

MEMORANDUM OF AGREEMENT
(Provisioning of GovNet to the
DOST-MIMAROPA)

KNOW ALL MEN BY THESE PRESENTS:

This **MEMORANDUM OF AGREEMENT (MOA)** is entered into, and executed by and between the following Parties on _____:

DEPARTMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY, a government entity duly organized and existing under and by virtue of Republic Act No. 10844, with regional office address at **C.P. Garcia Ave., Diliman, Quezon City** and represented herein by its Secretary, **IVAN JOHN E. UY** (hereinafter referred to as the “**DICT**”);

- and -

The **DEPARTMENT OF SCIENCE AND TECHNOLOGY-MIMAROPA**, a government entity created and existing under the laws of the Republic of the Philippines, with principal office address at 4th floor, PTRI bldg., DOST compound, Bicutan, Taguig City, represented herein by its Regional Director, **MA. JOSEFINA P. ABILAY**, (hereinafter referred to as “**DOST-MIMAROPA**”);

(whenever applicable, Parties or Party shall refer to both or either the DICT or AGENCY)

WITNESSETH, That:

WHEREAS, the DICT is a government entity mandated under Republic Act (RA) No. 10844, otherwise known as the “*Department of Information and Communications Technology Act of 2015*”, 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 Information and Communications Technology (ICT) development agenda;¹

WHEREAS, it is the declared policy of the State to ensure the provision of strategic, reliable, cost-effective, and citizen-centric ICT infrastructure, systems, and resources as instruments of good governance and global competitiveness,² to ensure the availability and accessibility of ICT services in areas not adequately served by the private sector, ³and to promote the use of ICT for the enhancement of key public services, such as education, public health and safety, revenue generation, and socio-civic purposes;

WHEREAS, DOST-MIMAROPA is a government entity of the National Government, mandated to provide central direction, leadership, and coordination of scientific and technological efforts, ensure that the results from research, development, and innovation (RDI) activities are geared and utilized for maximum economic and social benefits, and promote public and private sector partnerships in scientific and technological endeavors;

WHEREAS, the DICT is mandated to ensure the provision of efficient and effective information

¹ §5, Republic Act (RA) No. 10844.

² §2(b), RA 10844.

³ §2(e), RA 10844.

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, the E-Government Master Plan (EGMP) is a blueprint for the integration of Information and Communications Technology (ICT) for the whole of government and presents building blocks for E-Government that include an initial list of priority project;

WHEREAS, the Integrated Government Philippine (iGovPhil) was a project of the Department of Science and Technology – Information and Communications Technology Office which aims to enhance government efficiency and effectiveness by setting up relevant mechanisms to implement interactive, interconnected, and interoperable government applications and is one of the most important building blocks for E-Government;

WHEREAS, to effectively implement the tasks laid out in the EGMP, the Government Network (GovNet), previously handled by iGovPhil, was established to interconnect government agencies in the country to provide fast communication, better coordination, easier access to online services, simplified processes, secured and efficient fiber connectivity, and improved provisions of public services to the people.

WHEREAS, GovNet is implemented through the aggregation of common government ICT resources and sharing of common services. Agencies connected to the GovNet through a redundant fiber optic backbone are able to reap the benefits of an effective ICT infrastructure, including more efficient internet services;

WHEREAS, GovNet is geared towards interconnecting all national government agencies, local government units (LGUs), Government Owned and Controlled Corporations (GOCC), public hospitals, public schools, and state universities and colleges in the country through a Fiber Optic Cable (FOC) Network;

WHEREAS, in the implementation of the GovNet, the AGENCY shall act as DICT’s project partners who shall provide support and space in their office buildings for the housing of DICT’s network equipment;

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

ARTICLE I
SCOPE AND COVERAGE

Section 1. Agreement. —This MOA is executed for the purpose of establishing collaboration, cooperation, and the joint development of the GovNet by and between the Parties.

The Agency shall house and secure the network equipment provided by the DICT at its office location situated in

- 1. Bangbangalon, Boac, Marinduque,
- 2. 2F HM Center Bldg., JP Rizal Street, Camimil, Calapan Citu, Oriental Mindoro 5200

, which will be used in the operation of the fiber optic network of the GovNet.

IVAN JOHNE E. UY
DICT REPRESENTATIVE

MA. JOSEFINA P. ABILAY
(DOST-MIMAROPA REPRESENTATIVE)

Moreover, the Parties may agree on additional services, enhancements, new technology, and upgrades in relation to the GovNet. If requested by a Party, such agreement is subject to the mutual consent of all Parties, and shall be made in writing, signed by their respective duly authorized representatives.

ARTICLE II
DUTIES AND RESPONSIBILITIES

Section 2. Responsibilities of the DICT.— For the implementation of the GovNet, the DICT shall provide the following assistance to the AGENCY:

- a. The provision of fiber connection access to the GovNet;
- b. The provision of the FOC and network equipment⁴ which are necessary for establishing connection between the GovNet and the AGENCY’s network;
- c. Deploy personnel for the installation and setup of the FOC and network equipment for connection and access to the GovNet and maintain the fiber optic network including the fiber optic cables that shall connect the AGENCY with the GovNet;
- d. Train the identified personnel of the AGENCY on the proper handling, use, and operation of the network equipment provisioned by the DICT as well as the troubleshooting and maintenance works that the personnel of the AGENCY may perform on the network equipment;
- e. Deploy maintenance support personnel, subject to their availability, upon notice and request by the AGENCY, who will be ready to visit, inspect, troubleshoot and repair the fiber optic network and network equipment installed in case of technical difficulties, emergencies and damages encountered; and
- f. Review, approve, and periodically audit the implementation of the duly approved network design or plan submitted during project implementation.

Section 3. Responsibilities of the AGENCY. — The AGENCY shall:

- a. Provide a secured space with a cooling system and a cable path or tray going outside of the building [provide here the purpose of the secured space]. The Agency shall have a spare Registered Jack 45 (RJ45) copper port which is capable of a transfer speed of one (1) Gbps in their current router;
- b. Ensure the availability of an AC/220V power source which shall be dedicated for the use of the provisioned network equipment as well as the AGENCY’s wireless access point, network switch, and/or other equipment to be used for distribution of the GovNet to their current system;
- c. Allow the authorized DICT personnel or other duly authorized representatives to enter its network room and other parts of its building where the FOC is installed, provided that the AGENCY’s Management Information System (MIS) Personnel or its focal persons are given a prior written notice of the intended entry. In case of emergency or urgent need to work on the network equipment, the Agency shall

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allow the DICT personnel to work on the network equipment in the network room and on the FOC in the AGENCY's building without the AGENCY personnel's supervision, if unavailable;

- d. Allow roof access to be used as a base station, subject to the structural integrity of the roof, in case wireless links are necessary. This entails allowing the DICT personnel to install radio equipment on the AGENCY's existing antenna mast, or to install an antenna mast if necessary, provided, such radio equipment will not cause interference to the AGENCY's existing radio equipment. In case interference occurs, the DICT personnel shall deactivate and remove the radio equipment and address such interference problems before reactivating such equipment;
- e. Exercise extraordinary care over the network equipment provided by the DICT while in its possession. In case of loss or damage to the network equipment the Agency shall be held liable for any damage to the network equipment and shall shoulder the costs for its repair or replacement of the same, if needed.
- f. The AGENCY must reside for at least three (3) years at their current location where the fiber optic network where installed. The DICT will provide fiber optic cables to the Agency within three (3) to five (5) kilometers from splicing point and any equipment/materials and labor cost beyond project implementation scope of work shall be borne by the AGENCY. For the purposes of this MOA, splicing point shall refer to the location where the FOC will be spliced and connected to a number of FOC going to the agencies for termination and distribution of outside plant cables;
- g. In case of transfer of office location and/or expansion of the FOC to the attached AGENCY/office/unit/bureau, all the labor and materials costs shall be borne by the AGENCY. The DICT shall provide technical assistance, limited to site survey, checking of FOC layout design, material specifications, and methodology of installation, to the transfer of the FOC; and
- h. Maintain, provide and possess or occupy its own building necessary for the operational requirements of the FOC and the network equipment

ARTICLE III
TERM, EFFECTIVITY, AND DURATION

Section 4. Term and Effectivity. — This MOA shall take immediate effect upon signing by both Parties, and take effect for five (5) years, unless terminated, revised, or revoked for causes provided under Section 5 (Termination) hereof. Thereafter, it shall be considered automatically renewed from year to year unless terminated by either party for any valid cause upon a thirty (30) day notice to the other in advance of the intended date of termination.

Section 5. Termination. — Each Party reserves the right to terminate this MOA in its entirety, or in part, at any time on the following grounds:

- a. Upon mutual written agreement of the Parties;
- b. When any of the representations, warranties, or covenants of either Party turns out to be false, incomplete or misleading, and the innocent Party does not waive such defect;

- c. Material breach of this MOA such as non-performance of obligation as indicated in this MOA;
- d. In case of national emergency such as, but not limited to, war and epidemic, and during the implementation of a national priority project;
- e. Violation of relevant laws, rules, regulations of Departmental Orders, Circulars, and other official issuances; and
- f. Other causes as defined under Section 6 (Force Majeure) hereof.

The aggrieved Party shall within ten (10) days from the occurrence of the ground for termination, notify the defaulting Party and provide detailed information of the events constituting the ground/s for termination (Notice of Event of Termination). Upon receipt of the Notice of Event of Termination, the defaulting Party shall within thirty (30) calendar days resolve the ground for termination promptly and with due diligence.

Notwithstanding the preceding paragraph, both Parties shall endeavor to resolve the ground for termination in a manner most amicable to both Parties.

If after thirty (30) calendar days, and despite efforts from both Parties to resolve the ground for termination, the ground for termination remains unsettled, the aggrieved Party may terminate this MOA through a written notice to the other Party.

In the event of termination of this MOA, an accounting/inventory shall be conducted jointly by the Parties. **The DICT shall have the right to recover its FOC/s and network equipment installed at the AGENCY's facilities or premises within a reasonable time after the termination of this MOA provided that such removal shall not cause injury or damage to the POP AGENCY's facilities or premises.**

The occurrence of any of the grounds for termination shall not relieve such Party of liability in the event of its concurring negligence, or in the event of its failure to use due diligence to avoid or to remedy the situation

Upon consultation, both Parties shall, decide whether to terminate this Agreement, or to exempt, defer, or suspend the performance of part of obligations of either Party. Such decision shall be in writing and signed by their respective representatives.

Section 6. Force Majeure. —Neither Party shall be responsible for any delay or failure in the performance of any of its obligations under this MOA to the extent that such delay or failure is caused by Force Majeure. "Force Majeure" shall mean any event or circumstance beyond the reasonable control of the Party which renders the performance of said Party's obligations illegal or impracticable, including, but not limited to, (1) acts of God, (2) acts of any government body or public enemy, (3) war, civil commotion, strikes, riots, embargoes, (4) other concerted acts of workers, fire, explosion, sabotage, or (5) any other causes, circumstances, or contingencies, whether of a similar or dissimilar nature to the foregoing, without fault or negligence and beyond such Party's control, which prevent or hinder the performance by either Party of any of its obligations hereunder.

Upon occurrence of any event of Force Majeure, which may affect performance under this MOA, the affected Party shall immediately notify the other Party specifying (a) the nature of the event,

(b) the effect of the event on the Party’s performance, and (c) the estimated duration thereof. Upon such notice, the affected Party may cancel or delay performance of its obligations hereunder. In such event, the affected Party shall have no liability to the other Party.

Upon cessation of the Force Majeure, the Party in delay shall notify the other Party of such cessation, and performance of the obligation should ensue, if cancellation has not been effected.

If as a result of the Force Majeure, the performance of the obligations becomes (1) impossible or (2) when the obligation has become so difficult as to be manifestly beyond the contemplation of the Parties, or (3) if the Force Majeure continues unabated for a period of thirty (30) calendar days or more, either Party may terminate this MOA pursuant to Section 5 (Termination) of this MOA and the rights and obligations of the Parties shall be resolved either by mutual agreement or by applicable law.

ARTICLE IV
GENERAL PROVISIONS

Section 7. Other Cost and Expenses. — Each Party shall shoulder its own costs and expenses for the performance of roles, responsibilities, and obligations under this MOA.

Each party shall be liable for damage to property or injury to persons caused solely by its own negligence or fault or by any defect in or breakage of its equipment or connected apparatus or to any failure of the same to function and solely attributed to its facilities.

Section 8. Ownership. — Nothing in this MOA shall convey any ownership over the GovNet, including the appurtenant IT infrastructure and data platforms, if any, in favor of the AGENCY.

Each Party reserves and maintains ownership of all hardware and software developed, maintained, possessed, and controlled exclusively by each Party, should there be any. No ownership over any hardware or software shall be transmitted to any other Party, unless the Parties have agreed so in a separate written agreement.

The DICT reserves all proprietary, commercial, intellectual, and other rights associated with the GovNet subject to the rights of third-parties

Section 9. Confidentiality. — All information, data, and related documentation, in whatever form provided, recorded, or unrecorded, which the Parties may furnish or have furnished with each other in connection with this MOA shall:

- a. Be used solely for the purpose for which it was furnished;
- b. Be treated in the strictest confidence and protected;
- c. Not be reproduced, except as necessary for its authorized use; and
- d. If in tangible form, shall be returned together with all copies thereof, including promotional materials, when demanded by either Party or if no longer needed.

Each Party agrees to hold in strict confidence any confidential information disclosed to or obtained by it, and shall use such confidential information only in connection with the implementation of this MOA.

For purposes of this MOA, confidential information shall mean any and all information disclosed by a Party hereto, in any manner, that, as a result of, or in connection with this MOA, by its nature, is considered proprietary and or confidential, regardless of whether such information is specifically

labeled or described as such. In case of doubt as to whether the particular information is confidential, both Parties shall treat all information received pursuant to this MOA as confidential information, and shall be subjected to the confidentiality required under this MOA. Confidential information shall, however, not include the following:

- a. Information that is generally available to the public, other than as a result of disclosure in violation of this MOA;
- b. Information that is available to the other Party on non-confidential basis without an express restriction on disclosure;
- c. Information which is required to be disclosed by any court, tribunal or regulatory authority or by any requirement of law, legal process or regulation; or
- d. Information that a Party expressly agrees in writing may be disclosed by the other Party to third Parties.

Both Parties agree to implement and enforce reasonable security measures to protect all confidential information that either Party, including its officers, representatives or employees, may receive pursuant to this MOA.

All Parties hereby agree to keep and maintain custody of all records of all transactions relative to this MOA for a period of one (1) year. Such records shall include copies of all transaction forms, receipts, accounting stubs for checks and other related documents. Each Party agrees to provide copies of any such records request of the other.

This obligation of confidentiality and restricted use shall survive this MOA and will remain in full force and effect without any limitation as to time.

Section 10. Data Privacy.— Each Party shall, in accordance with RA No. 10173 otherwise known as the “Data Privacy Act of 2012”, its Implementing Rules and Regulations (IRR), issuances of the National Privacy Commission, and other relevant data protection and privacy laws, ensure that appropriate organizational, physical, and technical security measures are in place to maintain the confidentiality, integrity, and security of all personal data that may come to its knowledge or possession by reason of any provision of this MOA, and that its employees, agents, representatives, or any person acting under its authority shall hold personal information under strict confidentiality at all times. This clause shall survive the termination or expiration of this MOA.

Section 11. Representation and Warranties. —The Parties have read and understood the terms and conditions herein set forth and hereby represent and warrant that:

- a. Each of them has full legal right, power, and authority to execute and deliver this MOA, to enter into the transactions and incur obligations provided for in this MOA, and to perform and observe the terms and conditions of this MOA;
- b. All consents, authorities, and approvals that may be necessary for the effectivity of this MOA have been secured; and
- c. This MOA shall constitute legal, valid, and binding obligations, enforceable in accordance with its terms.

Section 12. Notices. —Any notice, statements, and requests, required by this MOA or given in connection with it, shall be in writing and shall be given to the appropriate Party by email, registered mail or duly accredited courier service providers. A Party shall give notice to the other as to change of address of either.

ARTICLE V
MISCELLANEOUS PROVISIONS

Section 13. Amendments. —The Parties agree to revise or amend renew 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 MOA.

The Parties may, at any time, recommend additional terms or conditions to this MOA, subject to seven (7) days written notification to the other Party. The recommendations shall be deemed approved and effective once a written agreement is signed by both Parties. Amendments and/or revisions shall have the same effect as the original agreement and shall be considered as an integral part thereof.

The Parties further agree that subsequent agreements covering exchange of use of specific services and/or facilities shall become an addendum to this MOA. 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.

Section 14. Effect of Waiver. —An effective waiver under this MOA to be effective must be in writing and signed by the Party waiving its right. A waiver by either of the Parties of any instance of the other's non-compliance with any obligation or responsibility under this MOA shall not be deemed a waiver and shall not affect its right to enforce any provision of this MOA at a subsequent time. All rights and remedies existing under this MOA are cumulative, and not exclusive of, any rights or remedies otherwise available.

Section 15. Relationship between the Parties. — There shall be no employee-employer relationship or principal-agency between the Parties.

Section 16. Assignment of Rights—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. This MOA shall be binding upon the successors and assigns of each Party.

Section 17. Non-Waiver of Rights. — Any failure on the part of any Party to enforce at any time, or for any period of time, the provisions of this MOA, shall not be deemed or construed to be a waiver of such provisions or of the right of such Party thereafter to enforce each and every provision.

Section 18. Limitations. — The Parties shall hold each other free from any damage and or liability that may arise from or occasioned by the exercise of their rights and obligations under this MOA except when such damage or liability is attributable to the gross negligence or willful misconduct of a Party or any of its officers, representatives or employees. The Parties further hold each other free and harmless from any claim or demand brought by their employees, agents, representatives, sub-contractors, clients, or other third persons arising from or related to non-payment of any obligation contracted by either Party in connection with the services or obligations undertaken pursuant to this MOA.

Section 19. Review. — This Agreement shall be subject to a yearly review by the Parties for the purpose of determining necessary amendments or the continued effectivity hereof.

Section 20. Authority. — Each Party represents and warrants that it has taken all appropriate and necessary corporate actions to authorize the execution and delivery of this Agreement, and to

IVAN JOHNE. UY
DICT REPRESENTATIVE

MA. JOSEFINA P. ABILAY
(DOST-MIMAROPA REPRESENTATIVE)

perform and be bound by the terms and conditions hereof.

Section 21. Further Assistance. —Subject to the terms and conditions herein provided, each of the Parties shall use its best efforts to take such action and execute and deliver such additional documents and instruments as may be reasonably requested or necessary to carry out the intents and purposes of this Agreement.

Section 22. —Execution by Counterparts. — This MOA may be executed by the Parties on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

Section 23. —Dispute Resolution and Venue of Actions. —Any dispute, claim, or controversy arising from this MOA, shall first be settled amicably within thirty (30) days between the Parties. In the event that all efforts to amicably settle the same between the two (2) parties herein shall have been exhausted and have failed, shall be administratively settled or adjudicated in the manner provided in Chapter 14, Book IV, Administrative Code of 1987 (Executive Order No. 292, s. 1987) and in accordance with the provisions of the Presidential Decree (PD) No. 242.

Section 24. —Previous Agreements Modified. —All agreements of the Parties which are inconsistent or contrary to the provisions herein, including the programs, projects, and services covered by this MOA, are deemed modified or superseded accordingly in so far as this MOA is concerned.

Section 25. —Severability. —If any provision contained herein is invalid, illegal, or unenforceable in any respect under any applicable law or decision, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired in any way. The Parties shall, so far as practicable, execute such additional documents in order to give effect to any provision hereof which is determined to be invalid, illegal, or unenforceable.

IN WITNESS WHEREOF, the PARTIES, through their authorized representatives have hereunto signed this instrument this ____ 20 ____ at _____, Philippines.

[Two separate signature pages follow.]

IVAN JOHNE E. UY
(DICT REPRESENTATIVE)

MA. JOSEFINA P. ABILAY
(DOST-MIMAROPA REPRESENTATIVE)

DEPARTMENT OF INFORMATION
AND COMMUNICATIONS TECHNOLOGY

By: IVAN JOHN E. UY
Secretary

SIGNED IN THE PRESENCE OF

EMMY LOU V. DELFIN
Regional Director
Witness

ANTONIO EDWARD E. PADRE
Project Director
Witness

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
PROVINCE/CITY OF _____) S.S.

At the above stated place, on the _____ day of _____ before me personally appeared **IVAN JOHN E. UY** with his government ID _____ valid until _____, known to me to be the same person who executed the foregoing instrument and acknowledged the same to be his free and voluntary act and deed on behalf of the Department of Information and Communications Technology.

Said instrument refers to the Memorandum of Agreement for **Provisioning of GovNet to the DOST-MIMAROPA** consisting of eleven (11) pages, including this page on which this Acknowledgment is written, duly signed by the authorized representatives of the Parties and their witnesses on each and every page hereof.

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

NOTARY PUBLIC

Doc. No. ____;
Page No. ____;
Book No. ____;
Series of ____.

DEPARTMENT OF SCIENCE AND TECHNOLOGY
-MIMAROPA

By: _____
MA. JOSEFINA P. ABILAY
Regional Director

SIGNED IN THE PRESENCE OF

JERRY B. MERCADO
Witness

JEFFREY D. VARELA
Witness

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
PROVINCE/CITY OF _____) S.S.

At the above stated place, on the _____ day of _____ before me personally appeared **Ma. Josefina P. Abilay** with her government ID PO255592B valid until January 14, 2029, known to me to be the same person who executed the foregoing instrument and acknowledged the same to be his free and voluntary act and deed on behalf of DOST-MIMAROPA.

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