

CO-LOCATION AGREEMENT

KNOW ALL PERSONS BY THESE PRESENTS:

This **MEMORANDUM OF AGREEMENT (MOA)**, entered into and executed by and between:

The **INFORMATION AND COMMUNICATIONS TECHNOLOGY OFFICE**, a government entity placed under the policy, technical, and administrative supervision of the **DEPARTMENT OF SCIENCE AND TECHNOLOGY (DOST)**, duly organized and existing under and by virtue of E.O. 322 as amended by P.D. 1480, E.O. 125, E.O. 269 and finally reorganized and renamed under E.O. No. 47 dated June 23, 2011, with principal office at C.P. Garcia Avenue, U.P. Diliman, Quezon City, and represented in this act by its **Executive Director, LOUIS NAPOLEON C. CASAMBRE**, hereinafter referred to as the "**ICT Office**;"

- and -

_____, a government entity mandated under _____ to _____, with principal office at _____, represented herein by its _____, hereinafter referred to as "**Client**."

W I T N E S S E T H that:

WHEREAS, ICT Office is mandated to ensure the provision of efficient and effective information communication technology infrastructure, and information systems and resources to ensure efficiency, transparency and accountability in governance and accessibility in the delivery of public service to the people;

WHEREAS, ICT Office and the **Advanced Science and Technology Institute (ASTI)** are currently implementing the **Integrated Government Philippines (iGovPhil Project)**, a project which aims to help address the basic needs of the government for transparency, efficiency and effective governance through ICT;

WHEREAS, one of the services offered under the **iGovPhil Project** is co-location of servers, appliances, and other equipment of participating government agencies;

WHEREAS, Client uses, operates, and maintains servers, equipment, and other appliances for its day to day operation for public service;

WHEREAS, the **ICT Office** can provide the co-location services for the **Client**, in keeping with the **ICT Office's** mandate and to reduce government spending and ensure data sovereignty and security;

NOW, THEREFORE, for and in consideration of the foregoing premises and the covenants hereunder, the Parties have mutually agreed to enter into this Agreement under the following terms and conditions:

Article I DUTIES AND RESPONSIBILITIES OF THE ICT OFFICE

1. The ICT Office shall provide the facility where the client's equipment shall be co-located. The facility shall include the following:
 - a) Space, including a room and racks within the data center;
 - b) Electrical power, including an uninterruptible power supply and generators;
 - c) Air conditioning throughout the entire space allocated for the co-located equipment;
 - d) Reasonable security systems and procedures to prevent unauthorized access into the space. In the event that any subscriber other than client co-locates in the premises, ICT Office shall ensure that access to the space provided to Client and to the equipment of Client is permitted only to authorized personnel of the ICT office and the Client;
2. ICT Office shall ensure that the co-located equipment shall be accessible via the internet;
3. ICT Office shall only allow authorized client personnel to access the co-located equipment. Only authorized personnel on the client's list shall be given 24x7 access to the space. If client needs to send a person other than those in the list, a letter of request shall be sent to the ICT Office, signed by the Client's authorized signatory two (2) days prior to the access, except in emergency cases where access to the space by a client personnel is extremely and immediately necessary. Such client personnel may be granted access to the space subject to the submission of other documents which the ICT Office may reasonably request;
4. ICT Office shall inform Client's designated staff of scheduled server and network maintenance to be done on the Data Center at least two (2) working days prior to the schedule. For unscheduled downtimes, ICT Office shall notify Client's designated staff within Fifteen (15) minutes after the downtime has been detected;
5. ICT Office shall, to the best of its ability, facilitate uninterrupted uptime to the Client's server co-located at its Data Center, except only during scheduled downtimes and those due to force majeure;
6. ICT Office shall be responsible for the periodic maintenance and/or repair, operation, administration and other related activities to be done on the equipment under co-location;

7. ICT Office shall provide assistance in the installation, routine maintenance and upgrades of the space and equipment, diagnosis, determination, repair, and restoration of faults or malfunctions in the facility;
8. ICT Office shall issue notices regarding power outages to the Client within thirty (30) minutes from the commencement of the outage;
9. ICT Office shall provide at least two (2) months notice to the client of any proposed relocation of the equipment. The ICT Office may propose relocation at anytime, from time to time. Client, at its sole discretion, may elect not to accept the proposed relocation;
10. ICT Office shall with the representative of Client inspect the equipment of Client if the same is in good order or working condition at the time of delivery to the facilities of ICT Office before acceptance thereof. Results of the inspection showing the condition of the equipment shall be in writing and duly signed by the representatives of the parties before actual acceptance of the equipment for co-location;
11. ICT Office shall hold free from any liabilities and agrees to indemnify the Client, its affiliates, officers, employees, agents and representatives from any and against all kinds of damages, costs, expenses, claims, and liabilities of any kind or nature suffered or resulting from negligence, fault, or breach by the ICT Office or its affiliates, officers, employees, agents and representatives of the ICT Office's duties and responsibilities under this agreement.

Article II DUTIES AND RESPONSIBILITIES OF THE CLIENT

1. Client shall co-locate its equipment in the ICT Office's data center. Client shall provide the ICT Office with a list and descriptions of all the equipment that it is co-locating with the ICT Office. Migration and physical transfer of the hardware shall be done primarily by the Client, with assistance from the ICT Office as may be available at the time of request;
2. Client shall cause a joint inspection of the equipment before actual turn-over to ICT Office;
3. Client shall provide a list of authorized personnel who shall be allowed to enter the space allocated for the Client and access the co-located equipment. The list shall be updated at least every month, and the client is responsible for notifying and sending the updated list to the ICT Office;
4. Client shall abide by all guidelines, house rules, and other related procedures, standards, and procedures pertaining to the

safety, security, and operations of the data center and co-location facilities;

5. Client shall be responsible for insuring its co-located server, including but not limited to, as fire and theft insurance;
6. Client shall hold free from any liabilities and agrees to indemnify the ICT Office, its affiliates, officers, employees, agents and representatives from any and againWhat about st all kinds of damages, costs, expenses, claims, and liabilities of any kind or nature suffered or resulting from negligence, fault, or breach by the Client or its affiliates, officers, employees, agents and representatives of the Client's duties and responsibilities under this agreement.

Article III OWNERSHIP

1. The equipment shall remain the sole property of client at all times. The ICT Office agrees that it shall not take any action intended or reasonably likely to interfere with the Client's ownership, interest, or other property rights in any such equipment; and
2. The co-location facilities shall remain with the ICT Office and the Client agrees that it shall not take any action intended or reasonably likely to interfere with the ICT Office's ownership, interest, or other property rights in any such equipment.

Article IV SECURITY

1. The physical security of the client's equipment shall be maintained by the ICT Office at all times. However, the client shall be responsible for securing its equipment's intangible resources, such as its operating system, database system, and application system. The ICT Office shall not be liable for any security breaches that could happen internally to the system which client has full control of;
2. Client shall comply with the ICT Office's minimum security standards, including but not limited to the following:
 - a) That the operating system and other application software and its related patches and hotfixes that are loaded in its system are kept maintained and up to date;
 - b) That the servers are installed and configured with an anti-virus software to protect against viruses and worms;
 - c) That virus signatures are kept updated;
 - d) Ensure that only the required ports and services are open.

2. Client shall designate a security administrator who shall ensure the proper implementation of the agreed security measures as defined in this agreement.

Article V INTELLECTUAL PROPERTY

1. Neither party shall use the trademarks, brand names, software, logos, and identifiers or service marks of the other party without such party's prior written consent;
2. All software and/or hardware independently developed by either party as a result of this Agreement shall remain the exclusive property of the respective developers;
3. Both parties undertake that effective upon the execution hereof, they shall not cause or attempt to create, assert, register, or use the other party's trade name, trademarks, or service marks, whether now or at any time in the future, whether by itself or as part of any other trademark, trade name, domain name, or other material without the prior written consent of the other party;
4. Both parties hereby acknowledge the other party's ownership of service marks and trademarks used and/or owned by such party, its holding company, or a subsidiary of its holding company and agree that they will not (nor permit anything to be done by their officers and staff) infringe upon or abridge each other's rights in their marks or logos; neither party will directly or indirectly challenge the validity of any of the other party's marks or logos.

Article VI WARRANTIES AND REPRESENTATIONS

1. Client certifies that the equipment does not generate spurious radio frequency signals that can cause undue problems to the ICT Office's equipment within the space;
2. Each party represents and warrants that it possesses all rights and licenses and has all authority necessary to enter into and execute this agreement and perform all of its other obligations hereunder;
3. Each party represents and warrants that it is not a party to any agreement, arrangement or understanding with any third party whose rights would be violated by this agreement or that would interfere with each party's timely performance of its obligations under this Agreement.

Article VII FEES

The co-location of Client's equipment shall be free of charge, and any fees or charges relative thereto that may be collected shall be subject to a separate agreement between the ICT Office and the Client.

Article VIII FUNDING

The costs for the co-location services shall be for the account of e-Gov funds but the cost of the activities and the performance of Parties' respective responsibilities under this Agreement will be borne solely by the party that incurs the cost.

ARTICLE IX EFFECTIVITY AND DURATION

1. This **MOA** shall take immediate effect upon signing of both parties, and shall continue to be in force unless terminated, revised or revoked for cause with written notice to the other party sent 30 days in advance, and in accordance with the provisions hereof;
2. The contracting parties may, at any time, recommend additional terms or conditions to this **MOA**, subject to 30 days written notification to the other party. The recommendations shall be deemed approved and effective once a written agreement is signed by both parties;
3. Said amendments and/or revisions shall have the same effect as the original agreement and shall be considered as an integral part thereof;
4. Each party reserves the right to terminate this Agreement at any stage on the following grounds:
 - (a) Non-accomplishment of responsibilities; and
 - (b) Evidence of Non-commitment;
5. A period of fourteen (14) days shall be allotted to resolve the grounds for termination in a manner most amicable to both parties.

ARTICLE X TERMINATION

1. The ICT Office may terminate this agreement if client rejects the ICT Office's request for relocation as mentioned above and such termination shall be effective within thirty days (30) from the client's rejection;

2. In the case of termination, the client shall be given two (2) months to transfer all servers, appliances, and other equipment out of the ICT Office's data center.

Article XI MISCELLANEOUS PROVISIONS

1. The Parties agree to revise, amend, renew or rescind this **MOA** as may be necessary during the effectivity thereof, in the interest of service and by reason of national security or other reasonable ground, or for any violation of the terms and conditions of this Agreement;
2. No amendments, modifications, expansions, extensions or alterations to this **MOA** shall be valid or binding on either Party unless expressed in writing and mutually accepted by both Parties;
3. The Parties hereto undertake not to assign, transfer, nor convey their respective rights, titles, or interest in this **MOA**, nor any benefits arising therefrom, without first obtaining the written consent of the other Party;
4. This **MOA** shall be binding upon the successors and assigns of each Party;
5. It is mutually understood and agreed upon that the Parties hereto shall be relieved and discharged from the performance of their respective obligations under this **MOA** in the event of and for the period subsequent to the occurrence of the following described actions and events, except as the Parties may otherwise mutually agree:
 - (a) Condemnation of **Client** and/or **ICT Office** premises by any authority having the power of eminent domain and directly affecting the performance of the obligations or exercise of the rights herein stipulated;
 - (b) Invasion of the country by a foreign country or the existence of a state of war in the Philippines to the extent that it directly and adversely affects the discharge of the obligations and exercise of the rights herein provided;
 - (c) Any action taken by a local or national governing body which tends to prevent the continued use of the properties of either Party for the purpose contemplated herein;
 - (d) Fortuitous events;
7. In case of disputes, claims and controversies due to non-compliance with the terms of this Agreement, the Parties agree to submit to voluntary arbitration before resorting to court

action following the pertinent provisions of **Presidential Decree No. 242**;

8. If any provision of this **MOA** is for any reason found to be unenforceable, the remainder of this **MOA** shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have signed this Memorandum of Agreement this ____ day of _____, 2015 at _____ .

Information and Communications Technology Office	(Name)
LOUIS NAPOLEON C. CASAMBRE Executive Director	(NAME OF REPRESENTATIVE) (Position)

Signed in the presence of:

DENIS F. VILLORENTE iGovPhil Project Director	(Name) (Position)
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ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
QUEZON CITY) S.S.

BEFORE ME, a Notary Public for and in Quezon City, on the date and at the place first above written, personally appeared the following:

Name of contracting parties	Government Issued I.D.	Place Issued	Date Issued
LOUIS NAPOLEON C. CASAMBRE	DFA OE0004370	DFA, Manila	September 29, 2011
NAME			

Known to me and to me known to be the same persons who executed the foregoing Memorandum of Agreement consisting of eight (8) pages including this page, on which the acknowledgment is written and they acknowledged to me that the same is their free and voluntary act and deed as well as the free and voluntary act and deed of the organizations, agencies, or instrumentalities herein represented.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date above written.

Doc. No. _____
Page No. _____
Book No. _____
Series of 2015