

## SOFTWARE AND SUBSCRIPTION AGREEMENT

This **Software and Subscription Agreement** ("Agreement") executed this \_\_\_\_\_ day of **NOV 29 2024**, at **MAKATI CITY** by and between:

**NETRUST PHILIPPINES CORPORATION**, a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 24th Flr. Zuellig Bldg. Makati Ave. cor. Paseo de Roxas, Makati City, represented herein by its President and CEO, **MS. JENNIFER TONGCO**, duly authorized for the purpose of this Agreement as evidenced by Secretary's Certificate dated 25 November 2024, attached as Annex "K", herein referred to as "**SUPPLIER**";

- and -

**DEVELOPMENT BANK OF THE PHILIPPINES**, a government financial institution duly created and existing under and by virtue of the provisions of Executive Order No. 81, otherwise known as the "1986 Revised Charter of DBP", as amended by Republic Act No. 8523 dated 14 February 1998, with principal office at DBP Building, Sen. Gil Puyat Avenue corner Makati Avenue, Makati City, represented in this act by its Head of IT Operations Group, **MR. PATRICIA S. ROGUE** per Secretary's Certificate dated 18 July 2023, attached as Annex "L" hereinafter referred to as "**DBP**"

(The **SUPPLIER** and **DBP** shall collectively be referred to as "Parties").

### ANTECEDENTS

**WHEREAS, DBP** is in need of (a) Thirty (30) Secure Socket Layer (SSL) License Certificates for DBP Websites (the "Software"); and (b) maintenance and support subscription for the Software (the "Support Subscription");

**WHEREAS, the SUPPLIER** has offered to provide the Software and Support Subscription and **DBP** has agreed to accept the same and procure the Software and Support Subscription of the **SUPPLIER** through Small Value Procurement as an alternative method of procurement under the Revised Implementing Rules and Regulations of Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act";

**ACCORDINGLY**, for and in consideration of the foregoing premises, the Parties have agreed to enter into this Agreement under the terms and conditions set forth below, including the Annexes.

#### 1. DEFINITIONS

Certain terms used in this Agreement are defined in **Annex "A"**. Other terms used in this Agreement are defined where they are used and have the meanings there indicated. Unless otherwise specifically defined, those terms, acronyms and phrases in this Agreement that are utilized in the IT services industry or other pertinent business context shall be interpreted in accordance with their generally understood meaning in such industry or business context.

#### 2. SOFTWARE AND SCOPE OF SUPPORT SUBSCRIPTION

The Software and the Scope of Support Subscription covered by this Agreement are set forth in **Annexes "B" and "C"**, respectively.

#### 3. CONTRACT PRICE

For and in consideration of the Software license and the Support Subscription under this Agreement, **DBP** shall pay the amount of **PESOS: SIX HUNDRED**

**THIRTY-ONE THOUSAND SIX HUNDRED EIGHTY (PhP631,680.00),** inclusive of all taxes and fees, hereinafter referred to as the "Contract Price".

#### **4. PAYMENT TERMS AND CONDITIONS**

**DBP** shall pay the Contract Price to the **SUPPLIER** via credit to its deposit account with **DBP** within forty-five (45) calendar days from its receipt of the **SUPPLIER's** sales invoice and the issuance by **DBP** of the Certificate of Acceptance, provided the **SUPPLIER** has completed the requirement for the validation of the SSL License Certificates, as well as the **SUPPLIER's** submission of the License Certificate or Proof-of-Entitlement and other documentary requirements enumerated under the Technical Specifications hereof, if any, subject to the usual government audit/accounting/procurement policies, provided the **SUPPLIER** has generated a positive performance assessment to be conducted by **DBP** in accordance with established metrics as stated in Section 9 hereof.

The **Expanded Withholding Tax (EWT)** due to the government shall be withheld by the **DBP** from any payment made to the **SUPPLIER**. The EWT deducted by **DBP** shall be at the rate prescribed by the Bureau of Internal Revenue (BIR), and shall be remitted directly to the BIR. It shall be indicated in the creditable withholding tax return to be filed with the BIR that the tax being withheld is to be credited to the **SUPPLIER**. The **Certificate of Creditable Tax Withheld** at Source shall be submitted by **DBP** to **SUPPLIER** within fifteen (15) calendar days from receipt of payment by the **SUPPLIER**.

#### **5. TERM AND TERMINATION**

- A. TERM.** The Agreement shall be for a period of one (1) year commencing on **01 December 2024** until **30 November 2025**. The Agreement may be terminated earlier when either or both Parties decide to terminate it in accordance with the provisions on *Termination*, hereinafter set forth.
- B. TERMINATION BY EITHER PARTY.** When either of the Parties commits a substantial breach of its obligation and such breach is not corrected within thirty (30) days from the date of receipt of written notice, duly served to the defaulting Party by the other Party, the other Party may terminate this Agreement.
- C. TERMINATION DUE TO DBP'S DEFAULT.** In the event of termination due to **DBP's** default, the **SUPPLIER** shall set a termination date in writing and the following shall apply:
  - 1. The **SUPPLIER** shall retain any payment received under this Agreement; **DBP** shall pay any outstanding invoices as of termination date, provided that the positive performance assessment has been complied in accordance with Section 9.
  - 2. **DBP** shall pay for any agreed deliverables as stated in the Agreement delivered by the **SUPPLIER** but not yet invoiced based on the agreed price.
  - 3. When payments have been made by **DBP**, the **SUPPLIER** shall deliver all materials and other deliverables due as of termination date.
- D. TERMINATION DUE TO SUPPLIER'S DEFAULT.** In the event of termination due to the **SUPPLIER's** default, **DBP** shall set a termination date in writing and the **SUPPLIER** shall refund to **DBP**, within fifteen (15) days from receipt of notice thereof, the applicable Contract Price from termination date to expiry date of the Agreement pro-rated on a per month basis. **DBP's** right to refund is without prejudice to its right to claim damages and act on/claim against the Performance Security set forth in Section 6 hereof.



- E. TERMINATION WITHOUT CAUSE.** Either of the Parties may terminate this Agreement without cause by serving a thirty (30) day written notice to the other party prior to the intended date of termination, or at any time upon the instruction of the Bangko Sentral ng Pilipinas (BSP).

In no case shall the Agreement be terminated due to recovery events, as provided in the BSP Manual of Regulations for Banks (MORB). As **DBP** is a government financial institution, both Parties hereby agree and warrant that both shall ensure compliance with the regulations and requirements of the BSP.

- F. TRANSITION ASSISTANCE.** In the event of termination for any cause, the **SUPPLIER** hereby agrees and guarantees that should **DBP** decide to transfer the Support Subscription to another provider or other arrangements, it shall provide **DBP** the necessary level of assistance during the transition.

In case of merger, consolidation and/or change in name, change in ownership, assignment, attachment of assets, insolvency, or receivership of the **SUPPLIER**, the **SUPPLIER** shall likewise provide **DBP** the necessary level of assistance to ensure a smooth transition. For the avoidance of doubt, the surviving or consolidated corporation shall assume all liabilities and obligations under the terms of this Agreement, provided that the **SUPPLIER** and/or the surviving or consolidated corporation submits proof of such merger or consolidation acceptable to **DBP**.

- G. BUSINESS CONTINUITY PLAN.** The **SUPPLIER** warrants that it has existing Business Continuity Plan which includes continuity service and disaster recovery plans that minimize the probability and impact of interruptions to **DBP** and an exit plan to be implemented upon termination of this Agreement that provides, among others, for transition assistance should the **SUPPLIER** convert to other service providers or other arrangements.

## 6. PERFORMANCE SECURITY

To guarantee the faithful performance of the **SUPPLIER** of its obligations under this Agreement, the **SUPPLIER** shall post, in favor of **DBP**, the required amount of the Performance Security in accordance with the following schedule:

Form of Security	Minimum % of Total Contract Price	Minimum amount
1. Cash, certified check, cashier's check, manager's check, bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank	Five percent (5%)	Pesos: Thirty-One Thousand Five Hundred Eighty-Four (PhP31,584.00)
2. Surety Bond	Thirty percent (30%)	Pesos: One Hundred Eighty-Nine Thousand Five Hundred Four (PhP189,504.00)
3. Any combination of the foregoing	Proportionate to share of form with respect total amount of security.	

The Performance Security shall be effective and in full force and effect for the entire Term of this Agreement. In the event of any extension of the term of this Agreement, the Performance Security shall be renewed accordingly.

Should the **SUPPLIER**, based on any of the conditions stipulated under Section 5 (TERM & TERMINATION), terminate this Agreement, (except if the cause of



termination is default or breach by **DBP**), the Performance Security shall be forfeited in favor of **DBP** without any need of judicial action. Furthermore, any changes in this Agreement shall not require the prior approval of the surety and shall in no way annul, release or limit the liability of the **SUPPLIER**.

The Performance Security shall only be released after the lapse of the Term of this Agreement, provided **DBP** has no claims against the **SUPPLIER** and that all conditions imposed under this Agreement have been fully met.

## **7. WARRANTY**

In accordance with and for the entire duration of the warranty period stated in the Technical Specifications, the **SUPPLIER** warrants the correctness and good quality of the Software and the Support Subscription it shall provide hereunder and that such Software and Support Subscription conform to the instructions and specifications of the manufacturer of the machine/equipment concerned.

## **8. GOOD FAITH**

The Parties shall assist each other with fairness, equity and efficiency in overcoming their difficulties for the satisfactory performance of their obligations under this Agreement.

## **9. RIGHT TO AUDIT AND CORRECTIVE ACTION CLAUSES**

The **SUPPLIER** agrees that it shall give **DBP**, the BSP, and other regulatory agencies the right to audit/examine the/access to the (i) necessary information regarding the Support Subscription in order for **DBP**, BSP, or such other regulatory agencies to fulfill their respective responsibilities; (ii) the operations of the **SUPPLIER** in order to review the same in relation to the Subscription; and, (iii) necessary financial information of the **SUPPLIER**.

The **SUPPLIER** agrees that **DBP** shall have the right to conduct the **SUPPLIER**'s performance assessment with respect to its Support Subscription based on established metrics, which shall be provided to the **SUPPLIER** upon signing of this Agreement.

The **SUPPLIER** warrants that it shall be required to immediately take the necessary corrective measures to satisfy the findings and recommendations of the BSP examiners and those of the internal and/or external auditors of **DBP**.

The immediately preceding fiscal/calendar year-end was last independent and/or third-party audit/review upon **DBP**.

## **10. LIABILITY CLAUSE**

- A.** In case the **SUPPLIER** is unable to comply with the terms and conditions of this Agreement or fails to satisfactorily deliver the Support Subscription on time inclusive of duly granted time extensions, if any, **DBP** shall, without prejudice to its other remedies under this Agreement and under the applicable law, deduct from the Contract Price, as liquidated damages, the applicable rate of one tenth (1/10) of one (1) percent of the cost of the unperformed portion for every day of delay until actual delivery or performance. Once the amount of liquidated damages reaches ten percent (10%), **DBP** may rescind or terminate this Agreement pursuant to Section 5 hereof, without prejudice to other courses of action and remedies open to it.
- B.** Any and all claims, liabilities, damages, suits, or causes of action of whatever nature or kind, now or hereafter arising from or in connection with this Agreement, including but not limited to those resulting out of or as a consequence of the acts of employees, personnel, or representatives of the **SUPPLIER**, shall be for the account of the **SUPPLIER**. The **SUPPLIER** shall indemnify **DBP**, its directors, officers, employees, successors, and assigns against, and hold them free and



harmless therefrom. The obligations of the **SUPPLIER** under this provision shall survive the termination of this Agreement.

#### **11. INFRINGEMENT INDEMNITY**

The **SUPPLIER**, at its own expense, agrees to (a) defend any claim or suit against **DBP** on the basis of infringement of any copyright, trademark, trade secret or patent ("Intellectual Property Rights") in connection with **DBP's** use of the Software, and (b) pay any final judgment entered against the **DBP** on such issue or any settlement thereof, provided that **DBP** shall:

- (i) Give the **SUPPLIER** primary control of the defense and/or settlement;
- (ii) Notify the **SUPPLIER** promptly in writing of each of such claim or suit and give **SUPPLIER** all information known to the **DBP** relating thereto, and
- (iii) Cooperate with **SUPPLIER** in the settlement and/or defense.

Should **DBP** be found to be faultless, **DBP** will be reimbursed for all reasonable out-of-pocket expenses incurred in providing any cooperation requested by the **SUPPLIER**.

If all or any part of the Software is, or in the opinion of the **SUPPLIER** may become, the subject of any claim or suit for infringement of any Intellectual Property Right, or in the event of any adjudication that the Software or any part does infringe, or if **DBP's** use of the Software or any part is enjoined, the **SUPPLIER**, at its expense, may either: (a) procure for the **DBP** the right to Use the Software or the affected part; (b) replace the Software or affected part; (c) modify the Software or affected part to make it non-infringing; or (d) if none of the foregoing remedies are commercially and reasonably feasible, refund to the **DBP** the license fees received by the **SUPPLIER** for the Software.

The **SUPPLIER** shall have no obligation to the extent a claim is based upon (a) use of any version of the Software other than a current, unaltered version, if infringement would have been avoided by a current, unaltered version; (b) combination, operation or use of the Software with other software and/or hardware not delivered by the **SUPPLIER** or recommended by the **SUPPLIER** in the Documentation, if such infringement could have been avoided by not combining, operating or using the Software with such other software and/or hardware, or (c) any modifications to the Software which were not made by the **SUPPLIER**.

#### **12. CONFIDENTIALITY**

The Parties hereby agree to comply with confidentiality requirements set forth in **Annex "D"** hereof.

In the event of any violation of Republic Act No. 1405 (the "Bank Secrecy Law"), the Parties shall be solidarily liable, thus, any Party may take action against the other Party for breach of confidentiality or any form of disclosure of Confidential Information, and the other Party may be held liable for the applicable penalties as may be provided by prevailing laws, rules and regulations.

#### **13. DATA PROTECTION AND SEGREGATION**

Unless prohibited by applicable law, either Party may disclose the other Party's Information to third parties providing services on its behalf who may collect, use, transfer, store or otherwise process it (collectively "Process") in the various jurisdictions in which they operate either for purposes related to the provisions of the Support Subscription, and/or to comply with regulatory requirements, to check conflicts, for quality, risk management or financial accounting purposes and/or the provision of other administrative support services (collectively "Process Purposes"), provided that the written consent of the other Party has been secured, and provided further that the first Party, its affiliates and third parties to whom the confidential information were disclosed shall strictly adhere to the confidentiality of the information. The receiving Party shall be responsible for maintaining the confidentiality of the disclosing Party's Information.



Whenever applicable in performing its obligations under this Agreement, both Parties shall, at all times, comply with the provisions of Republic Act No. 10173 or "the Data Privacy Act of 2012," its Implementing Rules and Regulations, and all other laws and government issuances which are now or will be promulgated relating to data privacy, segregation and the protection of personal information.

#### 14. OWNERSHIP

- A. **DBP** shall own any usage statistics, reports, scores and results generated from client's authorized use of **SUPPLIER** tools (collectively "Results"). For avoidance of doubt, Results shall not include the design, form or format of reports, or any **SUPPLIER** content or competencies contained within a report. The **SUPPLIER** will have no proprietary interest in any Results, except that the **SUPPLIER** shall have the right to use the Results in anonymized and aggregated form for its statistical norming, research and development. When used for these purposes, these Results will not be personally identifiable, nor will such information be aggregated in such a way as to compromise the anonymity of the participants.
- B. Any intellectual property provided by **DBP** ("DBP Intellectual Property") shall remain the sole property of **DBP**. **DBP** provides such DBP Intellectual Property under a non-exclusive, non-transferable, non-sublicensable license for the **SUPPLIER** to use solely in the provision of Products and Services hereunder and for no other purpose.
- C. The **SUPPLIER** may provide recommendations of third party content to use with the Goods, and **DBP** acknowledges and agrees that **DBP is solely responsible for obtaining from such third party the proper license(s) to use such third party content, including any intellectual property therein, if DBP elects to access any such third party content.**
- D. Except for subsections A, B and C above the **SUPPLIER** shall retain all right, title, and interest in and to all Goods, including Materials (as defined below). The **SUPPLIER** provides **DBP** a non-exclusive, non-transferable, non-sublicensable, worldwide license to use Goods solely for **DBP's** internal business purposes. The Support Subscription that **SUPPLIER** provides require that the **SUPPLIER** protect the anonymity of the participants and maintain the integrity and value of the Goods; and as such, **DBP** will not have access to the line item responses provided at the participant level. **DBP** must purchase a license for Goods for each participant.
- E. "Materials" means all copyright-protected products provided to **DBP** by the **SUPPLIER**. No right to modify, translate, or copy such Materials is given, unless previously provided in writing by the **SUPPLIER**; the **SUPPLIER** will retain copyrights on all modified, copied, and translated Materials. Configured or tailored Materials are not returnable for refund.
- F. As part of the Goods, **SUPPLIER** employees certified as trainers ("SUPPLIER Trainers") or **DBP** employees trained and certified by **SUPPLIER** as trainers ("DBP Trainers") may perform workshops ("SUPPLIER Workshops") for Participants. **DBP** may also have **DBP** employees trained as Master Trainers, and such Master Trainers may certify additional employees as **DBP** Trainers. No other personnel are authorized to perform **SUPPLIER** Workshops, **DBP** Trainers, and **DBP** Master Trainers may only perform **SUPPLIER** Workshops as previously agreed with the **SUPPLIER**. Without written consent of the **SUPPLIER** and entry into a separate agreement with the **SUPPLIER**, no third parties may deliver **SUPPLIER** Workshops within **DBP's** organization, even if third parties have been certified to deliver **SUPPLIER** Workshops within other organization

#### 15. WAIVER





No waiver of any Party with respect to a breach or default of any specific right or remedy and no course of dealing shall be deemed to constitute a continuing waiver of another breach or default or of another right or remedy, unless such waiver be expressed in writing and signed by the Party to be bound.

#### **16. FORCE MAJEURE**

In case of the occurrence of force majeure, such as but not limited to earthquakes, storms, floods, fires, epidemics, pandemics, quarantines, strikes and other concerted labor actions, civil unrests, riots, wars, or any other unforeseen or unavoidable Disaster or event which shall be beyond the control of a Party, the Party affected shall be excused from performing its obligation under this Agreement, other than payment, for a period equivalent to the number of days that they are affected or prevented by the event of force majeure, provided that:

- A.** The force majeure is the proximate cause which delayed or prevented the Party's performance of its obligation under this Agreement;
- B.** The Party concerned took all possible measures to overcome and mitigate the effects of such force majeure; and
- C.** The Party affected shall inform the other Party in writing of the occurrence as well as the abatement of such force majeure, including a detailed description thereof and the measures taken to overcome and mitigate the effects of the same.

Each Party shall hold the other free from any liability, claims, and/or damages of any kind and nature arising from or in connection with the occurrence of any force majeure, as well as for those incidents or events attributable to Third Parties.

#### **17. GOVERNING LAW AND VENUE OF ACTION**

This Agreement shall be governed and construed in accordance with the provisions of Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act" and other applicable laws of the Republic of the Philippines. Venue of all actions arising from this Agreement shall be brought exclusively to the jurisdiction of the appropriate courts of Makati City, Philippines, to the exclusion of all other venues and courts of law.

#### **18. ACKNOWLEDGMENT OF TRANSPARENCY OF TRANSACTION**

The **SUPPLIER** acknowledges that in addition to other prevailing/applicable Philippine laws, rules and regulations, **DBP** has an existing Code of Ethics, which prohibits any gift, fee, commission or benefit in favor of any of **DBP's** officers and/or employees and/or any other persons to be given as a condition to, or as an additional consideration for, the award of the Agreement to the **SUPPLIER**. The **SUPPLIER** further acknowledges that under **DBP's** Code of Ethics and other prevailing rules and regulations, **DBP's** personnel have the duty to report to superior officers any possible violation of the policy. Furthermore, the **SUPPLIER** commits itself to conduct its business professionally and ethically by equally abiding by the provisions of **DBP's** Code of Ethics, particularly the norms of conduct and the rules on conflict of interest, insofar as applicable to the **SUPPLIER's** nature of business and for the duration of its business relationship with the **DBP**.

Furthermore, in compliance with the Section 47 of Republic Act No. 9184 or the "Government Procurement Reform Act" as well as the provisions on Conflict of Interest under **DBP's** Code of Ethics, the **SUPPLIER** warrants that it is not related to any of the directors of **DBP**, members of the Bids and Awards Committee, the Technical Working Group (if any), the head of **DBP's** project management office and project consultants (if any), end-user or implementing unit, by consanguinity or affinity up to the third civil degree.



The **SUPPLIER** is aware that **DBP** is a government-owned corporation and that the receipt by any of **DBP**'s officers and/or employees and/or other persons, as well as the giving by the **SUPPLIER**, unless opportunely disclosed pursuant to the provisions of (Presidential Decree No. 749) of such gift, fee or commission, are crimes punishable under the provisions of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019), Title VII of the Revised Penal Code on Crimes Committed by Public Officers, the Code of Conduct and Ethical Standards for Public Officers and Employees (R.A. No. 6713), the Plunder Law (R.A. No. 7080), as well as under other applicable laws and governing presidential decrees.

The **SUPPLIER** further acknowledges **DBP**'s policy to refer any such violation to the proper government agency for criminal prosecution.

## 19. NOTICES

All notices, demands, requests, or other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made: (a) if made by hand delivery, when delivered; (b) if sent by mail, seven (7) days after being deposited in the mails, postage prepaid; and (c) if sent by facsimile to a facsimile receiver at the proper number of a party hereto as specified below, when receipt is acknowledged, addressed as follows:

For the **SUPPLIER**: (Please see Annex "E")

For the **DBP**:

Name	:	Development Bank of the Philippines
Address	:	DBP Bldg., Sen. Gil Puyat Avenue corner Makati Avenue, Makati City
Attention	:	Mgr. Jackleen G. Ramos
Tel No.	:	(02) 8818-9511

In the event any party changes its address, it shall notify the other party of the change of address in writing within five (5) calendar days from the date the change of address took effect.

## 20. SEVERABILITY AND NON-ASSIGNABILITY

Should any provision of this Agreement be declared or become wholly or partly illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining provisions of this Agreement shall not be affected as a result. The same applies in case the Agreement contains a gap in its provisions. Instead of the provisions which are ineffective or impracticable, or to fill the gap, a suitable provision should apply which, insofar as legally possible, comes closest to the original intention of the Parties. Should individual stipulations exceed the duration of this Agreement, such stipulations will remain valid even after the effectivity thereof.

Neither party may assign, in whole or in part, any right, obligation and/or benefit under this Agreement without the prior written consent of the other.

## 21. NON-COMPETITION CLAUSE

The Software that **DBP** is provided with under this Agreement may not be marketed further by **DBP** either entirely or partially, i.e., that it may not be made into a trade object.

## 22. NO POACHING CLAUSE

**DBP** or any of its affiliates will not engage, either directly or through other service provider and/or agencies, the personnel or consultants engaged or provided by the **SUPPLIER** to the former within twelve (12) months from the day of the termination of this Agreement unless there is a written waiver from the **SUPPLIER**.



## 23. ANNEXES

The following Annexes shall, by this reference, form an integral part of this Agreement:

Annex A	: Definition of Terms
Annex B	: Software
Annex C	: Scope of Support Subscription
Annex D	: Confidentiality
Annex E	: Notice to Supplier
Annex F	: Notice of Award
Annex G	: Technical Specifications
Annex H	: Performance Security
Annex I	: Performance Evaluation of 3rd Party Contracts/Agreements
Annex J	: Data Privacy Consent Form
Annex K	: Supplier's Secretary's Certificate for Board Resolution
Annex L	: DBP's Secretary's Certificate

The Parties shall endeavor to harmonize the provisions of this covering agreement and the Annexes so that each shall be effective. In the event of any inconsistency between the terms of this covering agreement and the Annexes, the terms of the Annexes shall prevail to the extent necessary to resolve such inconsistency. In the event of any conflict between the provisions of this Agreement including the annexes and the Technical Specifications, the terms of the Technical Specifications shall prevail.

## 24. DISASTER RECOVERY

In the event of a Disaster, **DBP** shall have authority to access and use the Software on other computer/s and avail the Support Subscription at its Disaster Recovery Site. If the circumstances warrant, **DBP** shall provide an initial oral notification on the use of the Software at the **DBP** Disaster Recovery Site, but such oral notice must be followed by a written Disaster Notification within twenty-four (24) hours after initial notification, provided that, the twenty four (24) hours written notice period may be extended depending on the circumstances. The use of the Software and availment of Subscription at the Disaster Recovery Site shall also be allowed in case of a Disaster Recovery Testing.

## 25. MATERIALITY OF OUTSOURCING ARRANGEMENT

Pursuant to BSP Circular No. 1137, series of 2022 amending Section 112 of the Manual of Regulations for Banks, the Support Subscription outsourced herein are considered non-material by **DBP** as evidenced by its internal documentation, hence the requirement for prior approval of the BSP is not applicable.

## 26. SUCCESSORS-IN-INTEREST

Use of the Product/Software by **DBP's** affiliates, subsidiaries and/or acquired companies shall be subject to the prior written notice to the **SUPPLIER**. Likewise, in case of mergers, consolidations and/or change in the name of **DBP**, the latter or its successor/s-in-interest can still use the subject Software under the terms of this Agreement provided that there is prior written notice to the **SUPPLIER** of such use and/or transfer of the Product/Software.

## 27. SUB-CONTRACTING

- a. Subcontracting of any portion of the Support Subscription for the implementation of the Software does not relieve the **SUPPLIER** of any liability or obligation under the Agreement. The **SUPPLIER** shall be solely liable and responsible for the acts, defaults, and negligence of its Sub-contractors, agents, servants or workmen as fully as if these were the **SUPPLIER's** own acts, defaults, or negligence.



- b. In the event that any Sub-contractor is found by **DBP** to be incompetent or incapable in discharging assigned duties, **DBP** may request the **SUPPLIER** to provide a replacement, with qualifications and experience acceptable to **DBP**, or to require the **SUPPLIER** to resume the performance of the work itself.
- c. In the event transition to an alternate service provider is necessary in view of unforeseen circumstances, the **SUPPLIER** shall provide the necessary Transition Assistance under Section 5 hereof and in accordance with the requirements under R.A. No. 9184 (the "Government Procurement Reform Act").

**28. MODIFICATION AND AMENDMENT**

No modification/amendment or waiver of any provision of this Agreement shall in any event be effective unless the same be in writing and duly signed by the Parties.

**29. SUBMISSION OF TAX CLEARANCE**

As required under Executive Order (EO) No. 398, the **SUPPLIER** shall submit income and business tax returns duly stamped and received by the Bureau of Internal Revenue before entering into and during the effectivity of this Agreement. The **SUPPLIER**, through its responsible officer/s, shall also certify under oath that it is free and clear of all tax liabilities to the government. The **SUPPLIER** shall pay taxes in full and on time and that failure to do so will entitle **DBP** to suspend or terminate this Agreement.

**30. ENTIRE AGREEMENT**

Both Parties acknowledge that this Agreement and the relevant Annexes constitute the entire agreement between them and shall completely supersede all other prior understandings, previous communications or contracts, oral or written, between the Parties relating to the subject matter hereof.

**31. OGCC REVIEW**

The Parties agree to supplement/amend/restate this Agreement, including all its amendments/supplements, to incorporate the comments/revisions, if any, of the Office of the Government Corporate Counsel, with effect from the date of signing thereof.

**32. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

**IN WITNESS WHEREOF**, the Parties hereto have signed this Agreement on the \_\_\_\_ day of **NOV 29 2024**, in **MAKATI CITY**.

**DEVELOPMENT BANK OF THE PHILIPPINES (DBP)**  
By:

**(SIGNED)**  
Head, IT Operations Group

**NETRUST PHILIPPINES CORPORATION (Supplier)**  
By:

**(SIGNED)**  
**MS. JENNIFER TONGCO**  
President and CEO



Signed in the presence of:

(SIGNED)  
Witness for DBP

(SIGNED)  
MARY GRACE DANIEL  
Witness for the Supplier

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)  
Makati City) SS.

BEFORE ME, a Notary Public for and in the City of Makati, Philippines, this  
\_\_\_\_ day of NOV 29 2024 2024, personally appeared the following:

Name	Government ID Presented	Place and Date Issued
Netrust Philippines Corporation Represented by:  Jennifer Tongco		
Development Bank of the Philippines Represented by:		

known to me and to me known to be the same persons who executed the foregoing document and identified by me through competent evidence of identity, to be the same persons in the foregoing document who exhibited to me the above IDs., that each party acknowledged to me that the execution of this document is the free and voluntary act and deed of the entities represented and that they have the authority to sign in behalf of their respective principals.

The foregoing document is a **Software and Subscription Agreement** which consists of twenty-nine (29) pages, including herein Annexes and the page where this Acknowledgment is written. This acknowledgment forms an integral part of the said document.

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

Doc. No. 33;  
Page No. 8;  
Book No. 7;  
Series of 2024.



(SIGNED)

ATTY. JOHN EMIL F. RECUENCO, CPA  
Appointment No. 18051  
Notary Public for and in the City of Makati until December 31, 2024  
Proscenium at Rockwell, 17th Floor, 1 Proscenium, Estrella, Makati City  
Roll No. 73283; IBP OR No. 325158; 12/08/23; Makati City  
PTR O.R. No. MKT10872401; 01/02/23; Makati City  
MCLE Compliance No. VII-0014839 valid until April 14, 2025