

CO-LOCATION AGREEMENT

KNOW ALL PERSONS BY THESE PRESENTS:

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

The **DEPARTMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY**, a government entity duly organized and existing under **Republic Act No. 10844**, otherwise known as, the **DICT Republic Act No. 10844 of 2015**, with principal office at DICT Building, C.P. Garcia Avenue, UP Diliman, Quezon City, and represented in this act by its **Undersecretary, DENIS F. VILLORENTE**, hereinafter referred to as the **"DICT"**;

- and -

_____, a government agency mandated under _____, with principal office at _____, represented in this act by its _____, hereinafter referred to as **"Client."**

WITNESSETH that:

WHEREAS, DICT is mandated under Section 5 of RA 10844 to be the primary policy, planning, coordinating, implementing, and administrative entity of the Executive Branch of the government that will plan, develop, and promote the national ICT development agenda, and is given the power and function under Section 6 (f) of the aforementioned law to harmonize and coordinate all national ICT plans and initiatives to ensure knowledge, information and resource-sharing, database-building and agency networking linkages among government agencies, consistent with e-Government objectives in particular and national objectives in general;

WHEREAS, Section 15 of Republic Act No. 10844 of 2015 abolished the Information and Communications Technology Office (ICTO) and transferred ICTO's functions, applicable funds, appropriations, records, equipment, property and personnel to the DICT;

WHEREAS, Client is maintaining a science infrastructure and facility intended for R&D in its fields of interest and areas it supports, and is currently implementing the DOST-funded "Computing and Archiving Research Environment or CoARE" Project, which targets to enable multiple data integration from ASTI-initiated projects and collaborative projects with other agencies that have high requirements for data storage and high-performance computing;

WHEREAS, DICT as the successor of the ICTO, and the **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 operates and maintains a consolidated Storage, High Performance Computing (HPC) and Science Cloud infrastructure in support of the Nationwide Operational Assessment of Hazards (NOAH) Project and other related initiatives on disaster mitigation;

WHEREAS, Client intends to co-locate servers and other equipment for development and/or production purposes of the CoARE Project;

WHEREAS, the **DICT** can provide the co-location services for the **Client,** in keeping with the **DICT'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 DICT

1. The DICT shall provide the facility where the client's equipment shall be co-located. The facility shall include the following:
 - a) Space for racks within the data center;
 - b) Electrical power, including 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, DICT shall ensure that access to the space provided to Client and to the equipment of Client is permitted only to authorized personnel of the DICT and the Client;
2. DICT shall ensure that the co-located equipment shall be accessible via the Internet;
3. DICT 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, and in cases of emergency, a duly accomplished access pass signed by the co-locator's authorized representative shall be submitted, or alternately, an e-mail notification from co-locator's authorized representative shall be forwarded.
4. DICT 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, DICT shall notify Client's designated staff within Fifteen (15) minutes after the downtime has been detected;
5. DICT 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. DICT shall provide assistance in the installation, maintenance and upgrades of the co-located equipment ;
7. DICT shall issue notices regarding power outages to the Client within thirty (30) minutes from the commencement of the outage;

8. DICT shall provide at least two (2) months' notice to the Client of any proposed relocation of the equipment. The DICT may propose relocation at any time, from time to time. Client, at its sole discretion, may elect not to accept the proposed relocation;
9. DICT 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 DICT 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.

Article II DUTIES AND RESPONSIBILITIES OF THE CLIENT

1. Client shall co-locate its equipment in the DICT's data center. Client shall provide the DICT with a list and descriptions of all the equipment that it is co-locating with the DICT. Migration and physical transfer of the hardware shall be done primarily by the Client, with assistance from the DICT as may be available at the time of request;
2. Client shall cause a joint inspection of the equipment before actual turn-over to DICT;
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 DICT;
4. Client shall be responsible for the regular maintenance, operation, administration and other related activities to be done on the equipment under co-location;
5. 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;
6. Client shall be responsible for insuring its co-located server, including but not limited to, fire and theft insurance.

Article III OWNERSHIP

1. The equipment shall remain the sole property of Client. The DICT 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 DICT and the Client agrees that it shall not take any action intended or reasonably likely to interfere with the DICT'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 DICT 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 DICT 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 DICT'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.
3. 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 DICT's equipment within the space;
2. Each party represents and warrants that it possess 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 FUNDING AND FEES

Each party to this Agreement shall bear his own cost in the performance of his responsibility under this Agreement. Any fees or charges relative thereto that may be collected shall be subject to a separate agreement between the DICT and the Client.

ARTICLE IX EFFECTIVITY AND DURATION

1. This Agreement 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 Agreement, 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 DICT may terminate this Agreement if Client rejects the DICT'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 DICT'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 **DICT** 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;
6. 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;
7. If any provision of this Agreement is for any reason found to be unenforceable, the remainder of this Agreement shall continue in full force and effect.

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

Department of Information and Communications Technology	(Agency Name)
DENIS F. VILLORENTE Undersecretary	(NAME OF REPRESENTATIVE) (Position)

Signed in the presence of:

ALONA H. ISIDRO Project Manager for Infrastructure	(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
DENIS F. VILLORENTE			
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 2016.
Series of 2016.