monitor the progress of Software Installation and other concerns related to the Software. The Consignor shall, if necessary, regularly visit the PS-DBM customers to provide the necessary support.

***Section IV. Checklist of Technical and  
Financial Documents***

# Checklist of Technical and Financial Documents

## I. TECHNICAL COMPONENT ENVELOPE

### *Eligibility Documents*

#### *Class “A” Documents*

##### Legal Documents

- (a) Valid and Updated PhilGEPS Registration Certificate (Platinum Membership) (all pages);
- (b) Registration certificate from Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives or its equivalent document;
- (c) Valid Mayor’s or Business permit issued by the city or municipality where the principal place of business of the Fulfiller is located, or the equivalent document for Exclusive Economic Zones or Areas;
- (d) Tax clearance per E.O. No. 398, s. 2005, as finally reviewed and approved by the Bureau of Internal Revenue (BIR); and
- (e) Income Tax Returns for year 2021 (BIR Form 1701 or 1702) and Latest Value Added Tax Returns (Forms 2550M and 2550Q) or Percentage Tax Returns (Form 2551M) filed and paid through the BIR Electronic Filing and Payment System (eFPS) covering the last six (6) months prior the opening of proposals.

##### Technical Documents

- (f) Certification from Microsoft Philippines proving that the Fulfiller is a certified and authorized domestic partner in good standing for MS Software and Licenses; and
- (g) Statement of the Fulfiller’s Top Ten (10) contracts for the supply of MS Software and Licenses, as described under Section III. Terms of Reference, in terms of value, reflecting the number of users, executed within the last five (5) years from the deadline for submission and opening of proposals;
- (h) Affidavit of Undertaking (**Annex “F”**) stating that the Fulfiller shall: (i) provide technical support and solutions to end-user agencies in all regions for the duration of the consignment contract and (ii) warrant the strict conformity to the terms and conditions of the Terms of Reference.

##### Financial Documents

- (i) The Fulfiller’s audited financial statements, showing, among others, the Fulfiller’s total and current assets and liabilities, stamped “received” by the

BIR or its duly accredited and authorized institutions, for the preceding calendar year which should not be earlier than two (2) years from the date of proposal submission.

***Class “B” Documents***

- (j) If applicable, a duly signed joint venture agreement (JVA) (**Annex “G”**) in case the joint venture is already in existence; **or** duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the proposal is successful.

***Technical Documents***

- (k) Conformity with the Terms of Reference (**Annex “D” for LSP or Annex “E” for VLD**); and
- (l) Original duly signed Omnibus Sworn Statement (OSS) (**Annex “C”**); and if applicable, Original Notarized Secretary’s Certificate in case of a corporation, partnership, or cooperative; or Original Special Power of Attorney of all members of the joint venture giving full power and authority to its officer to sign the OSS and do acts to represent the Fulfiller.

**II. FINANCIAL COMPONENT ENVELOPE**

- 1. Original of duly signed and accomplished Financial Proposal Form (**Annex “A” for LSP or Annex “B” for VLD**);

**Proposal Form  
(FOR LICENSING SOLUTION PROVIDERS)**

Date: \_\_\_\_\_  
Reference No: \_\_\_\_\_

To: PS-DBM BAC III Chairperson  
Procurement Service  
PS Complex, RR Road  
Cristobal St., Paco, Manila

Gentlemen and/or Ladies:

Having examined the Selection Documents, including the corresponding Supplemental Bulletins, if any, the receipt of which is hereby duly acknowledged, we, the undersigned, offer the below net margin percentage for the provision of Microsoft Software and License in conformity with the said Selection Documents.

**Breakdown of Fulfiller's Net Margin Percentage**

Fulfiller's Margin (% of net buy price from Microsoft)	_____ %
Less: Fulfiller's Discount (at least 1% of the net buy price from Microsoft)	_____ %
<b>NET MARGIN PERCENTAGE</b>	_____ %

\_\_\_\_\_ . \_\_\_\_\_ %  
**Net Margin Percentage Offer – Government Agencies and Academic Institutions**

*Note: For purposes of evaluation, Fulfillers are directed to use two (2) decimal places in setting up their net margin percentage proposal.*

We hereby state that the proposal entered above represents the lowest net margin percentage tendered to PS-DBM and shall remain valid for one hundred twenty (120) calendar days from the date of proposal opening.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[in the capacity of]

Duly authorized to sign Proposal for and on behalf of \_\_\_\_\_

**Proposal Form**  
**(FOR VOLUME LICENSE DISTRIBUTORS)**

Date: \_\_\_\_\_  
Reference No: \_\_\_\_\_

To: PS-DBM BAC III Chairperson  
Procurement Service  
PS Complex, RR Road  
Cristobal St., Paco, Manila

Gentlemen and/or Ladies:

Having examined the Selection Documents, including the corresponding Supplemental Bulletins, if any, the receipt of which is hereby duly acknowledged, we, the undersigned, offer the below net margin percentage for the provision of Microsoft Software and License in conformity with the said Selection Documents.

**Breakdown of Fulfiller's Net Margin Percentage**

<b>Fulfiller's Margin (% of net buy price from Microsoft)</b>	_____ %
<b>Less: Fulfiller's Discount (at least 1% of net buy price from Microsoft)</b>	_____ %
<b>Net Margin Percentage</b>	_____ %

\_\_\_\_\_ . \_\_\_\_\_ %  
**Net Margin Percentage Offer – Government Agencies and Academic Institutions**

*Note: For purposes of evaluation, Fulfillers are directed to use two (2) decimal places in setting up their net margin percentage proposal.*

We hereby state that the proposal entered above represents the lowest net margin percentage tendered to PS-DBM and shall remain valid for one hundred twenty (120) calendar days from the date of proposal opening.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[in the capacity of]

Duly authorized to sign Proposal for and on behalf of \_\_\_\_\_



**Omnibus Sworn Statement (Revised)**

*[shall be submitted with the Proposal]*

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REPUBLIC OF THE PHILIPPINES )  
CITY/MUNICIPALITY OF \_\_\_\_\_ ) S.S.

**AFFIDAVIT**

I, [Name of Affiant], of legal age, [Civil Status], [Nationality], and residing at [Address of Affiant], after having been duly sworn in accordance with law, do hereby depose and state that:

1. *[Select one, delete the other:]*

*[If a sole proprietorship:]* I am the sole proprietor or authorized representative of [Name of Fulfiller] with office address at [address of Fulfiller];

*[If a partnership, corporation, cooperative, or joint venture:]* I am the duly authorized and designated representative of [Name of Fulfiller] with office address at [address of Fulfiller];

2. *[Select one, delete the other:]*

*[If a sole proprietorship:]* As the owner and sole proprietor, or authorized representative of [Name of Fulfiller], I have full power and authority to do, execute and perform any and all acts necessary to participate, submit the proposal, and to sign and execute the Consignment Contract with the PS-DBM, as shown in the attached duly notarized Special Power of Attorney;

*[If a partnership, corporation, cooperative, or joint venture:]* I am granted full power and authority to do, execute and perform any and all acts necessary to participate, submit the proposal, and to sign and execute the Consignment Contract with the PS-DBM, as shown in the attached [state title of attached document showing proof of authorization (e.g., duly notarized Secretary’s Certificate, Board/Partnership Resolution, or Special Power of Attorney, whichever is applicable)];

3. [Name of Fulfiller] is not “blacklisted” or barred from bidding by the Government of the Philippines or any of its agencies, offices, corporations, or Local Government Units, foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the Government Procurement Policy Board, **by itself or by relation, membership, association, affiliation, or controlling interest with another blacklisted person or entity as defined and provided for in the Uniform Guidelines on Blacklisting;**

4. Each of the documents submitted in satisfaction of the requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;

5. [Name of Fulfiller] is authorizing the PS-DBM or its duly authorized representative(s) to verify all the documents submitted;
6. *[Select one, delete the rest:]*

*[If a sole proprietorship:]* The owner or sole proprietor is not related to the Head of the PS-DBM, members of the BAC, the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;

*[If a partnership or cooperative:]* None of the officers and members of *[Name of Fulfiller]* is related to the Head of the PS-DBM, members of the BAC, the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;

*[If a corporation or joint venture:]* None of the officers, directors, and controlling stockholders of *[Name of Fulfiller]* is related to the Head of the PS-DBM, members of the BAC, the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;
7. *[Name of Fulfiller]* complies with existing labor laws and standards;
8. *[Name of Fulfiller]* is aware of and has undertaken the responsibilities as a Fulfiller in compliance with the Selection Documents, which includes:
  - a. Carefully reading, reviewing and examining all of the Selection Documents;
  - b. Acknowledging all conditions, local or otherwise, affecting the implementation of the Contract;
  - c. Making an estimate of the facilities available and needed for the contract, if any; and
  - d. Inquiring or securing Supplemental Bulletin(s) issued relative to the Selection Process.
9. *[Name of Fulfiller]* did not give or pay directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity;
10. In case advance payment was made or given, failure to perform or deliver any of the obligations and undertakings in the contract shall be sufficient grounds to constitute criminal liability for Swindling (Estafa) or the commission of fraud with unfaithfulness or abuse of confidence through misappropriating or converting any payment received by a person or entity under an obligation involving the duty to deliver certain goods or services, to the prejudice of the public and the government of the Philippines pursuant to Article 315 of Act No. 3815 s. 1930, as amended, or the Revised Penal Code;

11. [Name of Fulfiller] hereby assigns the following contact number/s and e-mail address/es as the official telephone/fax number and contact reference of the company where the PS-DBM BAC and PS-DBM notices may be transmitted.

Telephone No/s.: \_\_\_\_\_  
Fax No/s.: \_\_\_\_\_  
E-mail Add/s.: \_\_\_\_\_  
Mobile No.: \_\_\_\_\_

It is understood that notices/s transmitted in any of the above-stated telephone/fax numbers and/or e-mail address/es are deemed received as of its transmittal and the reckoning period for the reglementary periods stated in the Selection Documents shall commence from receipt thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_ day of \_\_\_, 20\_\_ at \_\_\_\_\_, Philippines.

\_\_\_\_\_  
Fulfiller’s Representative/Authorized Signatory

SUBSCRIBED AND SWORN to before me this \_\_\_ day of [month] [year] at [place of execution], Philippines. Affiant/s known to me, and known to be the same person/s in the exhibited [insert type of government identification card used\*], with his/her photograph and signature appearing thereon, with no. \_\_\_\_\_ issued on \_\_\_\_\_ at \_\_\_\_\_.

Witness my hand and seal this \_\_\_ day of [month] [year].

NAME OF NOTARY PUBLIC Serial No. of Commission _____ Notary Public for _____ until _____ Roll of Attorney's No. _____ PTR No. _____ [date issued], [place issued] IBP No. _____ [date issued], [place issued]
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Page No. ;  
Book No. ;  
Series of 2022.

*\*The identification card shall be at least one of those acceptable proofs of identity as identified under the provisions of the 2004 Rules on Notarial Practice.*

*“Sec. 12. Competent Evidence of Identity – The phrase “competent evidence of identity” refers to the identification of an individual based on:*

*At least one current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to, passport, driver’s license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter’s ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman’s book, alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification;*

*The Board Resolution or Secretary’s Certificate referring to the said Board Resolution designating the Fulfiller’s authorized representative and signatory need not specifically indicate the particular project where such authority is given provided that the said authority covers activities by PS.*

**STATEMENT OF COMPLIANCE**  
*(FOR LICENSING SOLUTION PROVIDERS)*

TERMS OF REFERENCE	STATEMENT OF COMPLIANCE
<b>Provision of MS Software and Licenses</b>  Conforms to the minimum terms and conditions set forth under the Terms of Reference	

**I/We hereby certify that the statement of compliance to the foregoing Terms of Reference is true and correct, otherwise, if found to be false either during proposal evaluation or post-qualification, the same shall give rise to automatic rejection of our proposal.**

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Signature Over Printed Name of Authorized Representative

\_\_\_\_\_  
Date

**STATEMENT OF COMPLIANCE**  
*(FOR VOLUME LICENSE DISTRIBUTORS)*

<b>TERMS OF REFERENCE</b>	<b>STATEMENT OF COMPLIANCE</b>
<b>Provision of MS Software and Licenses</b>  Conforms to the minimum terms and conditions set forth under the Terms of Reference	

**I/We hereby certify that the statement of compliance to the foregoing Terms of Reference is true and correct, otherwise, if found to be false either during proposal evaluation or post-qualification, the same shall give rise to automatic rejection of our proposal.**

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Signature Over Printed Name of Authorized Representative

\_\_\_\_\_  
Date

***Affidavit of Undertaking***

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REPUBLIC OF THE PHILIPPINES)  
CITY OF \_\_\_\_\_ ) S.S.

**Affidavit of Undertaking**

*Request for Proposal : [Insert Reference Number indicated in the Selection Documents]  
To: Procurement Service - Department of Budget and Management  
RR Road, Cristobal St., Paco, Manila*

*I/We, the undersigned, declare that:*

*1. Having examined the Selection Documents, including the Supplemental Bulletins, if any, the receipt of which is hereby duly acknowledged, we, the undersigned, submit this Proposal, including the legal, technical, and financial eligibility documents, for the provision of Microsoft Software and License in conformity with the said Selection Documents.*

*2. If our Proposal is accepted, we undertake to: (a) enter and execute a Consignment Contract with PS-DBM; (b) provide technical support and solutions to end-user agencies in all regions for the duration of the Consignment Contract and (c) warrant the strict conformity to the terms and conditions of the Terms of Reference.*

*IN WITNESS WHEREOF, I/We have hereunto set my/our hand/s this \_\_\_\_ day of [month] [year] at [place of execution].*

***[Insert NAME OF FULFILLER OR ITS  
AUTHORIZED REPRESENTATIVE]  
[Insert signatory’s legal capacity]  
Affiant***

***[Jurat]  
[Format shall be based on the latest Rules on Notarial Practice]***

**JOINT VENTURE AGREEMENT**

**KNOW ALL MEN BY THESE PRESENTS:**

This **JOINT VENTURE AGREEMENT** (hereinafter referred to as the “Agreement”), entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ at \_\_\_\_\_ City, Philippines by and among:

\_\_\_\_\_, a domestic corporation duly organized, registered and existing under and by virtue of the laws of the Republic of the Philippines, with office address at \_\_\_\_\_, represented by its \_\_\_\_\_, \_\_\_\_\_, hereinafter referred to as “\_\_\_\_\_”;

- and-

\_\_\_\_\_, a foreign corporation organized and existing under and by virtue of the laws of \_\_\_\_\_, represented by its \_\_\_\_\_, \_\_\_\_\_, hereinafter referred to as “\_\_\_\_\_”;

The PARTIES shall be collectively referred to as “**PARTIES**” to this Agreement.

**WITNESSETH: That**

**WHEREAS**, the Procurement Service (PS) has posted the Selection Documents for the opportunity of the Microsoft certified and authorized Licensing Solution Providers (LSPs) and Volume License Distributors (VLDs) to be selected as Consignors of Microsoft licenses, software, solution technologies, and subscription services (MS Software and Licenses) in the Procurement Service-Department of Budget and Management (PS-DBM);

**WHEREAS**, the parties have agreed to pool their resources together to form the “\_\_\_\_\_ Joint Venture”, hereinafter referred to as the Joint Venture, under the laws of the Philippines, for the purpose of participating in the abovementioned project of PS-DBM;

**NOW, THEREFORE**, for and in consideration of the foregoing premises and the covenants hereto set forth, the Parties have agreed as follows:

**ARTICLE I  
ORGANIZATION OF THE JOINT VENTURE**

**SECTION 1. Formation** – The Parties do hereby agree and bind themselves to establish, form and organize a Joint Venture pursuant to the laws of the Republic of the Philippines, in order for the JV to carry on the purposes and objectives for which it is created;

**SECTION 2. Name** – The name and style under which the JV shall be conducted is “\_\_\_\_\_”;

**SECTION 3. Principal Place of Business** – The JV shall maintain its principal place of business at \_\_\_\_\_;

**SECTION 4. Preparation and Documentation** – The Parties shall secure and/or execute such certifications, documents, deeds and instruments as may be required by the laws of the Republic of the Philippines for the realization of the JV and in compliance with the Project. Further, they shall do all other acts and things requisite for the continuation of the JV pursuant to applicable laws;

**SECTION 5.** The Joint Venture shall be represented by the \_\_\_\_\_ in all activities related to the selection process, related transactions and other official dealings that it shall enter into with the PS-DBM and third parties, such transactions to include, among others, the submission of eligibility documents, proposals, registration documents obtaining bonds, performing the principal contract in the event that the contract is awarded in favor of the Joint Venture, and similar and related activities.

**SECTION 6.** The period of the Joint Venture shall begin upon execution of this Agreement and shall continue until the complete performance of its contractual obligations to PS-DBM, as described in Consignment Contract, or upon its termination for material breach of any term or condition of this Agreement, by service of a written statement on the other Party, not less than 90 days prior to the intended date termination.

**ARTICLE II  
PURPOSE**

**SECTION 1.** The primary purpose of the Joint Venture is to participate in the Selection Process to be conducted by the PS-DBM Bids and Awards Committee for the provision of MS Software and Licenses in PS-DBM.

**SECTION 2.** If the above-described contract/s is/are awarded to the Joint Venture, the Joint Venture shall undertake the performance thereof to PS-DBM, and such other incidental activities necessary for the completion of its contractual obligations.

**ARTICLE III  
SOLIDARY LIABILITY OF THE PARTIES**

**SECTION 1.** In the performance of the contract/s that may be awarded to the Joint Venture by the PS-DBM, and all other related activities/obligations, as described in the Consignment



Contract, the Parties bind themselves jointly and severally in the concept of solidary debtors to PS-DBM, as provided in the relevant provisions of the Civil Code of the Philippines.

**ARTICLE IV  
MISCELLANEOUS PROVISIONS**

**SECTION 1.** The provisions in the Selection Documents, Supplemental Bulletin, if any, and other proposal documents issued by the PS-DBM in relation to the Consignment Contract, shall be deemed incorporated in this Agreement and made an integral part thereof.

**SECTION 2.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

**SECTION 3.** The Parties herein are duly represented by their authorized officers.

**SECTION 4.** Governing Law – This Agreement shall be governed by and construed according to the laws of the Republic of the Philippines. Venue of any court action arising from this Agreement shall be exclusively laid before the proper court of the \_\_\_\_\_, Philippines.

**IN WITNESS WHEREOF,** the parties have set their hands and affixed their signatures on the date and place first above-stated.

\_\_\_\_\_  
\_\_\_\_\_

Signed in the Presence of:

\_\_\_\_\_  
\_\_\_\_\_

**ACKNOWLEDGMENT**

REPUBLIC OF THE PHILIPPINES )  
CITY OF \_\_\_\_\_) S.S.

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

<b>Name</b>	<b>Competent Evidence of Identity and Validity</b>
_____	_____
_____	_____

known to me and to me known to be the same persons who executed the foregoing instrument and they acknowledge to me that the same is their free and voluntary act and deed and that of the entities they represent.

This instrument refers to a Joint Venture Agreement consisting of \_\_\_\_\_ pages, including the page on which this Acknowledgment is written, and signed by the parties and their instrumental witnesses.

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

**NAME OF NOTARY PUBLIC**  
Serial No. of Commission \_\_\_\_\_  
Notary Public for \_\_\_\_\_ until \_\_\_\_\_  
Roll of Attorneys No. \_\_\_\_\_  
PTR No. \_\_, [date issued], [place issued]  
IBP No. \_\_, [date issued], [place issued]

Doc. No. ;  
Page No. ;  
Book No. ;  
Series of 2022.

Note:  
*The identification card shall be at least one of those acceptable proofs of identity as identified under the provisions of the 2004 Rules on Notarial Practice.*

*“Sec. 12. Competent Evidence of Identity – The phrase “competent evidence of identity” refers to the identification of an individual based on:*

*At least one current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to, passport, driver’s license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter’s ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman’s book, alien certificate of registration/immigrant certificate of*

registration, government office ID, certification from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification.

“Annex H”

### ***Performance Securing Declaration (Revised)***

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REPUBLIC OF THE PHILIPPINES)  
CITY OF \_\_\_\_\_ ) S.S.

#### **PERFORMANCE SECURING DECLARATION**

*To: Procurement Service - Department of Budget and Management  
RR Road, Cristobal St., Paco, Manila*

*I/We, the undersigned, declare that:*

*1. I/We understand that, according to your conditions, to guarantee the faithful performance by the selected Fulfiller of its obligations under the Consignment Contract, I/we shall submit a Performance Securing Declaration within a maximum period of ten (10) calendar days from the receipt of the Notice to Execute Consignment Contract prior to the signing of the Contract.*

*2. I/We accept that: I/we will be automatically disqualified from bidding for any procurement contract with any procuring entity for a period of one (1) year for the first offense, or two (2) years for the second offense, upon receipt of your Blacklisting Order<sup>1</sup> if I/We have violated my/our obligations under the Contract;*

*3. I/We understand that this Performance Securing Declaration shall cease to be valid upon termination of the Consignment Contract with PS-DBM, subject to the following conditions: (i.) PS-DBM has no claims filed against the selected Fulfiller; and (ii) compliance of the selected Fulfiller with the terms and conditions of the Consignment Contract.*

*IN WITNESS WHEREOF, I/We have hereunto set my/our hand/s this \_\_\_\_ day of [month] [year] at [place of execution].*

***[Insert NAME OF FULFILLER OR ITS  
AUTHORIZED REPRESENTATIVE]  
[Insert signatory's legal capacity]  
Affiant***

**[Jurat]**

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<sup>1</sup> The Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants shall apply, including the grounds for blacklisting provided therein.

*[Format shall be based on the latest Rules on Notarial Practice]*

**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 **Executive Director V, Dennis S. Santiago**, hereinafter referred to as “**PS-DBM / CONSIGNEE**”;

*-and-*

\_\_\_\_\_, an entity duly organized and existing under the laws of the Republic of the Philippines and a \_\_\_\_\_ Partner of Microsoft Philippines, Inc., having its principal office at \_\_\_\_\_, represented by its \_\_\_\_\_, hereinafter referred to as “**FULLFILLER / CONSIGNOR**”;

*-and-*

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

**WITNESSETH THAT:**

**WHEREAS**, PS-DBM and Microsoft Philippines, Inc. 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, \_\_\_\_\_, a domestic partner of Microsoft and authorized provider of MS Software and Licenses classified as LSP/VLD, was determined to have submitted the lowest LSP/VLD proposal;

**WHEREAS**, the Notice to Execute Consignment Contract was issued to \_\_\_\_\_ on \_\_\_\_\_;

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

**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 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 attached hereto as Annex “A” and made an integral part of this Contract.

- 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.
- 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** price, 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 every 15<sup>th</sup> and 30<sup>th</sup> of the month or 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 through electronic mail and the receipt thereof is confirmed by any representative of the **CONSIGNOR** either through electronic mail acknowledgment receipt or verbal confirmation.

**ARTICLE 6**  
**DELIVERY PERIOD**

- 6.1 The **CONSIGNOR** shall have a period of fifteen (15) calendar days upon receipt of the Order Form/s to deliver and/or install the ordered MS Software and Licenses to the end-user agency.

**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. 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 installation of MS Software and Licenses.
- 8.2. The **CONSIGNOR** shall guarantee that the Licensing Service Agreement (LSA) to be issued to and signed by end-user agencies shall be the prescribed LSA 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, delivery, installation, and configuration of the MS Software and Licenses to the end-user agencies.
- 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.
- 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 **CONSIGNOR** shall not assign any of their rights, or delegate the performance of any of the obligations or duties hereunder, without the prior written consent of **PS-DBM**; and any attempt or act by the **CONSIGNOR** to assign, transfer, and subcontract any rights, duties, or obligations arising under this Contract 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.

**IN WITNESS WHEREOF**, the parties have hereunto affixed their signatures this \_\_\_\_ day of \_\_\_\_\_, 2022 in \_\_\_\_\_, Philippines.

**PROCUREMENT SERVICE-DEPARTMENT OF BUDGET AND MANAGEMENT  
(PS-DBM)**

*Authorized Representative, \_\_\_\_\_*

**SIGNED IN THE PRESENCE OF:**

\_\_\_\_\_  
  
\_\_\_\_\_

**ACKNOWLEDGMENT**

**REPUBLIC OF THE PHILIPPINES)**

\_\_\_\_\_ ) S.S.

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

<b>Name</b>	<b>Competent Evidence of Identity and Validity Date</b>
_____	_____
_____	_____

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 \_\_\_\_\_ 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. ;  
Page ;  
Book ;  
Series of 2022.

