

## MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT is made and entered into this 30<sup>th</sup> day of October 2014 by and between:

The **TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY (TESDA)** a national government agency created and existing under and by virtue of Republic Act No. 7796, with principal address at TESDA Complex, East Service Road, South Luzon Expressway, Taguig City, Metro Manila, Philippines, represented herein by its **Director General, SEC. EMMANUEL JOEL J. VILLANUEVA**, and hereinafter referred to as the "**FIRST PARTY**";

- and -

**ACMI OFFICE SYSTEM PHILIPPINES, INC.**, a private business entity, registered under the laws of the Republic of the Philippines with business address at 268-A N. Domingo St., Barangay Pasadena, San Juan City, herein represented by its President, **MR. RICHARD ANTHONY S. NGUI**, and hereinafter referred to as the "**SECOND PARTY**".

- WITNESSETH -

**WHEREAS**, the **FIRST PARTY** through its Bids and Awards Committee (BAC) issued and posted an Invitation to Apply for Eligibility and to Bid (IAEB) in the Philippine Star and in the Philippine Government Electronic Procurement System (PhilGEPS) on 16 July 2014 in compliance with Section 21 of the Revised Implementing Rules and Regulations of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, for the procurement of starter toolkits for Special Training for Employment Program (STEP);

**WHEREAS**, during the bid opening, only the **SECOND PARTY** was declared eligible due to the failure of B.C. Cuerpo Construction Corporation to comply with the eligibility requirements as prescribed by Sections 23 and 25 of the Revised Implementing Rules and Regulations of Republic Act No. 9184;

**WHEREAS**, the bid of the **SECOND PARTY** amounting to Three Hundred Forty Three Million Five Hundred Eighty Three Thousand Four Hundred Twenty Three and 00/100 Pesos (Php 343,583,423.00) has satisfactorily passed the legal, financial and technical requirements set forth by Republic Act No. 9184 and the bidding documents;

**WHEREAS**, after post-qualification prescribed by Sections 34 and 36 of the Revised Implementing Rules and Regulations of Republic Act No. 9184, the bid offered by the **SECOND PARTY** had been found to be the Single Calculated and Responsive Bid;

**WHEREAS**, pursuant to Section 36 (b) of the Revised Implementing Rules and Regulations of Republic Act No. 9184, the recommendation to award the contract in favor of the **SECOND PARTY** with a Single Calculated and Responsive Bid through BAC Resolution No. 11-2014 on 10 September 2014 had been elevated by the Director General to the TESDA Board for approval;

WHEREAS, the TESDA Board approved the award of contract to ACMI Office System Philippines, Inc. in the amount of Three Hundred Forty Three Million Five Hundred Eighty Three Thousand Four Hundred Twenty Three and 00/100 Pesos (Php 343,583,423.00) through Board Resolution No. 2014-11 dated 13 October 2014.

NOW, THEREFORE, for and in consideration of the foregoing, this Agreement is entered by and between the FIRST PARTY and the SECOND PARTY with the following covenants, to wit:

**GENERAL PROVISIONS:**

1. The **SECOND PARTY** shall supply and deliver the items prescribed in the bidding documents and verified through actual inspection by the Technical Evaluation Group (TEG) within sixty (60) calendar days from receipt by the **SECOND PARTY** of the notice to proceed;
2. The **FIRST PARTY** shall pay the amount of Three Hundred Forty Three Million Five Hundred Eighty Three Thousand Four Hundred Twenty Three and 00/100 Pesos (Php 343,583,423.00) after delivery of all the items prescribed in the bidding documents and acceptance by the **FIRST PARTY**. Since the goods will be delivered to TESDA Regional Offices prescribed in the bidding documents, a team shall be created by the **FIRST PARTY** to look into the delivery of goods by the **SECOND PARTY**. A certificate of acceptance as to the completeness of the delivery and compliance with the requirements prescribed by the **FIRST PARTY** shall be issued by the team and must be duly approved by the Regional Director concerned of TESDA before any payment is made in favor of the **SECOND PARTY**. At any rate, payment shall be made in accordance with the government accounting and auditing rules and regulations;
3. The following documents shall be deemed to form and be read and construed as part of this Agreement:
  - (a) Bidding Documents of the **SECOND PARTY**;
  - (b) BAC Resolution No. 11-2014 dated 10 September 2014;
  - (c) TESDA Board Resolution No. 2014-11 dated 13 October 2014;
  - (d) Notice of Award dated 14 October 2014;
  - (e) Performance Security;
  - (f) Notice to Proceed;
  - (g) Bid Bulletin No. 01 dated 18 July 2014;
  - (h) Bid Bulletin No. 02 dated 30 July 2014; and
  - (i) Bid Bulletin No. 03 dated 11 August 2014.
4. To guarantee the faithful performance by the **SECOND PARTY** of its obligations, a performance security should have been posted prior to the signing of the contract pursuant to Section 39 of the Revised Implementing Rules and Regulations of Republic Act No. 9184. The performance security shall remain valid until the issuance by the **FIRST PARTY** of the Certificate of Acceptance. The performance security should be posted in favor of the **FIRST PARTY** and shall be forfeited in the event it is established that the **SECOND PARTY** is in default in any of its obligations under the contract.
5. The goods subject of the delivery shall be covered by the provisions of Section 62 of the Revised Implementing Rules and Regulations of Republic

Act No. 9184 on warranty. The **SECOND PARTY** hereby warrants that the tools and equipment subject of this Agreement is free from material defects or faulty workmanship under normal use and operation for a period covered by the law. Warranty shall be for one (1) year after acceptance by the procuring entity of the nonexpendable goods. In case of expendable goods, the warranty shall be valid for three (3) months after acceptance by the procuring entity of the expendable goods.

The obligation for the warranty shall be covered by either retention money or a special bank guarantee equivalent to at least ten percent (10%) of the total contract price.

Any goods found to be defective which is not due to the normal wear and tear or improper use of the **FIRST PARTY** during warranty period shall be repaired or replaced for free of the **SECOND PARTY**.


6. Any delay in the delivery of goods shall be governed by Section 68 (Liquidated Damages) of the Revised Implementing Rules and Regulations of Republic Act No. 9184. For the procurement of goods, the amount of the liquidated damages shall be at least equal to one-tenth of the one percent (0.1%) of the cost of the unperformed portion of every day of delay. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of contract, the procuring entity shall rescind the contract, without prejudice to other courses of action and remedies open to it.
7. Cost of applicable taxes, deployment and insurance of goods shall be shouldered by the **SECOND PARTY**.
8. The obligations and rights arising from this Agreement shall not be assigned and transferred by the **SECOND PARTY** to any third party without the written consent of the **FIRST PARTY**.
9. If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with the implementation of this contract, the Parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

Any and all disputes arising from the implementation of this contract shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law" and Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004". Any cost arising from the arbitration shall be charged against the **SECOND PARTY**.

IN WITNESS whereof, the parties hereto have caused this Agreement to be executed in accordance with the laws of the Republic of the Philippines on the day and year indicated above.


TECHNICAL EDUCATION AND SKILLS  
DEVELOPMENT AUTHORITY

ACMI OFFICE SYSTEM  
PHILIPPINES, INC.

  
\_\_\_\_\_  
SEC. EMMANUEL JOEL J. VILLANUEVA  
Director General

  
\_\_\_\_\_  
RICHARD ANTHONY S. NGUI  
President

SIGNED IN THE PRESENCE OF:

  
\_\_\_\_\_  
MARISSA G. LEGASPI  
Executive Director  
TWSP-PMO

  
\_\_\_\_\_  
JULIUS RANDOLPH GAJUDO  
Account Executive

ACKNOWLEDGEMENT

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

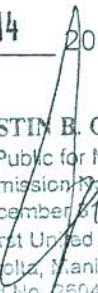
BEFORE ME, a Notary Public for and in the Province /City of  
MANILA this OCT 31 2014 2014 personally came and appeared:

NAME	VALID ID NO.	ISSUED BY
EMMANUEL JOEL J. VILLANUEVA	1998-2454	TESDA
RICHARD ANTHONY S. NGUI		

Known to me and to known to be the same persons who executed the foregoing instrument which they acknowledge before me as their free and voluntary act and deed.

WITNESS MY HAND AND SEAL this OCT 31 2014 2014 at  
\_\_\_\_\_  
MANILA

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Book No. xxx1  
Series of 2014

  
ATTY. AGUSTIN B. CABREDO  
Notary Public for Manila  
Notarial Commission No. 2013-109  
Until December 31, 2014  
Rm. 409, First United Bldg. Co.,  
Escollta, Manila  
Roll No. 25047  
PTR No. 2450249 / 1-2-14 / Manila  
IBP Life Member 05097  
MCLE No. IV 0000822

