

CONTRACT AGREEMENT**Negotiated Procurement (Due to Two Failed Biddings) Supply, Installation and Configuration of Artificial Intelligence Computing Environment (PBM 2023-03)**

THIS AGREEMENT is made and entered into by and between:

The **UNIVERSITY OF THE PHILIPPINES**, the national university of the Philippines, created by virtue of Act No. 1870, as amended and re-organized and operating by virtue of Republic Act No. 9500, through its constituent unit, the **UNIVERSITY OF THE PHILIPPINES MINDANAO (UP MINDANAO)**, established by virtue of Republic Act No. 7889, with office address at Administration Building, Mintal, Tugbok District, Davao City, represented herein by its Chancellor, **LYRE ANNI E. MURAO, Ph.D.**; hereinafter referred to as the "UNIVERSITY";

and

The **R3HUB IT SOLUTIONS**, an entity duly organized and existing under the laws of the Republic of the Philippines, with address at San Andres DECA Homes, Indangan, Davao City, represented herein by its Authorized Representative, **MR. EMERSON CRUZ**, hereinafter referred to as the "CONTRACTOR".

WHEREAS, the UNIVERSITY is desirous that the CONTRACTOR execute **Negotiated Procurement (Due to Two Failed Biddings) Supply, Installation and Configuration of Artificial Intelligence Computing Environment (PBM 2023-03)** hereinafter called "the Work" and the UNIVERSITY has accepted the Bid for **Nine Million Nine Hundred Eighty Pesos (P9,980,000.00)** by the CONTRACTOR for the execution and completion of such Works and the remedying of any defects therein.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement, words and expressions shall have the same meanings as the respectively assigned to them in the Conditions of contract hereinafter referred to.
2. The following documents as required by the 2016 revised Implementing Rules and Regulations of Republic Act No. 9184 shall be deemed to form and be read and construed as integral part of this Agreement, viz.:
 - i. Philippine Bidding Documents (PBDs);
 - a. Schedule of Requirements;
 - b. Technical Specifications;
 - c. General and Special Conditions of Contract; and
 - d. Supplemental or Bid Bulletins, if any
 - ii. Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals, and all other documents or statements submitted;

Bid form, including all the documents/statements contained in the Bidder's bidding envelopes, as annexes, and all other documents submitted (e.g., Bidder's response to request for clarifications on the bid), including corrections to the bid, if any, resulting from the Procuring Entity's bid evaluation;
 - iii. Performance Security;
 - iv. Notice of Award of Contract; and the Bidder's conforme thereto; and
 - v. Other contract documents that may be required by existing laws and/or the Procuring Entity concerned in the PBDs. Winning bidder agrees that additional contract documents or information prescribed by the GPPB that are subsequently required for submission after the contract execution, such as the Notice to Proceed, Variation Orders, and Warranty Security, shall likewise form part of the Contract.

CUA UP, MINDANAO
RECEIVED

DATE: MAY 24 2023

TIME: _____

Lyre Anni E. Murao

Emerson Cruz

[Signature]

[Signature]

3. **PAYMENTS** – In consideration of the payments to be made by the UNIVERSITY to the CONTRACTOR as hereinafter mentioned, the CONTRACTOR hereby covenants with the UNIVERSITY to provide the goods and services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

The UNIVERSITY hereby covenants to pay the CONTRACTOR in consideration of the provision of the goods and services and the remedying of defects therein, The Contract Price or such other sum as may become payable under the provisions of the contract at he time and in the manner prescribed by the contract.

The Contract Price is inclusive of all duties, taxes, license premiums, fees and changes which may accrue by virtue of the WORK, such as but not limited to permit and registration fees, municipal and personal property taxes, fees for storage or consumption, employment taxes, payments and contribution imposed by law and insurance. All such fees shall be for the account of the CONTRACTOR.

Any exemption in the payment of the foregoing shall be credited to the UNIVERSITY. The CONTRACTOR is obligated to inform the UNIVERSITY in writing of any exemption obtained or granted to it with respect to taxes, licenses, and other fees. The CONTRACTOR shall pay all cost incurred in the preparation of this Agreement, including notarial fees.

No changes shall be made on the contract price by reason of escalation in currency, the price of materials, tolls, equipment, or labor supervising during the course of the work, except under conditions specified by Law. Any adjustment in the Contract Price shall be done in accordance with guidance provided by law.

- a) The UP MINDANAO shall, upon a written request of the CONTRACTOR which shall be submitted as a contract document, make an advance payment to the CONTRACTOR in an amount equal to fifteen percent (15%) of the total contract price pursuant to Annex "D" of the Contract Implementation Guidelines for the Procurement of Goods, Supplies and Materials (The 2016 Revised Implementing Rules and Regulations of Republic Act 9184).
- b) The advance payment of 15% shall be made upon the submission to and acceptance by UP MINDANAO of an irrevocable letter of credit or bank guarantee issued by a Universal or Commercial Bank. The irrevocable letter of credit or bank guarantee must be for an equivalent amount, shall remain valid until the goods are delivered, and accompanied by a claim for advance payment.
- c) The remaining amount shall be paid upon completion of the WORK.

4. **PERIOD OF WORK** – The CONTRACTOR shall complete the aforementioned WORK within Ninety (90) calendar days from receipt of the Notice to Proceed ready for use of UNIVERSITY unless prevented by causes like strikes, accidents, typhoons, floods and other natural calamities or other unforeseen events, which render the work incapable of completion, in which case UNIVERSITY shall have the power to extend the time and shall certify accordingly.

No extension of contract time whatsoever shall be granted to the CONTRACTOR due to ordinary/unfavorable conditions, non-availability of equipment or materials to be furnished by it, labor problems and such causes for which the UNIVERSITY is not directly responsible, or when time-affected activities do not fall within the critical part of the network. The Provisions of RA 9184 and its IRR shall apply in case of suspension of work.

5. **SUBCONTRACT** – The CONTRACTOR shall not assign, transfer, pledge, convey, subcontract or make any other disposition of the Contract or any part or interest therein under this Contract without the consent of the UNIVERSITY.

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6. **LIQUIDATED DAMAGES** – In the event the CONTRACTOR refuses or fails to deliver within the time herein specified, or within the period or extension that may be granted by UNIVERSITY, if any, UNIVERSITY is hereby authorized to deduct liquidated damages from any amount due under this contract.

To be entitled to such liquidated damages, UNIVERSITY does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due to the CONTRACTOR under the Contract and/or collect such liquidated damages from the securities posted by the CONTRACTOR whichever is convenient to UNIVERSITY.

The amount of liquidated damages to be paid by the CONTRACTOR shall be ONE TENTH OF ONE PERCENT (1/10 of 1 %) of the cost of the unperformed portion of the works for every day of delay.

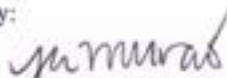
The provisions of RA 9184 and its IRR on liquidated damages shall apply in case of liquidated damages.

7. **VIOLATION OF TERMS AND CONDITIONS** – If the CONTRACTOR in any manner neglects or fails to perform any agreement herein stipulated, UNIVERSITY shall give written notice to the CONTRACTOR to proceed with such work and to perform such agreement without prejudice to enforcement of other legal remedies as deemed necessary.
8. **LIABILITY CLAUSE** – The UNIVERSITY shall not be liable for any damage or prejudice caused to third persons arising out of or related to the contract, provided that there was no negligence on the part of the UNIVERSITY.
9. **AMENDMENTS AND REVISIONS** – All amendments or revision of any provision of this contract shall be upon the prior written consent of both parties subject to the execution of an appropriate instrument for the purpose.
10. **APPLICABLE LAWS** –Provisions in the Republic Act 9184 and its Implementing Rules and Regulations shall be deemed applicable. Other relevant laws and jurisprudence are supplementary in nature. In case of inconsistency in the provisions in this contract, RA 9184 and its IRR shall prevail.

IN WITNESS whereof the parties thereto have caused this Agreement to be executed this 24 MAY 2023 (date).

UNIVERSITY OF THE PHILIPPINES
MINDANAO

By:


LYRE ANNI E. MURAO, Ph.D.
Chancellor


R3HUB IT SOLUTIONS

By:


EMERSON CRUZ
Authorized Representative

Signed in the presence of:


LEO MANUEL B. ESTAÑA
Vice Chancellor for Administration


ZENAIDA G. CALATRAVA, CPA
Chief, Accounting Office

UP Mindanao

UP Mindanao

Republic of the Philippines)
DAVAO CITY ss.
X----- X

ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in the City of Davao, personally appeared the following persons, to wit:

| Name | Gov't Issued ID | Date Issued |
|-----------------------|----------------------|-------------------|
| 1. Lyre Anni E. Murao | <u>L02-06-003064</u> | <u>07/03/2018</u> |
| 2. Emerson Cruz | <u>L02-16-011634</u> | <u>11/13/2018</u> |

known to me and to me known to be the same persons who executed the foregoing instrument and acknowledged to me that the same is their free and voluntary act and deed and that it is within the authority of the entities they respectively represent in this instance.

This instrument consisting of four (4) pages including this page where the Acknowledgment is written, refers to a Contract Agreement between the UNIVERSITY OF THE PHILIPPINES MINDANAO and R3HUB IT SOLUTIONS. It has been signed by the parties and their instrumental witnesses at every page.

WITNESS MY HAND AND NOTARIAL SEAL this 24 day of MAY 2023
2023 at Davao City, Philippines.

Doc. No.: 181
Page No.: 38
Book No.: XLIV
Series of 2023.


KAREN CATE L. PINTO
 Notary Public
 Until December 31, 2022
 Roll of Attorney's No. 70440
 Notarial Commission No. 2022-144-2003
 PTR No. 7895928-12/29/2022 - Davao City
 IBP OR No. 260237-01/03/2023 - Davao City
 MCLE Compliance No. VII-0019140-05/26/2022
 Davao City
 0912 - 890 - 6619 ; 0945 - 380 - 0298

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