

TERMS OF REFERENCE

MANAGED SERVICES FOR ANTI-DDOS SYSTEM JOINT VENTURE WITH DBP DATA CENTER, INC.

I. BACKGROUND

DBP Data Center, Incorporated (DCI) is a Government-Owned and Controlled Corporation (GOCC) duly organized and registered with the Securities and Exchange Commission (SEC) and is a wholly-owned subsidiary of the Development Bank of the Philippines (DBP).

Its primary mandate is to provide information and technology facilities management, systems application development, systems integration, IT solutions, contact center operation, business processes outsourcing, consultancy services and other IT related services to government and non-government institutions.

The JV with the Private Sector would be very advantageous to the Government since the infrastructure set-up, installation of systems, integration and integration shall bear minimum impact on the financial capabilities of the government, thus, realizing profitable source of added income using a fixed financial budget. With this, DCI, as a government entity, together with the JV partner shall have the infrastructure set up in line with and aligned with potential projects envisioned within the scope of the target projects.

II. OBJECTIVES

- 2.1. To have a tool/service that would prevent the sites and critical systems of government agencies and local government units to be attacked by malicious DDOS attacks from all over the world.
- 2.2. To provide a real-time monitoring view of all the attacks to the systems of government agencies and local government units.
- 2.3. To ensure that sites and systems of government agencies and local government units are up and running 24x7.

III. DEFINITION OF TERMS

- a. **Scrubbing Center** – A centralized data cleansing station where traffic is analyzed and malicious traffic such as DDoS, known vulnerabilities and exploits are removed.
- b. **Attack Map** – a live data visualization of actual DDoS attacks of all the sites shielded by the system which allows the viewers to see the frequency and location of attacks.

- c. **DDOS** – Distributed Denial-of-service, DDoS attack uses multiple computers and Internet connections to flood the targeted resource. It usually uses botnets to attack the victim site until it is controlled by the attacker and eventually causing it to shut down.
- d. **Attack Visualization** – a real-time graphical view of the origin of the attacks and the traffic logs of the visitors accessing the site.

IV. DURATION OF CONTRACT

The contract for the Managed Services for ANTI-DDOS System shall be for ten (10) years with a total Joint Venture estimated project cost ranging from One Hundred Million (PhP 100,000.00) to One Hundred Forty Million and 00/100 Pesos (PhP140,000,000).

This contract is renewable under the same terms and conditions, and upon mutual consent of both parties.

V. QUALIFICATION OF JOINT VENTURE PARTNER

- 5.1. The Joint Venture Partner must be operational for at least three (3) years;
- 5.2. The Joint Venture Partner must have at least three (3) years of experience in providing IT managed services in government agencies and private institutions;
- 5.3. The Joint Venture Partner must have the capability in implementing and creating its own ANTI-DDOS Solution.

VI. SCOPE OF SERVICES

- 6.1. The Joint Venture of DCI and Joint Venture Partner (JV) shall set up an anti-DDOS service for clients such as government agencies and Local Government Units. All hardware and software under these enumerated infrastructures to be used for the operations are deemed property of the Joint Venture Partner for the duration of the contract of DCI and Client:
 - 6.1.1. Servers shall serve as the scrubbing center to be used for the Anti-DDOS service.
 - 6.1.2. Reverse proxy server that will redirect the client request to the actual site.
- 6.2. The Joint Venture shall provide marketing support to clients in the form of training and/or orientation to the Joint Venture's ICT products and services, proposal preparation, product presentation, and assistance with client scoping. Any other additional specialized marketing support outside of those enumerated above shall be charged and billed separately to clients.

VII. RESPONSIBILITIES OF JOINT VENTURE PARTNER

The Joint Venture Partner shall provide equity, as its share to the Joint Venture, equivalent to 90% of the estimated project cost which may be in the forms of monetary, services, hardware and/or software to deliver the following IT solutions:

7.1. ANTI-DDOS Service:

- 7.1.1. The Joint Venture Partner shall provide all the necessary computer software, servers, and network equipment needed to operate the required Incident Reporting and Management System including all the necessary equipments such as, but not limited to Servers, Desktop Computers, IP Phones, Printers and other peripherals;
- 7.1.2. The Joint Venture Partner shall provide the scrubbing center.
- 7.1.3. The Joint Venture Partner shall provide an ANTI-DDOS Client Portal.
- 7.1.4. The Joint Venture Partner shall provide a minimum of 4 scrubbing centers distributed worldwide as the initial setup.
- 7.1.5. The Joint Venture Partner shall provide auto-scaling of the scrubbing centers depending on the magnitude and massiveness of the attacks.
- 7.1.6. The Joint Venture Partner shall provide Attack Map for client to monitor real-time traffic of those browsing the client's project and those attacking their project.
- 7.1.7. The Joint Venture Partner shall ensure that connectivity between servers and users shall meet the minimum requirements.
- 7.1.8. Maintain electronic copies of all records and documentations required by this Agreement for a period of not less than 10 years.

VIII. RESPONSIBILITIES OF DCI

- 8.1. DCI shall provide over-all Project Management of the Joint Venture's Managed Services for Anti-DDOS system and monitor clients' compliance with operational procedures, best practices and policies.
- 8.2. DCI together with Joint Venture Partner shall perform Sales and Marketing of the above stated project engagements of the Joint Venture.
- 8.3. DCI shall provide equity, as its share to the Joint Venture, with the value thereof assessed at 10% of the estimated project cost.

8.4. DCI, shall:

- 8.4.1. Perform first (1st) level support to all project clients, providing technical support, help desk, utilities and security for the operation of every project.
- 8.4.2. Perform with the Joint Venture partner marketing services such as but not limited to project selling, negotiations and binding contract/s offering all ICT products and services of the Joint Venture to other government agencies.
- 8.4.3. DCI shall be responsible for billing and the collection process for the Incident Management and Emergency Response System Project. Revenues for the services of the Joint Venture, however, shall be deposited to a special account that shall be opened at DBP under the joint control of the parties.
- 8.4.4. Designate or ensure that DBP is the depository bank for the Joint Venture.

IX. TERMS OF PAYMENT

9.1. Revenue Sharing

9.1.1. The fees shall be categorized as follows:

- 9.1.1.1. Subscription Fees - Subscription packages may be on an Annual, Semi-Annual or Monthly basis.
- 9.1.1.2. Milestone-based payments
- 9.1.1.3. Profits obtained from the Joint Venture transactions made using the above stated projects will be shared according to the following:

JV Partner	70%	<i>the proposal to be submitted may vary but any proposal for sharing on fees collected should have a percentage of not more than 70% for the JV Partner</i>
DCI	30%	<i>the proposal to be submitted may vary but any proposal for sharing on fees collected should have a percentage of not less than 30% for DCI</i>

X. WARRANTIES OF THE JOINT VENTURE PARTNER

- 10.1. The Joint Venture Partner warrants that it shall conform strictly to the terms and conditions of this Terms of Reference.
- 10.2. The Joint Venture Partner warrants, represents and undertakes reliability of these services and that its manpower are hardworking, qualified / reliable and dedicated to do the service required to the satisfaction of DCI. It shall employ well-behaved and honest employees with ID displayed conspicuously while working within the premises of DCI. It shall not employ DCI employees to work in any category whatsoever.
- 10.3. The Joint Venture Partner shall comply with the laws governing employee's compensation, PhilHealth, Social Security and labor standards, and other laws, rules and regulations application to the personnel employed by Joint Venture Partner on account of the contracted services. The Joint Venture Partner shall pay its personnel not less than the minimum wage plus other benefits mandated by law.
- 10.4. The Joint Venture Partner in the performance of its services shall secure, maintain at its own expense all registration, licenses or permit required by National or Local Laws and shall comply with the rules, regulations and directives of Regulatory Authorities and Commission. The Joint Venture Partner undertakes to pay all fees or charges payable to any instrument of government or to any other duly constituted authority relating to the use or operation of the installation.
- 10.5. The Joint Venture Partner personnel shall take all necessary precautions for the safety of all persons and properties near area of work and shall comply with all the standard and established safety regulations, rules and practices.
- 10.6. The Joint Venture Partner shall coordinate with the authorized and/or designated DCI personnel in the performance of their jobs.
- 10.7. The JV Partner shall be liable for loss, damage or injury due directly or indirectly through the fault of negligence of its personnel. It shall assume full responsibility thereof and the DCI shall be specifically released from any and all liabilities arising there from.

XI. CONFIDENTIALITY OF DATA

- 11.1. The JV Partner shall document detailed procedures/techniques in identifying systems security risks and breaches and how such shall be handled.
- 11.2. All project staff of both parties shall be required to sign a Non-Disclosure Agreement (NDA).

- 11.3. The project Managed Services for Anti-DDoS System, its components, parts and all products, product samples and specifications, data, ideas, technology and technical and non-technical materials, all or any of which may be derived from any of the foregoing (all of which, individually and collectively, shall hereinafter be referred to as the "Proprietary Information") are confidential and proprietary to the JV.
- 11.4. The JV agrees to hold the Proprietary Information in strict confidence. Furthermore, agrees not to reproduce, transcribe, or disclose the Proprietary Information to third parties without prior written approval of both parties.
- 11.5. To ensure the confidentiality of all information that will come to the knowledge of the JV and its employees detailed with the implementation of the project, the JV and its employees assigned with the project Managed Services for Anti-DDoS System shall be considered agents of the JV. The contract that will be executed heretofore shall categorically provide that the JV Partner and its employees, as agents of DCI, shall keep on strict confidentiality any information regarding the business.

XII. CONDITIONS OF CONTRACT

- 12.1. The JV Partner is exclusive to DCI for IT projects with government agencies. As such, the JV Partner shall course through DCI any business opportunities to any government agency related to the line of product and services DCI is offering with the same JV Partner. Whereas, this shall not be construed that DCI is exclusive to JV Partner. DCI shall ensure that this term is incorporated or considered in its contract/s with its clients.
- 12.2. In the event that DCI's client terminates the use of the Services without reasonable cause before the end of the Term of its contract or agreement therewith, a pre-termination penalty applies, which shall essentially cover the minimum charges for the unused term of the contract or agreement. DCI shall include a pre-termination clause in any Contract or Service Agreement it signs with its clients.
- 12.3. The JV Partner shall reserve the right to review the contract prepared by DCI with its client. Any contract drafted by DCI with its client or third party should be in conformity with the JV Agreement between DCI and the JV Partner. Any stipulation contrary to said JV Agreement shall be void, unless mutually agreed upon by both parties.
- 12.4. Joint Venture Partner will be evaluated every six (6) months. Non-performances in terms of project delivery after three (3) years may be a ground for pre-termination.
- 12.5. After the contract, Data ownership will be given to DCI.
- 12.6. This Terms of Reference defines that DCI shall not incur additional payments other than the agreed share in the JV.

12.7. Payment scheme is on a case-to-case basis wherein the subscription fee shall be determined based on what the government client requires in any particular month. It may increase or decrease depending on the actual usage, actual server requirements and actual storage use.

XIII. PRE-TERMINATION OF CONTRACT

13.1. The contract for the project Anti-DDOS Services may be pre-terminated for any violation of the terms of the contract. In case of pre-termination, the JV Partner shall be informed by DCI thirty (30) days prior to such pre-termination.

13.2. The JV shall continue to be in force unless sooner terminated by either party through a written notice of either party at least sixty (60) calendar days prior to intended date of termination.

13.3. Either party shall have the right to recover all amounts which had already become due from the other party prior to the termination or any other pre-termination penalties as well as all the expenses and cost incurred in recovering such amount.

13.4. All Agreements, specifically its Terms and Conditions related to any Project or Activated Service created shall continue to be in force with DCI's clients even after the Termination of this Agreement, until such time that the terms and conditions set forth in the said Agreements with DCI's clients have been fully served. In which case, JV Partner shall continue all its support and maintenance series related to the use of systems and solutions covered by this Agreement.

XIV. PERFORMANCE SECURITY

As a condition for the awarding of Contract, Private Entity shall deliver a Performance Security in order to guarantee the performance of its obligations. The Performance Security shall be in the following forms and amounts at the option of Private Entity:

- a. Cash, manager's check, irrevocable letter of credit, bank draft – a minimum of two percent (2%) of Private Entity's contribution to the Joint Venture as valued in the TOR; or
- b. Bank Guarantee – a minimum of five (5%) of Private Entity's contribution to the Joint Venture as valued in the TOR; or
- c. Surety Bond – a minimum of ten (10%) of Private Entity's contribution to the Joint Venture as valued in the TOR.

The Performance Security shall be renewed annually if in the form of Surety Bond no later than thirty (30) days before the expiration date of such Performance Security.

Within twelve (12) months after the end of the term of the Contract, or its extension, unless there is any accrued liability under the Performance Bond, DCI shall undertake with due expedition such action as Private Entity may reasonably request, to assist Private Entity in procuring the release of the Performance Bond.

**** Nothing Follows ****