

## MEMORANDUM OF AGREEMENT

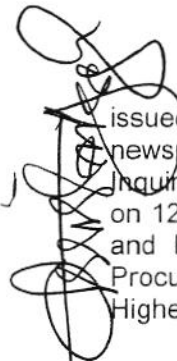
This MEMORANDUM OF AGREEMENT is made and entered into this 27th day of December 2017 by and between:

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/Secretary, GUILING "GENE" A. MAMONDIONG**, and hereinafter referred to as the "**FIRST PARTY**";

- and -

**GAYLAN TECHNOLOGIES, EQUIPMENTS, MACHINERIES & SUPPLIES**, a private business entity, registered under the laws of the Republic of the Philippines with business address at 15 VCGT Complex, Meralco Street, A. Rodriguez Avenue, Manggahan, Pasig City, herein represented by its OIC-Marketing Director, **MR. CHRISTIAN C. GAYLAN**, 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 two (2) newspapers of general circulation namely the Philippine Star and the Philippine Daily Inquirer and in the Philippine Government Electronic Procurement System (PhilGEPS) on 12 October 2017 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 Training Tools and Equipment for the Higher Level DAC Qualification of the 23 CenTEs;

**WHEREAS**, during the bid opening, the **SECOND PARTY** was one of the eleven (11) bidders which were declared to be eligible to bid since it was able 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** for Lot 7 (CNC Lathe and Milling Machine Operation NC III) amounting to Twenty-Five Million Nine Hundred Forty-Seven Thousand Pesos (Php25,947,000.00) 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 Section 34 of the Revised Implementing Rules and Regulations of Republic Act No. 9184, the bid offered by the **SECOND PARTY** on Lot 7 (CNC Lathe and Milling Machine Operation NC III) had been found to be the lowest calculated responsive bid;

**WHEREAS**, pursuant to Section 34 of the Revised Implementing Rules and Regulations of Republic Act No. 9184, the recommendation to award the contract in favor of the **SECOND PARTY** pertaining to Lot 7 (CNC Lathe and Milling Machine Operation NC III) through BAC Resolution No. 62-2017 issued on 06 December 2017 had been elevated by the Director General to the TESDA Board for approval;



  
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**WHEREAS**, the TESDA Board approved the award of contract to Gaylan Technologies, Equipments, Machineries & Supplies in the total amount of **Twenty-Five Million Nine Hundred Forty-Seven Thousand Pesos (Php25,947,000.00)** through Board Resolution No. 2017-45 dated 18 December 2017 for Lot 7 (CNC Lathe and Milling Machine Operation NC III);

**NOW, THEREFORE**, for and in consideration of the foregoing, this Agreement is entered into 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 all the items in a lot as identified above and prescribed in the bidding documents and verified by the Technical Evaluation Group (TEG) within ninety (90) calendar days from receipt by the **SECOND PARTY** of the Notice to Proceed;
2. The **FIRST PARTY** shall pay by lot/qualification as the competitive bidding was done by lot/qualification. However, payment shall only be made after delivery of all the items prescribed in the bidding documents per lot/qualification and acceptance by the **FIRST PARTY** of such goods are completed. Since the goods will be delivered to the Centers for Technical Excellence (CentExs) as 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;

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. 62-2017 dated 06 December 2017;
- (c) TESDA Board Resolution No. 2017-45 dated 18 December 2017;
- (d) Notice of Award;
- (e) Performance Security;
- (f) Notice to Proceed; and
- (g) Bid Bulletin No. 01 dated 24 October 2017;

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 goods subject of this Agreement are 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 non-expendable 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 one percent (1%) 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 the warranty period shall be repaired or replaced immediately for free by 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 one percent (0.001) 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 may rescind or terminate the contract, without prejudice to other courses of action and remedies available under the circumstances.
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. The **SECOND PARTY** shall comply with the provisions of the law on working conditions and labor standards.

10. 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**.



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