

**CONTRACT
FOR THE SUPPLY OF EQUIPMENT AND SERVICES FOR THE
NATIONAL BROADBAND NETWORK PROJECT**

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

THROUGH THE

DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS

AND

ZTE CORPORATION

April 21, 2007

TABLE OF CONTENT

ARTICLE 1:	DEFINITION.....	4
ARTICLE 2:	INTERPRETATION.....	6
ARTICLE 3:	SCOPE OF CONTRACT.....	7
ARTICLE 4:	TECHNICAL SPECIFICATIONS.....	7
ARTICLE 5:	BILL OF QUANTITIES (BOQ).....	8
ARTICLE 6:	MANAGED SERVICES.....	8
ARTICLE 7:	PRICE OF THE CONTRACT.....	9
ARTICLE 8:	TERMS OF PAYMENT.....	9
ARTICLE 9:	TAXES.....	13
ARTICLE 10:	DELIVERY.....	14
ARTICLE 11:	LIQUIDATED DAMAGES.....	14
ARTICLE 12:	PACKING.....	14
ARTICLE 13:	INSURANCE.....	15
ARTICLE 14:	CUSTOMS CLEARANCE AND INLAND TRANSPORTATION.....	15
ARTICLE 15:	QUALITY/QUANTITY DISCREPANCY.....	16
ARTICLE 16:	SCOPE OF WORK.....	16
ARTICLE 17:	TARGET DATE OF COMPLETION.....	18
ARTICLE 18:	IMPLEMENTATION SCHEDULE.....	17
ARTICLE 19:	MEETING.....	17
ARTICLE 20:	THE CONTRACTOR'S PERSONNEL.....	17
ARTICLE 21:	PROVISION OF FACILITIES AND SERVICES BY THE PURCHASER.....	18
ARTICLE 22:	ACCESS TO SITE.....	18
ARTICLE 23:	INSTALLATION AND COMMISSIONING.....	18
ARTICLE 24:	EXCUSED DELAY.....	18
ARTICLE 25:	CHANGES.....	19
ARTICLE 26:	PROVISIONAL ACCEPTANCE AND FINAL ACCEPTANCE.....	20
ARTICLE 27:	TRAINING.....	22
ARTICLE 28:	WARRANTY.....	23
ARTICLE 29:	POST WARRANTY SERVICE.....	24
ARTICLE 30:	SUBCONTRACTORS.....	24
ARTICLE 31:	FORCE MAJEURE.....	25
ARTICLE 32:	TERMINATION.....	26
ARTICLE 33:	GOVERNING LAW AND RESOLUTION OF DISPUTES.....	27
ARTICLE 34:	INTELLECTUAL PROPERTY RIGHTS.....	28
ARTICLE 35:	INDEMNIFICATIONS.....	28
ARTICLE 36:	LIMITATIONS OF LIABILITY.....	29
ARTICLE 37:	EXPORT CONTROLS.....	29
ARTICLE 38:	RETENTION OF TITLE.....	30
ARTICLE 39:	CONFIDENTIALITY.....	30
ARTICLE 40:	REPRESENTATIONS AND WARRANTIES.....	31
ARTICLE 41:	GENERAL PROVISIONS.....	33
	ACKNOWLEDGEMENT.....	39

This Contract is made and entered into on this day of April, 2007,

BETWEEN

The Government of the Republic of the Philippines through the Department of Transportation and Communications (DOTC), with address at The Columbia Tower, Ortigas Avenue, Mandaluyong City, represented herein by its Secretary, HON. LEANDRO R. MENDOZA (hereinafter referred to as "Purchaser").

AND

ZTE CORPORATION, a company incorporated under the laws of the People's Republic of China having its registered office at ZTE Plaza, Keji Road South, Hi-Tech Industrial Park, Nanshan District, Shenzhen, P. R. China, represented herein by its Vice President, YU YONG (hereinafter referred to as "Contractor").

WHEREAS:

- A. the Government of the Republic of the Philippines desires the Contractor to design, supply, construct, install, test, commission, and provide technical support for the National Broadband Network Project in the Republic of the Philippines.
- B. the Contractor is financially capable and possesses the necessary technical knowledge, skill, and experience to perform such design, supply, construction, installation, testing, commissioning and technical support of the Network and desires to provide such design, supply, construction, installation, testing, commissioning and technical support to Purchaser in accordance with the terms and conditions contained herein;
- C. the Government of the Republic of the Philippines and ZTE International Investment Limited executed a Memorandum of Understanding dated July 12th, 2006 in respect of the Nationwide Government Broadband Communication Infrastructure Project; and
- D. an Executive Agreement was entered into between the Republic of the Philippines and the People's Republic of China where the latter agreed to finance the National Broadband Network Project through a Loan Agreement with Export-Import Bank of China subject to the condition that the Equipment and Services to be procured from the proceeds of the loan come from ZTE Corporation.

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, and other valuable consideration, the Parties agree as follows:

13

ARTICLE 1: DEFINITION

In construing terms and conditions under the said Contract, the following words shall have the meanings therein assigned to them unless there is something in the subject matter or context inconsistent with such construction:

1.1 "Affiliates" means, in respect of a Party, any person or entity which directly or indirectly Controls, is Controlled by or is under common Control with that Party; "Control" or "Controlled" means in relation to a company, that a company will be treated as "controlled" by another if that other company appoints, or is able to appoint, or removes, whether directly or indirectly and whether by ownership of share capital, possession of voting power, contract or otherwise, the majority of the members of the governing body of that company or otherwise controls or has the power to control the affairs and policies of that company;

1.2 "Business Day" means:

1.2.1 in respect of any action to be taken in the P. R. China, any day on which the companies in the P. R. China are generally open for business in the P. R. China; and

1.2.2 in respect of any action to be taken in the Republic of the Philippines, any day on which the companies in the Republic of the Philippines are generally open for business in the Republic of the Philippines;

1.3 "Change Order" means a Change Order entered into pursuant to Article 25;

1.4 "Contract" means this Contract concluded between the Purchaser and the Contractor and any attachments thereto, and a reference to this Contract includes any variation or replacement of any part of it;

1.5 "Contractor's Personnel" means the employees of the Contractor or its sub-contractors employed in connection with performance of this Contract;

1.6 "Contract Price" means the total sum payable to the Contractor by the Purchaser for the Equipment and Services under this Contract;

1.7 "Effective Date" means the date on which this Contract shall enter into force as set out in Article 41.11;

1.8 "Engineering Services" means the installation and the like of the Equipment undertaken by the Contractor as set out in Attachment C (Scope of Work);

1.9 "Equipment" means the physical items and their corresponding Software to be provided by the Contractor to the Purchaser under the Contract as required for the satisfactory implementation of the Network under the Contract or as specifically provided for in the Contract;

1.10 "Final Acceptance" means the acceptance by the Purchaser after completion of the delivery of

31

Equipment and Services specified in the Contract including completion of warranty services;

- 1.11 "Final Acceptance Certificate" means final acceptance certificate to be issued by the Purchaser upon satisfactory completion of the project in accordance with the Contract;
- 1.12 "Implementation Schedule" means the implementation schedule set out in Attachment D;
- 1.13 "Loan Agreement" has the meaning set out in the preamble of this Contract;
- 1.14 "Managed Services" means all operation, maintenance, and repair services necessary or advisable to safely, dependably, and efficiently operate, maintain, and repair the Network on a commercial basis as set out in Attachment H (Scope of Work for Managed Services);
- 1.15 "Managed Services Fees" means the price set out in the Priced Bill of Quantities in respect of the Managed Services for the Network;
- 1.16 "Network" means the totality of the Equipment, Software and Services for the operation of the national government network in the Republic of the Philippines contemplated under this Contract to be supplied to the Purchaser;
- 1.17 "Notice to Proceed" has the meaning set out in Article 41.11.2 of this Contract;
- 1.18 "Party" means either the Purchaser or the Contractor, or collectively, "Parties";
- 1.19 "Priced Bill of Quantities", "Bill of Quantities" or "BOQ" means the priced bill of quantities specified in Attachment A to the Contract;
- 1.20 "Provisional Acceptance" in respect of any Equipment, means the acceptance by the Purchaser of such Equipment after satisfactory installation and commissioning thereof, as referred to and in accordance with Article 26;
- 1.21 "Provisional Acceptance Certificate" means the provisional acceptance certificate to be issued by the Purchaser to the Contractor upon satisfactory installation and commissioning of the Equipment in accordance with Attachment E (Testing Items of Provisional Acceptance Test);
- 1.22 "Provisional Acceptance Test" means the provisional acceptance testing to be carried out for the Equipment at the end of installation of said Equipment in accordance with the provisions of the Contract;
- 1.23 "Scope of Work" or "SOW" means the scope of works set out in Attachment C as amended from time to time pursuant to the written agreement between the Parties;
- 1.24 "Services" means services ancillary to the supply of equipment such as transportation and insurance and any other incidental services such as design, supply, installation, testing, training, commissioning into service, technical support, Warranty Period maintenance, repair and replacement and other services as provided in the Contract;

- 1.25 "Site" means any land or other place on, under, in or through which the Equipment is to be delivered or the Works are to be performed by the Contractor. Site shall be classified as new Site or existing site; new Site shall be acquired through the Project; existing Site shall mean existing stations operated by the Purchaser;
- 1.26 "Software" means the software bundled with, embedded, or supplied with the Equipment which is described in the Specifications, or any improvements thereof and/or enhancements thereto;
- 1.27 "Technical Specification" or "Specification(s)" means the technical specifications and performance standards of the Equipment as set forth in Attachment B;
- 1.28 "Testing Items" means testing items of Provisional Acceptance Test specified in Attachment E, the requirements in which the Provisional Acceptance Test shall satisfy and which shall be conformed and signed by Parties to become one part of this Contract;
- 1.29 "Training" means the training to be provided by the Contractor to the Purchaser's staff, as set forth in this Contract;
- 1.30 "Training Plan" means the training proposal and schedule agreed by both Parties and as detailed in Attachment F;
- 1.31 "Warranty Period" means twelve (12) months commencing from the date the relevant Provisional Acceptance Certificate has been issued or shall be deemed to have been issued, or a period commencing from the date the relevant Provisional Acceptance Certificate has been issued or shall be deemed to have been issued and ending at the target date for the completion of the supply and installation of the Equipment and completion of the network as set out in Article 17 herein, not to exceed thirty six (36) months after the issuance of the first Provisional Acceptance Certificate, whichever is longer.
- 1.32 "Work" means all necessary work required to be performed by the Contractor to satisfy its obligations under this Contract, including design work, installation, services, and any other work required under this Contract.

ARTICLE 2: INTERPRETATION

In the interpretation of this Contract, unless the context otherwise requires:

1. References to the plural include the singular and references to the singular include the plural.
2. References to Articles and Attachments are, unless otherwise stated, references to the articles of and attachments to this Contract.
3. The words "hereof," "herein," "hereunder," and words of similar import when used in this Contract shall refer to this Contract as a whole and not to any particular provision of this Contract.

7

2.4 Reference to any statute or statutory provision is a reference to that statute or provision as amended, modified, consolidated or re-enacted.

2.5 The table of contents and the headings of the several Articles and Attachments of this Contract are intended for convenience only and shall not in any way affect the meaning or construction of any provision therein.

2.6 References to the words "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to", whether or not they are followed by such phrases or words of similar import.

2.7 References to a number of days, months, and years shall refer to calendar days, months, and years respectively.

ARTICLE 3: SCOPE OF CONTRACT

3.1 The Contractor's obligations are:

- a) to design, supply, construct, install, test, commission, and deliver the Network in accordance with this Contract and provide Services as further elaborated in Attachment C (Scope of Work); and
- b) to ensure that the Network is capable of providing services in accordance with the terms and conditions of this Contract.

3.2 The Purchaser's obligations in connection this Contract are:

- a) payment in accordance with Article 8;
- b) such other obligations as are assumed by the Purchaser in this Contract.

3.3 No obligations shall be implied on either of the Parties.

ARTICLE 4: TECHNICAL SPECIFICATIONS

Equipment supplied under the Contract shall conform to the standards in Attachment B (Technical Specification), and when no applicable standard is mentioned, to the authoritative standard appropriate to the Equipment's country of origin, such standards being the latest issued by the concerned institution. In this regard, the Contractor shall endeavor to update all necessary systems if necessary to make the Equipment operational prior to Provisional Acceptance without additional cost except any cost specified in a Change Order.

ARTICLE 6: BILL OF QUANTITIES (BOQ)

The Priced Bill of Quantities specified in Attachment A and signed by both Parties shall be deemed to form and be read and construed as part of this Contract and shall be of the same effect as this Contract. The Priced Bill of Quantities shall be revised in accordance with the actual requirement of the project to be determined and approved by the Purchaser and the Contractor during the detailed engineering stage. The Contractor shall supply and deliver the quantity of equipment and provide Services as specified in the BOQ determined and approved by the Purchaser and the Contractor during the detailed engineering unless a Change Order has been approved by the Parties.

ARTICLE 6: MANAGED SERVICES

- 6.1 The Contractor shall provide the Managed Services to the Purchaser in respect of the Network for a period of one year and a half ("Term of the Managed Services") commencing from the issuance of the Provisional Acceptance Certificate, provided that the Contractor has received the advance payment as set out in Article 8.4.1 herein.
- 6.2 The Contractor shall supply the Managed Services to the Purchaser so as to ensure that the provision of the Managed Services meets the Service Levels and KPI as set out in Attachment I;
- 6.3 Contractor's Obligations in respect of Managed Services
- 6.3.1 The Contractor shall keep a record of all the Purchaser's calls together with the launched escalation procedures and all relevant information on the appropriate actions taken under this Contract.
- 6.3.2 The Contractor warrants that the Managed Services will be carried out in accordance with Attachment H: Scope of Work for Managed Services and Attachment J (Responsibility Matrix for Managed Services), provided that the Contractor shall be allowed to use all tools and documentation available on Site.
- 6.3.3 Problem severity will be decided upon mutual agreement between the Purchaser and the Contractor in accordance with the definitions and examples specified in this Contract.
- 6.3.4 The Contractor commits to keep the highest level of protection on the Purchaser's data.
- 6.4 In order for the Contractor to be able to supply the Managed Services according to the provisions of this Contract, the Purchaser shall fulfill the following obligations in addition to those set out in Attachment J (Responsibility Matrix for Managed Services).
- 6.4 Following the issuance of the Provisional Acceptance Certificate,
- 6.4.1 the Purchaser shall be responsible for spare part management and asset management;

6.5.2 The maintenance of certain Equipment will be transferred to the Purchaser from the Contractor after first half year of the Term of the Managed Services; and the Contractor will not be responsible for the Service Level Agreement result in relation to the Equipment and Services that are not provided and transferred to the Contractor pursuant to Attachment K (Part Services Maintenance and Some Products Maintenance Transfer).

ARTICLE 7: PRICE OF THE CONTRACT

The total Contract Price is US\$ 329,481,290 (say, United States Dollars Three Hundred Twenty Nine Million, Four Hundred Eighty One Thousand, Two Hundred Ninety only), which consists of:

7.1 price of the Equipment as set out in Attachment A (Priced Bill of Quantities), which is US\$194,051,628 (say, United States Dollars One Hundred Ninety Four Million, Fifty One Thousand, Six Hundred Twenty Eight only) on the basis of CIP Manila for all deliveries of the Equipment (INCOTERMS 2000);

7.2 price of the Engineering Services, which is US\$119,605,650 (say, United States Dollars One Hundred Eighteen Million, Six Hundred Five Thousand, Six Hundred Fifty only) for all deliveries of the Engineering Services;

7.3 price of the Managed Services, which is US\$14,875,507 (say, United States Dollars Fourteen Million, Eight Hundred Seventy Five Thousand, Five Hundred Seven only) for all deliveries of the Managed Services; and

7.4 price of the Training, which is US\$ 1,948,505 (say, United States Dollars One Million, Nine Hundred Forty Eight Thousand, Five Hundred Five only) as set out in Attachment A.

7.5 All prices mentioned above are net prices, exclusive of all taxes.

ARTICLE 8: TERMS OF PAYMENT

The Purchaser shall pay the Contractor the Contract Price on the following terms:

8.1 General Terms of Payment

8.1.1 Currency of Payment

All payment to be made by the Purchaser to the Contractor under this Contract shall be in United States Dollars.

8.1.2 The Contractor's Bank Account

All payments to be made by the Purchaser to the Contractor under this Contract shall be paid by telegraphic transfer (T/T) to accounts designated by the Contractor, as follows:

Beneficiary: ZTE CORPORATION

Beneficiary's Bank: THE EXPORT-IMPORT BANK OF CHINA SHENZHEN BRANCH

Account Number: 221030002082 (USD)

1.2 Payment for the Equipment

Payment for the Equipment shall be made pursuant to the following terms:

1.2.1 Advance Payment

1.2.1.1 Unless otherwise specified in the Loan Agreement, fifteen percent (15%) of the contract price of all the Equipment as set forth in Article 7.1, shall be paid as advance payment by the Purchaser within ten (10) Business Days after the following conditions have been met:

1.2.1.1.1 The Loan Agreement between the Export-Import Bank of China and the Department of Finance of the Government of the Republic of the Philippines has come into effect; and

1.2.1.1.2 Receipt by the Purchaser of commercial invoice of the Contractor in one (1) original and four (4) copies covering this advance payment to the Purchaser; and

1.2.1.1.3 Issuance of the Notice to Proceed by DOTC.

1.2.2 Delivery Payment

1.2.2.1 Fifty percent (50%) of the value of relevant shipment shall be paid by the Purchaser within ten (10) Business Days after the Purchaser has completely received the following documents provided by the Contractor:

1.2.2.1.1 In the case of the Equipment imported into the Republic of the Philippines:

1.2.2.1.1.1 One (1) original and four (4) copies of Bill of Lading or Airway Bill;

1.2.2.1.1.2 Commercial invoice covering the delivery payment in one (1) original and four (4) copies;

1.2.2.1.1.3 One (1) original and four (4) copies of Certificate of Quality/Quantity issued by the Contractor;

1.2.2.1.1.4 Packing list in five (5) copies issued by the Contractor; and

1.2.2.1.1.5 One (1) copy of insurance certificate specifying the risk type as all risk covering one hundred and ten percent (110%) of the invoice amount.

1.2.2.1.1.6 Factory test certificate to be issued by the Contractor witnessed by or, if not witnessed, duly notified to the Purchaser.

1.2.2.1.2 In the case of the Equipment purchased in the Republic of the Philippines:

21

12.2.1.2.1 Commercial invoice covering fifty percent (50%) of value of relevant shipment in one (1) original and four (4) copies; and

12.2.1.2.2 Certificate of Delivery issued by the Purchaser one (1) original and four (4) copies.

12.3 Payment on Provisional Acceptance

For each Provisional Acceptance Certificate, thirty five percent (35%) of the price of the Equipment which has been issued Provisional Acceptance shall be paid by the Purchaser within ten (10) Business Days after the Purchaser has completely received the following documents from the Contractor:

12.3.1 One (1) copy of the Provisional Acceptance Certificate; and

12.3.2 Commercial invoice covering this provisional acceptance payment in one (1) original and four (4) copies.

13 Payment for the Engineering Services

Payment for the Engineering Services shall be made pursuant to the following terms:

13.1 Advance Payment

Unless otherwise specified in the Loan Agreement, fifteen percent (15%) of the price of the Engineering Services, shall be paid by the Purchaser as advance payment within ten (10) Business Days after all the following conditions have been met:

13.1.1 The Loan Agreement between the Export-Import Bank of China and the Department of Finance of the Government of the Republic of the Philippines has come into effect; and

13.1.2 Receipt by the Purchaser of commercial invoice of the Contractor in one (1) original and four (4) copies covering this advance payment to the Purchaser.

13.2 Payment upon Completion of Site Survey and Engineering Design

13.2.1 Fifteen percent (15%) of the price of the Engineering Services shall be paid by the Purchaser within ten (10) Business Days after the site survey and engineering design covering the upgrading portion set out in Attachment D have been completed by the Contractor and approved by the purchaser. If the Purchaser fails to respond within ten (10) Business Days after submission of the site survey and engineering design report, such report shall be deemed approved.

13.2.2 Fifteen percent (15%) of the price of the Engineering Services shall be paid by the Purchaser within ten (10) Business Days after the site survey and engineering design covering the extension portion set out in Attachment D have been completed by the Contractor and approved

by the purchaser. If the Purchaser fails to respond within ten (10) Business Days after submission of the site survey and engineering design report, such report shall be deemed approved.

9.3.3 Payment upon Provisional Acceptance

For each Provisional Acceptance Certificate, fifty five percent (55%) of the price of the Engineering Services which have achieved Provisional Acceptance shall be paid by the Purchaser within ten (10) Business Days after the Purchaser has received all of the following documents from the Contractor:

9.3.3.1 One (1) copy of the Provisional Acceptance Certificate; and

9.3.3.2 Commercial Invoice covering this provisional acceptance payment in One (1) original and four (4) copies.

9.4 Payment for the Managed Services

9.4.1 Advance Payment

Unless otherwise specified in the Loan Agreement, fifteen percent (15%) of the price of the Managed Services shall be paid as advance payment by the Purchaser to the Contractor within ten (10) days of Effective Date of this Contract.

9.4.2 Balance of Payment

9.4.2.1 The balance of the payment, i.e. eighty five percent (85%) of the price of the Managed Services shall be paid in eighteen (18) equal and consecutive monthly installments each of which equals to one eighteenth (1/18) of eighty five percent (85%) of the price of the Managed Services.

9.4.2.2 All the eighteen (18) installments shall be paid respectively within one week from the first date of each month during the Term of the Managed Services as set out in Article 6.1.

9.5 Payment for Training

Unless otherwise specified in the Loan Agreement, fifteen percent (15%) of the price of Training as set forth in Article 7.4 shall be paid by the Purchaser as advance payment to the Contractor and eighty five percent (85%) balance of the payment for each training course upon completion of such relevant training course within ten (10) Business Days after the following conditions have been met:

9.5.1 The Loan Agreement between the Export-Import Bank of China and the Department of Finance of the Government of the Republic of the Philippines has come into effect; and

9.5.2 Receipt by the Purchaser of commercial invoice of the Contractor in one (1) original and four (4) covering this advance payment to the Purchaser.

8.6

Warranty Bond & Performance Security

The Contractor shall provide, within fifteen (15) Business Days after the issuance of relevant Provisional Acceptance Certificate, a warranty bond in the form of a bank guarantee or stand-by letter of credit ("Warranty Bond"). The Warranty Bond shall be at an amount equivalent to ten percent (10%) of the price of the relevant Equipment, Services and/or Works which have achieved Provisional Acceptance. The Warranty Bond shall be valid for a period twelve (12) months commencing from the date of issuance of such Warranty Bond. The Purchaser shall return the Warranty Bond to the Contractor within fourteen (14) days after the expiry of such Warranty Period provided that any defect found during the relevant Warranty Period has been rectified by the Contractor.

The Contractor shall likewise, within thirty (30) Business Days from the effectivity of this Contract, post a Performance Security in the form of a Bank Guarantee equivalent to five percent (5%) of the total contract price, callable on demand, to guarantee the faithful performance of its obligations to supply, deliver, install, commission, and complete the network in accordance with the agreed timeliness/schedule and the terms and conditions of the contract.

The Performance Security shall be released in proportion to the price of Equipment and Services which have achieved Provisional Acceptance and was issued with corresponding Warranty Bond. The Performance Security to be furnished by the contractor shall cover the project implementation duration until the last Provisional Acceptance. The Purchaser may likewise require the Contractor to extend the validity of its performance security/ies to cover approved time extensions.

8.7

Bank Charges

Bank charges and costs shall be for the Purchaser's account.

8.8

Approval of the Terms of Payment

Notwithstanding the forgoing, the terms of payment set out in this Article 8 shall be subject to the provisions of the Loan Agreement. The Purchaser and the Contractor agree to make relevant any changes or amendments to such terms of payment as required by the Loan Agreement.

ARTICLE 9: TAXES

9.1

The Purchaser's Liability

All taxes, import or customs duties and other taxes and duties, including without limitation VAT and income tax, in connection with or in respect of the performance of this Contract levied by the relevant authority in the Republic of the Philippines, shall be borne and paid by the Purchaser.

9.2

The Contractor's Liability

All the taxes in connection with, and in the performance of the Contract to be levied on the Contractor by the relevant tax authority outside the Republic of the Philippines, in accordance with the applicable tax laws then in effect, shall be paid by the Contractor and the Contractor shall not demand reimbursement from the purchaser for payments made.

ARTICLE 10: DELIVERY

- 10.1 All the Equipments furnished under this Contract are to be delivered by the Contractor to the destination(s)/site(s) under CIP Manila (INCOTERMS 2000).
- 10.2 Partial shipments and transshipments shall be allowed.
- 10.3 The risk of accidental loss and/or damage to the Equipment shall transfer according to the trade term as specified in Article 10.1.

ARTICLE 11: LIQUIDATED DAMAGES

11.1 Liquidated Damages

Except for delay in the delivery due to Force Majeure and/or due to fault attributable to the Purchaser, any delay in delivery of the Equipment shall entitle the Purchaser to claim liquidated damages in an amount equal to one tenth (1/10) of one percent of the price of those Equipment involved in delay for each day of delay, up to a maximum of five per cent (5%) of the price of the Equipments delayed. In no case shall the total sum of liquidated damages exceed fifteen percent (15%) of the total contract price. In which event the Purchaser may, upon fifteen (15) days prior written notice, terminate the contract and impose appropriate sanctions over and above the liquidated damages to be paid.

11.2 Payment of Liquidated Damages

The amount of liquidated damages accruing under this Article 11 shall be deducted from money due or which may become due to the Contractor, or collect the same from any securities or warranties posted by the Contractor whichever is convenient to the Purchaser. The said deductions shall only be made upon prior notice to the Contractor and will be effective within ten(10) days from receipt of such notice.

ARTICLE 12: PACKING

- 12.1 All of the Equipment to be delivered by the Contractor shall be packed in a manner suitable to protect it against repeated handlings and numerous loadings and unloadings. Protective measures consistent with the characteristics and requirements of the various items of the Equipment shall be taken to prevent the Equipment from damage by moisture, rain, shock and

corrosion.

- 12.2 The Contractor shall mark the following on the sides of each package of the goods in conspicuous printed English words:
- (a) Consignee
 - (b) Place of Destination; and
 - (c) Package number.

ARTICLE 13: INSURANCE

- 13.1 The Contractor shall obtain marine insurance policy in an amount equal to 110% of the invoice value of the Equipment from port of shipment up to port of destination according to the trade terms specified in Article 7.
- 13.2 The Contractor shall take out and/or maintain Employer's Liability Insurance until issuance of the Provisional Acceptance Certificate.
- 13.3 If the Contractor fails to take out and/or maintain any such insurance policies, the Purchaser may do so and recover the premiums paid from the Contractor as a debt.

ARTICLE 14: CUSTOMS CLEARANCE AND INLAND TRANSPORTATION

- 14.1 The Purchaser shall be responsible for carrying out customs clearance within one (1) week after each arrival of the Equipment under CIP Manila (INCOTERMS 2000). The Contractor shall provide the Purchaser with any necessary documentation for the customs clearance.
- 14.2 The Purchaser shall pay any duties, taxes, fees, or deposits, including any surcharge, interest, and penalty thereon, that the authority of the Republic of the Philippines may claim for the Equipment shipped to Philippines.
- 14.3 The Contractor shall provide sufficient shipping documentation to the Purchaser necessary for exemptions from customs duties, import taxes and VAT of all Equipment imported into the Republic of the Philippines. All shipments of Equipment shall be consigned to and be in the name of the Purchaser.
- 14.4 The Contractor shall be responsible for inland transportation and warehousing in the Republic of the Philippines up to the Sites. The charges incurred thereof shall be borne by the Contractor. The Purchaser shall provide all assistance reasonably required by the Contractor to enable the Contractor to perform its obligations under this Article 14.4.

ARTICLE 16: QUALITY/QUANTITY DISCREPANCY

- 15.1 The Purchaser shall file with the Contractor:
- 15.1.1 claims regarding quality discrepancies, within thirty (30) days after arrival of the Equipment at the port of destination; and
 - 15.1.2 claims regarding quantity discrepancies, within fifteen (15) days after arrival of the Equipment at the port of destination.
- 15.2 Any claim filed by the Purchaser with the Contractor shall be supported by an inspection certificate issued by an inspection organization designated by the Parties.

ARTICLE 18: SCOPE OF WORK

- 18.1 The Contractor shall be responsible for the supply, installation, testing, training of purchaser's personnel and commissioning of the Equipment with the cooperation of the Purchaser. The Purchaser shall provide the necessary conditions and facilities for the performance of the Work. The Scope of Work of the Parties is specified in Attachment C.
- 18.2 The Contractor shall prepare and complete the detailed Engineering Services, the plans, specifications and designs and submit the same for approval of the Purchaser.
- 18.3 As specified in the attachment in this Contract, the Contractor shall:
- (a) Prepare and complete the detailed engineering studies, plans, specifications, and designs for the project and submit the same for approval by the Purchaser;
 - (b) Supply the required equipment, parts, and materials;
 - (c) Install the Equipment and execute any required construction work in accordance with the approved plans, specifications, and designs;
 - (d) Implement agreed technical services; and
 - (e) Provide the required maintenance assistance for the duration agreed upon by the parties hereto.

ARTICLE 17: TARGET DATE OF COMPLETION

The Contractor shall supply all the Equipment and complete installation, testing and commissioning thereof within thirty six (36) months from the Effective Date of the Contract, except as otherwise provided in the Contract. The target date for the completion of the supply and installation of the Equipment shall be deemed to have been met when the following conditions have all been complied with:

- (a) all the Equipment and its component parts therein have been constructed and functioning;
- (b) such Equipment is demonstrated to the Purchaser or its representatives as functioning; and
- (c) the Purchaser has issued an Provisional Acceptance Certificate in accordance with Article 26.

ARTICLE 18: IMPLEMENTATION SCHEDULE

- 18.1 The Parties shall comply with the Implementation Schedule as set out in Attachment D, which prescribes the time schedule of each milestones of the Work, including but not limited to the expected date of beginning and completion of installation and testing on the Sites, and the expected dates of readiness for Provisional Acceptance Test.
- 18.2 During the implementation of the Work, the Contractor shall prepare and deliver to the Purchaser a detailed monthly status report, in the form reasonably specified by the Purchaser, on the current status of the project as compared to the Implementation Schedule.
- 18.3 The Purchaser shall appoint a project manager with whom the Contractor's project manager shall maintain the closest possible cooperation at all time. The project managers of the Parties shall have sufficient delegated authority to participate productively at meetings and to take operational decisions independently and without delay, and shall be fully conversant with the Scope of Work.

ARTICLE 19: MEETING

- 19.1 At the beginning of the Work, a meeting shall be held to coordinate the works of the various entities involved in the Work. Representatives of the Contractor and the Purchaser shall have sufficient delegated authority to participate in this meeting and shall be fully conversant with all background of the Work.
- 19.2 A technical review shall be held during this meeting to examine the finalized design proposed by the Contractor after the site survey conducted by it.

ARTICLE 20: THE CONTRACTOR'S PERSONNEL

- 20.1 The Contractor shall ensure that the Contractor's Personnel have appropriate skill, expertise, experience and competence to perform the Work.
- 20.2 If the Purchaser notifies the Contractor that any employee of the Contractor or any sub-contractor engaged by the Contractor in the Work is, in the Purchaser's reasonable opinion and after mutual agreement, is incompetent or unsuitable in a manner which is disruptive of the Work, the Contractor shall terminate the said employee if the Contractor and Purchaser consider that such termination is necessary to protect the interest of the Government. Contractor shall

bear all expenses necessary for such termination and shall provide replacement of equal capability.

- 20.3 The Contractor shall, whenever possible, utilize Filipino Personnel in the execution of the project. Nothing contained in this Contract shall be construed as creating an agency or employment relationship between the Purchaser and the Contractor's personnel or employees.

ARTICLE 21: PROVISION OF FACILITIES AND SERVICES BY THE PURCHASER

- 21.1 The Purchaser, upon request of the Contractor, shall assist in obtaining from the relevant authorities in the Republic of the Philippines any and all permits in respect of performance of the Contractor's obligations hereunder, including, without limitation, entry work and/or access permits, authorizations, licenses, and visas for personnel employed or temporarily engaged by the Contractor, which may be necessary to perform the Contractor's obligations hereunder.

- 21.2 The Purchaser shall ensure the accuracy and timely provision of any data reasonably requested by the Contractor for the purpose of performing its obligations under this Contract. The Purchaser shall assist the Contractor in its efforts to obtain all necessary drawings, maps, plans and information in respect of the Purchaser's existing network and Sites.

ARTICLE 22: ACCESS TO SITE

The Purchaser shall provide, at all reasonable times, access to the Contractor to each Site, premises, storage, deposit areas, facilities and offices, sources of materials, and to any other places or areas used in connection with the Work or Services.

ARTICLE 23: INSTALLATION AND COMMISSIONING

- 23.1 The Contractor shall be responsible for performing all the installation and commissioning of the Equipment in accordance with the terms and conditions of this Contract. The Contractor shall provide all materials, labor, and tools required for such installation and commissioning.

- 23.2 The Contractor shall be responsible for all installation means, methods, techniques, sequences, procedures, work coordination, supervision, and directions, all of which shall be performed in accordance with the standards set forth in this Contract and according to good engineering and safety practice.

ARTICLE 24: EXCUSED DELAY

- 24.1 Any delay resulting from any of the following factors shall be deemed excused:

any work required by the Purchaser other than those expressly assumed by the Contractor in

this Contract;

- (b) suspension of Work without any default or negligence on the part of the Contractor;
- (c) any default on the part of the Purchaser;
- (d) any Force Majeure Event;
- (e) any default of any other contractor of the Purchaser working on the Site.

24.2 Without limiting the generality of the foregoing, the failure or delay on the part of the Purchaser to fulfill any of its obligations as set out in Articles 21 and 22 herein, which cause delay in the performance of the obligations of the Contractor shall be deemed to be an excused delay under Article 24.1(c) hereof.

24.3 In the event of an excused delay, the Contractor shall be allowed without penalty such extension of time for completion as may be deemed appropriate for the fulfillment of the Work.

24.4 Each Party shall bear, at its own cost, any loss or expenses that it incurred as a result of any delay or postponement due to a force majeure event.

ARTICLE 25: CHANGES

25.1 Requests for Change Order

25.1.1 The Purchaser may, from time to time and at any time, request changes in the Work ("Purchaser Requested Change"). Changes requested by the Purchaser may include (but need not be limited to) adding, deleting, or modifying relevant portions of this Contract, the Work, the Equipment, the Implementation Plan, or the method of performing the Work. Any Purchaser Requested Change shall be in writing and shall be sufficiently definite and detailed to give the Contractor an adequate basis on which to prepare a preliminary Change Order pursuant to Article 25.2.

25.1.2 The Contractor may from time to time and at any time suggest a change in the Work ("Contractor Requested Change") to the Purchaser. Any such suggestion shall include the reason for the request and such associated information and data as may reasonably be required to support the suggested change. The Purchaser shall within seven (7) business days of receipt of such Contractor Requested Change: (a) request Contractor to prepare a preliminary Change Order in accordance with Article 25.2, or (b) deny the Contractor Requested Change. Under no circumstances shall Contractor proceed to commence work under any change order unless the

same has been approved by the Purchaser. But the Contractor Requested Change shall be considered accepted by the Purchaser if the Purchaser fails to make appropriate action within the said seven (7) business day period.

25.2 Preliminary Change Orders

Upon receipt of a Purchaser Requested Change, the Contractor shall prepare a preliminary Change Order and furnish it to the Purchaser within fifteen (15) Business Days following receipt of the Purchaser's request unless the Contractor requests additional time and provides a reasonable justification therefore in writing. If the Contractor contends that the Purchaser's request for a change lacks sufficient information, the Contractor shall within ten (10) Business Days after receiving the Purchaser's request inform the Purchaser in writing of the specific information that the Contractor requires. Each preliminary Change Order proposal submitted by the Contractor to Purchaser pursuant to this Article shall be in writing and be accompanied by such information and data as will be reasonably required by the Purchaser to evaluate properly the proposed execution of the work in question and the estimated effect, if any, on the Work, the Project Implementation Plan, the Contractor's standards of performance, the other undertakings by the Contractor, and the Contract Price.

25.3 Minor Changes

The Contractor may also suggest minor changes in the Work that do not affect the Contract Price, any required performance standards, or performance or operational efficiency of the Network. Such changes are effective only upon written approval by the Purchaser that is clearly designated "Approval of Minor Change". The Purchaser shall not unreasonably withhold or delay its approval of such minor changes.

25.4 Change Orders

25.4.1 Notwithstanding anything to the contrary contained in this Contract, before either Party acts on a preliminary Change Order, the Parties shall execute a written Change Order (which may be the preliminary Change Order signed by both Parties) incorporating the changes in question and providing for any change in the Implementation Schedule, any increase or reduction of the Contract Price, any change in the Work, or other provisions of this Contract.

25.4.2 A Party's signature on the Change Order shall indicate such Party's full, final, and unconditional agreement with the matters prescribed in such Change Order.

ARTICLE 26: PROVISIONAL ACCEPTANCE AND FINAL ACCEPTANCE

26.1 The Purchaser will conduct the Provisional Acceptance Test in the presence of the Contractor in accordance with the test procedures and testing items specified in Attachment III, in order to ensure the Equipment meet the Technical Specification, when all the installation of the Equipment have been completed at the Sites.

26.2 Provisional Acceptance Test shall be conducted,

- (a) in the case of integrated data centre (IDC), on an IDC basis (for example, testing an IDC by itself to verify that such IDC work in accordance with the applicable provisions of this Contract);
- (b) in the case of terminal product, on a five-hundred (500) terminal products basis (for example, testing each five-hundred (500) terminal products to verify that such terminal products work together in accordance with the applicable provisions of this Contract, odd terminal product less than five hundred (500) terminal products shall be counted as five hundred (500) terminal products for the purpose of Provisional Acceptance Test); and
- (c) in all other cases, on a Site basis (for example, testing a Site by itself to verify that all Equipment at such Site work together in accordance with the applicable provisions of this Contract).

26.3 Provisional Acceptance Test shall satisfy all the requirements stated in the Testing Items. If the Equipment, components, materials and system performance fail to meet the requirements in the Testing Items, due to the fault of the Contractor, the Contractor shall rectify or replace the defective items so as to conform to the Technical Specification. Such rectification and replacement shall be made as soon as practicable after determination of the cause at the expense of the Contractor. The Purchaser shall assist the Contractor in providing instruments, equipment and consumable items necessary for the test and inspection.

26.4 The Contractor shall give the Purchaser fifteen (15) days prior written notice of the date after which the Contractor shall be ready to execute the Provisional Acceptance Test and shall provide the pre-test result to the Purchaser therewith. Unless otherwise agreed upon between the Parties, the Provisional Acceptance Test shall take place within fifteen (15) days from the said date, and the Purchaser shall notify in writing the Contractor of such day or days. If the Purchaser does not execute the test within the said time, the Contractor shall deem that the Purchaser has accepted the system and shall have the right to request the Purchaser to issue the Provisional Acceptance Certificate within the time specified in Article 26.6 hereof.

26.5 In the event the system completed fails to satisfy the requirement specified in the Testing Items, the Contractor shall correct the failures as soon as possible and the Provisional Acceptance Test shall be repeated. The procedure will be in accordance with Article 26.4 hereof.

26.6 The Purchaser shall issue the Provisional Acceptance Certificate to the Contractor within ten (10) Business Days after completion of the Provisional Acceptance Test, thereafter the Equipment may be put into operation if the Purchaser desires.

26.7 If the Provisional Acceptance Test demonstrates that the Equipment meets the requirements as set out in the Testing Items except for minor non-service affecting deficiencies (i.e. physical defects), then such Equipment shall be deemed to have achieved Acceptance and be ready to be placed into service, and the Purchaser shall issue the Provisional Acceptance Certificate despite of such deficiencies. Notwithstanding the foregoing, the Contractor shall continue to perform its obligation to rectify any and all such non-service affecting deficiencies within twenty (20)

business days from the issuance of the provisional acceptance certificate.

- 26.8 If the Purchaser places any Equipment into service or uses such Equipment for any purpose other than testing, or in case the Purchaser has not issued the Provisional Acceptance Certificate to the Contractor within the aforesaid period without valid reasons, such Equipment shall conclusively be deemed to have achieved Provisional Acceptance.
- 26.9 After the Contractor has performed all the necessary and required conditions, requirements and warranties, the purchaser will initiate the process for final acceptance upon receipt of a formal request and final accomplishment report from the Contractor stating that they have fully and satisfactorily complied with all requirements of the Contract.
- 26.10 The Purchaser shall after completion of the process for final acceptance shall issue the corresponding Final Acceptance Certificate to the Contractor.

ARTICLE 27: TRAINING

- 27.1 The Contractor shall provide training as per Attachment A (BOQ) and Attachment F (Training Plan) to such persons as may be nominated by the Purchaser, in order to facilitate a smooth implementation and taking over of the Equipment. Any amendment of Training Plan shall be decided one (1) month prior to the commencement of training unless otherwise agreed by both Parties.
- 27.2 The Contractor shall design courses for such training and submit the same for the approval of the Purchaser. The Contractor shall provide one set of training documentation for each course one month prior to the commencement of training.
- 27.3 Training shall be held in English language at such times as detailed in the BOQ on Business Days and during working hours.
- 27.4 Prior to the commencement of Training, the Contractor may check, by means of interviews and tests, that the nominees proposed by the Purchaser for such Training meet the required language and technical standards. The Contractor shall have the right to reject any candidate who, in its reasonable opinion, does not meet the above stated standards.
- 27.5 The Purchaser may, at its own expense, delegate a substitute trainee to replace a candidate or trainee repatriated.
- 27.6 The Purchaser on whose premises the courses are held shall place at the instructor's disposal all equipment, tools and classrooms necessary for the performance of Training.
- 27.7 The allocation of costs and expenses relating to Training between the Contractor and the Purchaser shall be as follows:
- 27.7.1 The cost of travel to and from the Purchaser's country and the designated place of training shall

be borne by the Contractor.

- 27.7.2 The cost of boarding, lodging and travel outside the Purchaser's country shall be borne by the Contractor who shall pay a per diem to each trainee to meet such and other costs outside the Purchaser's country.
- 27.7.3 The cost of travel and boarding, lodging of the Purchaser's employees within the Purchaser's country shall be borne by the Purchaser.
- 27.8 At the end of each Training course, the Contractor may issue a training certificate in respect of each trainee having completed the courses, but shall not incur any liability as to the performance of their tasks after having been trained.

ARTICLE 28: WARRANTY

- 28.1 The Contractor warrants that:
- (a) Upon delivery the Equipments to be supplied by the Contractor shall be new and unused;
 - (b) The Equipments and update during implementation provided by the Contractor to the Purchaser hereunder will be free from defects in workmanship and materials and conform to the Specifications under normal use and service; and
 - (c) Spare parts in sufficient number and appropriate quality shall be made available for at least ten (10) years from the expiry of the Warranty Period.
- 28.2 If it appears that any Equipment, or part thereof, contains a defect in materials or workmanship, or otherwise fails to conform to the Specifications, during the Warranty Period, the Contractor shall at its expense correct any such defect by repairing such defective Equipments or part or, at the Contractor's option, by delivering to the Purchaser an equivalent equipment or part replacing such defective Equipments or part in accordance with the equipments as set out in Attachment G (Service Level Agreement) as soon as practicable. Any further right or remedy of the Purchaser against the Contractor and its employees or agents in connection with or based on defects in materials or workmanship are hereby excluded.
- 28.3 The Contractor shall be notified in writing of any defect in the Equipment without delay upon discovery by the Purchaser. The Purchaser shall allow the Contractor a reasonable period to rectify such defect.
- 28.4 The Contractor shall not be liable under this warranty if its testing and examination discloses that the alleged defect in the Equipment does not exist or was caused by:
- (a) use of the Equipment by the Purchaser in a manner inconsistent with the maintenance manual or for a purpose not contemplated by the Contractor and/or by this Contract;

modification of the Equipment by the Purchaser where such modification is not authorized by the Contractor;

- (c) the Purchaser or its end user's misuse, neglect, improper installation or testing;
- (d) accident, fire, lightning or other hazard; or
- (e) any other reason not attributable to the Contractor.

28.5 The warranty is voided by removal or alteration of identification labels on the Equipments.

28.6 Disclaimer of Warranties

To the extent permitted by applicable law, the foregoing warranties are exclusive and are in lieu of all other warranties, express or implied, either in fact or by operation of law, statutory or otherwise, including but not limited to non-infringement, warranties of merchantability or fitness for a particular purpose. Products are not designed or intended to be used for the design, construction, operation, or maintenance of any nuclear facility. Products are not designed or intended to be used for military applications. The contractor disclaims any express or implied warranty or condition of fitness for such uses.

28.7 To the extent permitted by applicable law, the foregoing shall constitute the purchaser's sole and exclusive remedy for all situations involving non-conforming equipment.

ARTICLE 29: POST WARRANTY SERVICE

The Contractor may, upon payment of mutually agreed prices, provide maintenance and technical support to the Purchaser in respect of all the Equipment and Services for at least three (3) years after the expiry of the relevant Warranty Period. The said post warranty services may include repair of faulty boards, PC boards and other components, modifications of the Software, supply of spare parts, and any other maintenance and operation support required by the Purchaser.

ARTICLE 30: SUBCONTRACTORS

30.1 The Contractor may engage or sub-contract to any sub-contractor or agent in respect of the performance of any of its obligations under this Contract subject to the written consent of the Purchaser but the latter shall not unreasonably withhold its consent.

30.2 Where the Contractor engages or sub-contracts to a sub-contractor, the Contractor shall:

- (a) remain liable to the Purchaser for the performance, acts, omissions, default or negligence of each such sub-contractor and their employees, as if they were acts, omissions, default or negligence of the Contractor;

- (b) be solely responsible for ensuring the suitability, and the performance, of all sub-contractors that it has engaged; and
- (c) not be relieved of any of its liabilities or obligations under this Contract by entering into any such arrangement.

ARTICLE 31: FORCE MAJEURE

31.1 A Party shall not be responsible for any loss, damage, delay or failure of performance resulting directly or indirectly from any of the following events to the extent that such events are beyond its reasonable control (a Force Majeure Event):

- (a) explosion, fire, lightning, tempest, natural disaster, earthquake, flood, or other acts of God;
- (b) outbreak of disease, plague or other epidemic, war, warlike conditions, hostilities, riot, civil disturbance, strike, acts of terrorism;
- (c) failure of telecommunications lines, critical shortage on petroleum products, fuel or energy sources or other raw materials that has an adverse and material impact on the affected Party's ability to perform the obligations hereunder;
- (d) acts of any government that have an adverse and material impact on the affected Party's ability to perform the obligations hereunder; or
- (e) any other causes beyond the affected Party's reasonable control and which could not reasonably be planned for or avoided, which renders the performance of the material obligation hereunder by the affected Party impossible;

31.2 If a Party is prevented from performing any of its material obligations under this Contract, (in whole or in part) by reason of a Force Majeure Event (the "Affected Party"), it shall immediately notify the other (the "Unaffected Party") in writing of the circumstances constituting the Force Majeure Event and shall furnish within fifteen (15) days thereafter sufficient proof of the occurrence and duration of such Force Majeure. The Affected Party shall also keep the Unaffected Party regularly informed of the progress in resolving the Force Majeure Event.

31.3 The Affected Party shall take all reasonable steps to minimize the adverse effects of the Force Majeure Event on the performance of its obligations under this Contract.

31.4 Subject to Articles 31.2 and 31.3, neither the Affected Party nor the Unaffected Party shall be treated as being in breach of this Contract (but only to the extent it is prevented from performing any of its obligations due to the Affected Party's failure to perform as a result of the Force Majeure Event), or otherwise liable to the other Party, by reason of any delay in performance, or non-performance of any of its obligations due to a Force Majeure Event.

31.5 If a Force Majeure Event continues for longer than sixty (60) days ("Affected Period"), then the Unaffected Party may at the expiry of such period, provided the Force Majeure Event is still subsisting, give notice in writing to the Affected Party terminating this Contract or cancel that portion of this Contract or SOW which is delayed and adjust the Contract Price accordingly.

ARTICLE 32: TERMINATION

32.1 Termination for Cause

Either Party ("Notifying Party") may terminate this Contract by giving prior written notice to the other Party for a period of fifteen (15) days before the actual date of termination in case the other Party materially breaches this Contract and such breach is not capable of being remedied. In the case where such breach is capable of being remedied, failure of the offending Party to remedy that breach within forty-five (45) days after being notified by the Notifying Party shall entitle the Notifying Party to terminate this Contract subject to a prior five (5) days notice before actual date of termination.

32.2 Termination for Cause by the Purchaser

The Purchaser may terminate this Contract with immediate effect by giving written notice to the Contractor if the Contractor ceases to conduct business, becomes or is declared insolvent or bankrupt, makes an assignment for the benefit of its creditors, or is the subject of any proceeding in bankruptcy or similar proceeding relating to its liquidation, reorganization or insolvency which, if involuntary, is not dismissed within sixty (60) days after being filed.

32.3 Termination for Extended Force Majeure

Either Party ("Notifying Party") may terminate this Contract through written notice to the other Party, if the conditions or consequences of Force Majeure which have a material adverse effect on the other Party's ability to perform continue for a period in excess of sixty (60) days and the Parties have been unable to find an equitable solution.

32.4 Effect of Termination

In the event of termination of the Contract under this Article 32,

- (a) payment and indemnification obligations arising prior to termination will remain in force; and
- (b) neither Party will be liable for damages of any kind as a result of exercising its right to terminate this Contract under this Article and termination will not affect any other right or remedy of either Party arising from any antecedent breach of this Contract.

32.5 Survival of Provisions

The provisions of Articles 32 (Termination), 33 (Governing Law and Arbitration), 35

(Indemnifications), 36 (Limitations of Liability), 39 (Confidentiality), and any other provision of this Contract, which expressly or by implication is intended to come into or remain in force on or after expiry or termination of this Contract, shall continue in full force and effect notwithstanding any such expiry or termination.

ARTICLE 33: GOVERNING LAW AND RESOLUTION OF DISPUTES

- 33.1 The Contract shall be governed by and construed in accordance with the laws of the Republic of the Philippines.
- 33.2 In the event of any dispute, claim or difference of opinion, the parties hereto shall do their best to settle the same amicably by negotiation. In the event settlement by negotiation is not achieved, such dispute shall, at the request of either party hereto, be first arbitrated without recourse to court action in accordance with the UNCITRAL Arbitration Rules as at present in force.
- 33.3 Arbitration shall be initiated by one party by hereto giving forty-five (45) calendar days notice in writing to the other party, of the desired commencement of arbitration proceedings. The place of Arbitration shall be Singapore and the language of the arbitral proceedings shall be English. Thereupon, a panel of three (3) arbitrators shall be appointed, one of whom shall be chosen by the Purchaser, one by the Contractor, and a third by agreement of the two arbitrators, hereafter referred to as the Third Arbitrator. If the two arbitrators cannot agree on a Third Arbitrator, the appointing authority shall be the International Court of Arbitration of the International Chamber of Commerce.
- 33.4 The decision by a majority of the Panel of Arbitrators shall be final and binding upon the parties hereto, who shall be fully liable therefore. Execution of such decisions may be applied for in the proper courts of Metro Manila, Philippines, should resort thereto become necessary, the cost thereof to be borne by the losing party.
- 33.6 The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (also known as "the New York Convention") shall apply to this Article hereof and to any arbitral award or order resulting from any arbitration conducted hereunder and the recognition and enforcement thereof. Judgment upon the award rendered by the arbitrators may be entered in any court of record of competent jurisdiction in Metro Manila, Philippines, or application may be made to such court for judicial acceptance of the award and an order of enforcement, as the law of such jurisdiction may require or allow.
- 33.8 The Parties irrevocably and unconditionally waives, any immunity to which it may at any time be or become entitled, whether characterized as sovereign immunity or otherwise, from any suit, judgment, service of process upon it, execution on judgment or set-off to which it may be entitled in any legal action or proceedings with respect to this Contract or any of the transactions contemplated hereby or hereunder.
- 33.7 Except where the Dispute renders it impossible to do so, the Parties shall continue to perform their obligations under this Contract while the Dispute is being resolved.

ARTICLE 34: INTELLECTUAL PROPERTY RIGHTS

- 34.1 All patents, trade and service marks, design rights, copyrights, know-how, trade secrets and other intellectual and industrial property interests or rights (collectively, "Intellectual Property Rights") in and to the Equipments, any Services and resulting work product, and all associated materials in any form, shall remain the property of the Contractor and its third party suppliers, as appropriate. Nothing contained in this Contract shall be construed as a transfer of such rights.
- 34.2 The Contractor hereby grants the Purchaser a personal, non-exclusive, non-transferable right to use the Software only in connection with the Equipment on the terms set out in this Article 34 (such right being the "Software License").
- 34.3 The Purchaser shall not:
- (a) use the Software (i) for any purpose other than Purchaser's own internal business purposes and (ii) other than as expressly provided by the terms of this Software License;
 - (b) allow anyone other than Purchaser's employees, agents and/or representatives with a "need to know" to have access to the Software;
 - (c) make any copies of the Software except such limited number of object code copies as may be reasonably necessary for execution or archival purposes only;
 - (d) make any changes to the Software, other than those arising from Purchaser's normal use of the Software as explained in the associated documentation; or
 - (e) reverse engineer or in any other manner decompile Software, in order to derive the source code form or for any other reason.

ARTICLE 35: INDEMNIFICATIONS

35.1 Indemnification by the Contractor

The Contractor shall at its own cost fully defend, indemnify, and hold harmless the Purchaser, its officers, agents, employees and Affiliates, from and against any and all liabilities, damages, losses, claims, demands, actions, causes of action, and costs (including reasonable attorneys' fees and expenses) to the extent caused by the negligent or wrongful acts, errors, or omissions of the Contractor or any of its agents, provided that the Purchaser: (i) provides the Contractor prompt written notice of the claim; (ii) provides the Contractor authority, assistance and information to perform its obligations under this Article; (iii) grants the Contractor sole control of the defense and all related settlement negotiations; and (iv) has not compromised or prejudiced the Contractor's position on the claim. The Purchaser shall have the right to retain separate counsel and participate in the defense of the claim at its own expense. Any further right or

remedy of the Purchaser against the Contractor and its employees and agents in connection or based on the liability, damages, losses or claims caused by the negligent or wrongful acts, errors, or omissions of the Contractor or any of its personnel or agents are hereby excluded.

35.2 Indemnification by the Purchaser

The Purchaser shall at its own cost fully defend, indemnify, and hold harmless the Contractor, its officers, agents, employees, sub-contractors and Affiliates, from and against any and all liabilities, damages, losses, claims, demands, actions, causes of action, and costs (including reasonable attorneys' fees and expenses) to the extent caused by the negligent or wrongful acts, errors, or omissions of the Purchaser or any of its agents, provided that the Contractor: (i) provides the Purchaser prompt written notice of the claim; (ii) provides the Purchaser authority, assistance and information to perform its obligations under this Article; (iii) grants the Purchaser sole control of the defense and all related settlement negotiations; and (iv) has not compromised or prejudiced the Purchaser' position on the claim. The Contractor shall have the right to retain separate counsel and participate in the defense of the claim at its own expense.

35.3 Miscellaneous

In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence or fault of the Contractor and the Purchaser, each Party shall bear such claims, losses, damages, or expenses in proportion to its own negligence or fault.

ARTICLE 36: LIMITATIONS OF LIABILITY

36.1 Notwithstanding any other provision of this Contract, the Contractor shall not be liable to the Purchaser for damages for loss of revenues or profits, loss of goodwill, loss of or damage to third party property or any incidental, consequential, indirect, punitive or special damages in connection with the performance or non-performance of this Contract, whether or not the Contractor was advised of the possibility of such damage.

36.2 The aggregate liability of the Contractor for all claims for any loss, damage or indemnity whatsoever resulting from its performance or non-performance of this Contract shall in no case exceed the payment actually received by it under this Contract. These limitations shall apply notwithstanding the failure of the essential purpose of any limited remedy.

ARTICLE 37: EXPORT CONTROLS

37.1 The Purchaser represents and warrants that it shall not use any Equipments and/or technical information relating thereto provided by the Contractor for the purposes or activities to disturb international peace and security, including the design, development, production, stockpile or any use of weapons of mass destruction such as nuclear, chemical or biological weapons or missiles to deliver any such weapons, nor any use supporting these weapons activities.

37.2 The Purchaser also represents and warrants that it shall not sell, dispose of, license, rent, transfer, disclose or otherwise provide the Equipments to any party intending or likely to apply or to have a third party use the Equipments for the purposes or activities set forth above. Furthermore, The Purchaser shall not directly or indirectly, export, re-export or transship the Equipments in violation of any applicable export control laws and regulations promulgated and administered by the governments of the countries claiming jurisdiction over the Parties or the transactions contemplated under this Contract.

ARTICLE 38: RETENTION OF TITLE

38.1 Property in the Equipments

38.1.1 Notwithstanding delivery and the passing of risk in the Equipments, or any other provision of this Contract, the property in and legal title to the Equipments shall not pass to the Purchaser until the Contractor has received the Contract Price in full.

38.1.2 In the event that the Purchaser does not pay the amount due, the agents of the Contractor may, until full payment is effected, take the equipment out of service, repossess and remove such equipment after thirty (30) days from receipt of a formal written notice by the Purchaser.

38.1.3 As long as the legal title to the Equipment remains with the Contractor and the Equipment have not been paid for, any technical intervention in relation to the Equipment shall be undertaken only by an authorized agent of the Contractor.

ARTICLE 39: CONFIDENTIALITY

39.1 As used in this Contract, "Confidential Information" means all non-public information disclosed by or relating to a Party ("Disclosing Party") that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information does not include any information which:

- (a) is publicly available or becomes publicly available through no fault of the Party who receives Confidential Information from the other Party ("Receiving Party");
- (b) is already in the lawful possession of the Receiving Party without confidentiality obligation prior to disclosure to the Receiving Party;
- (c) is legitimately obtained by the Receiving Party without confidentiality obligation from a source other than the other Party; or
- (d) is at any time developed independently by the Receiving Party.

39.2 Without limiting any other provision of this Contract, neither Party shall use Confidential Information received from the other Party, nor reproduce such Confidential Information, in whole

or in part in any form except as may be permitted under this Contract. Each Party shall keep secret and confidential all Confidential Information, and shall not disclose the same (except to its employees, consultants, permitted subcontractors or agents, professional advisers or Affiliates who have a need to know the information (the "Authorized Recipient")), save with the prior written consent of the person whose Confidential Information is being disclosed. Disclosure to any Authorized Recipient shall be subject to the Authorized Recipient agreeing to be bound by obligations equivalent to those set out in this Article. The Receiving Party shall procure that such Authorized Recipient complies with such obligations and shall take such necessary actions to procure the performance of such obligations as the Disclosing Party reasonably requires in respect of any violation of such obligations.

39.3 The obligations of confidentiality in this Article shall not prevent either the Purchaser or the Contractor from disclosing such Confidential Information, where it is required to do so under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction, or by any mandatory requirement of a regulatory authority or by the rules of any recognized stock exchange, provided that the Receiving Party:

- (a) gives the Disclosing Party prior written notice sufficient to allow the Disclosing Party to seek a protective order or other appropriate remedy,
- (b) discloses only such information as is required by the governmental entity, and
- (c) uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed.

39.4 The Receiving Party shall return or destroy all Confidential Information, in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information, promptly following the Disclosing Party's request.

39.5 The Receiving Party acknowledges that unauthorized disclosure or use of Confidential Information in violation of this Contract could cause irreparable harm to the Disclosing Party for which monetary damages may be difficult to ascertain or an inadequate remedy. The Receiving Party therefore agrees that the Disclosing Party will have the right, in addition to its other rights and remedies, to seek injunctive relief for any unauthorized disclosure or use of the Confidential Information.

ARTICLE 40: REPRESENTATIONS AND WARRANTIES

40.1 The Purchaser hereby represents and warrants for the benefit of the Contractor that:

40.1.1 **Authorization** The Purchaser has full power and authority to enter into this Contract, to purchase the Equipment and Services hereunder and to perform and observe its obligations hereunder. The Purchaser has taken and completed all necessary and legal action or procedures necessary to authorize the Purchaser to execute, deliver and perform this Contract. This Contract has been duly signed, executed, and delivered by the authorized signatory and

representative of the Purchaser;

- 40.1.2 **Government Consents and Actions** All authorizations, approvals and consents of the Purchaser's country which are required for (i) the execution, delivery or performance of this Contract or the validity and enforceability hereof, or (ii) the purchase of the Equipment and Services, or (iii) the payment by the Purchaser hereunder, have been duly effected, completed and obtained and are in full force and effect;
- 40.1.3 **Binding Effect** This Contract has been duly executed and delivered by the Purchaser and constitutes legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms and conditions;
- 40.1.4 **No Contravention** The execution, delivery and performance of this Contract by the Purchaser do not and will not contravene, violate or constitute a default under (a) any provisions of any agreements or other instruments to which the Purchaser is a party or by which the Purchaser or any of its assets is or may be bound; or (b) any treaty, law, regulation, judgment or order applicable to the Purchaser;
- 40.1.5 **Commercial Activity** The execution and delivery of this Contract by the Purchaser constitutes the Purchaser's performance of and compliance with its obligations under this Contract and will constitute private and commercial acts done and performed for commercial purposes under the laws of Philippines;
- 40.1.6 **Documents Provided** The Purchaser has disclosed to the Contractor all documents issued by any governmental department of Philippines that may have a material adverse effect on its ability to fully perform its obligations under this Contract, and the documents previously provided by it to the Contractor do not contain any misstatements or omissions of material facts.
- 40.2 The Contractor hereby represents and warrants that:
- 40.2.1 **Status of the Contractor** The Contractor is an independent legal person duly organized, validly existing in good standing under the laws of the place of its establishment or incorporation;
- 40.2.2 **Authorization** The Contractor has full authority to enter into this Contract and to perform its obligations hereunder. This Contract has been duly signed, executed, and delivered by the authorized signatory of the Contractor;
- 40.2.3 **Binding Effect** This Contract has been duly executed and delivered by the Contractor and constitutes legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms and conditions;
- 40.2.4 **No Contravention** The Contractor's execution of this Contract and its performance of its obligations hereunder: (i) will not violate any provision of its business license, articles of incorporation, articles of association or similar organizational documents; and (ii) will not violate or result in a default under any contract to which it is a party or to which it is subject; and

40.2.5 **No Litigation** There are no actions, suits, or proceedings pending, or to Contractor's best knowledge, threatened, against or affecting Contractor before any court or administrative body or arbitral tribunal that could reasonably be expected to materially adversely affect the ability of the Contractor to meet and carry out its obligations under this Contract.

40.3 If any of the above representations and warranties of a Party are not accurate in all material respects, then such Party shall be in material breach of this Contract.

ARTICLE 41: GENERAL PROVISIONS

41.1 Independent Contractor Relationship

The Parties are only establishing an independent contractor relationship with each other by entering into this Contract. Nothing in this Contract shall be construed or implied as:

- (a) establishing between the Parties hereto any partnership or any other form of relationship entailing joint liability;
- (b) constituting either of the Parties hereto as the agent of the other Party;
- (c) creating an employer-employee relationship between the Parties; or
- (d) authorizing either Party to incur any expenses or any other form of obligation on behalf of the other Party (except with the other Party's prior written consent).

41.2 Notices

Any notice required or permitted to be given by either Party to the other under this Contract shall be in writing and shall be served by leaving it at or sending it by telex, facsimile, prepaid recorded delivery, special delivery or registered post to that other Party. Any notice so served by telex, facsimile or post shall be deemed to have been received:

- (a) in the case of telex or facsimile, twelve (12) hours after the date of dispatch; and
- (b) in the case of recorded delivery, special delivery or registered post, forty eight (48) hours from the date of posting.

In the case of the Purchaser:

The Columbia Tower, Ortigas Avenue, Mandaluyong City, the Republic of the Philippines

Tel: 0063-2-7277968

Fax: 0063-2-7277946

Attention: Assistant Secretary Elmer A. Soneja

In the case of the Contractor:

25/F Pacific Star Bldg., Sen. Gil Puyat Avenue cor. Makati Avenue, Makati City 1200, the

Republic of the Philippines
Tel: 0063-2-8106627; 0063-2-8911808
Fax: 0063-2-8640487
Attention: Zhang Yu

41.3 Entire Agreement

This Contract and the Attachments hereto constitute the entire agreement between the Parties hereto with respect to the subject matter of this Contract and supersede all prior discussions, negotiations and agreements between them.

41.4 No Waiver

41.4.1 The failure of any Party to insist upon a strict performance of any of the terms, conditions, stipulations and covenants hereof shall not be deemed a relinquishment or waiver of any right or remedy that such Party may have nor shall the waiver of any breach of any provision of this Contract shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

41.4.2 A waiver of any default by any Party of any of the terms and conditions of this Contract shall not be construed to be continuing waiver or a waiver of any other provisions of this Contract but shall apply solely to the instances which such waiver is granted.

41.5 Severability

41.5.1 Should any provision of this Contract, by action of law or for any other reason, be held to be prohibited, invalid, unenforceable or illegal, the remaining provisions of this Contract shall, provided that the contractual state of equilibrium between the Parties is not materially distorted as a result of such prohibition, invalidity, unenforceability or illegality, remain in full force and effect.

41.5.2 Should the contractual state of equilibrium between the Parties not be materially distorted as a result of a prohibition, invalidity, unenforceability or illegality of any provision of this Agreement, the Parties shall promptly agree upon an alternative provision having an effect as similar as possible to the effect of the prohibited, invalid, unenforceable or illegal provision.

41.5.3 Should the contractual state of equilibrium between the Parties be materially distorted as a result of the prohibition, invalidity, unenforceability or illegality of any provision of this Contract, the Party not favored by such prohibition, invalidity, unenforceability or illegality shall have the right to terminate this Contract with immediate effect provided that prior written notice of said termination is given to the Party favored by such prohibition, invalidity, unenforceability, or illegality.

41.6 Attachment of the Contract

The Attachments hereto are made an integral part of this Contract and are equally binding with

the main body of the Contract:

- (a) Attachment A: Priced Bill of Quantities
- (b) Attachment B: Technical Specification
- (c) Attachment C: Scope of Work
- (d) Attachment D: Implementation Schedule
- (e) Attachment E: Testing Items of Provisional Acceptance Test
- (f) Attachment F: Training Plan
- (g) Attachment G: Service Level Agreement
- (h) Attachment H: Scope of Work for Managed Services
- (i) Attachment I: SLA & KPI for Managed Services
- (j) Attachment J: Responsibility Matrix for Managed Services
- (k) Attachment K: Part Services Maintenance and Some Products Maintenance Transfer

Should there be any ambiguity, discrepancy or inconsistency between this Contract and any other documents constituting the Contract, the Parties shall endeavor to harmonize the inconsistency or ambiguity, failing which such ambiguity or inconsistency shall be resolved in the following order of priority, except as otherwise specifically provided to the contrary:

- (a) This Contract;
- (b) Any Attachments;
- (c) Any other document forming part of the Contract.

41.7 Amendments

This Contract shall not be amended or modified except in writing signed by the Parties hereto.

41.8 Assignment

- (a) This Contract may not be assigned in whole or in part by either Party, except that the Contractor may solely upon written notice to the Purchaser assign the Contractor's rights to receive payments and other benefits of this Contract to one or more financial institutions for purposes of arranging debt financing or similar financial arrangements, but in such event the Contractor shall remain fully liable for the performance of its obligations under this Contract.



- (b) Notwithstanding the foregoing, the Purchaser agrees that the Contractor shall have the right to assign all its right, title, and interest in and to, and delegate all its obligations to its Affiliates in the Republic of the Philippines in respect of the provision of: (i) the Engineering Services; (ii) the Manages Services; (iii) the warranty services; (iv) Training; and/or (v) any other Works undertaken by the Contractor under the Contract to the extent that such Works are to be performed by the Contractor in the Republic of the Philippines pursuant to the Contract.

41.9 Language

This Contract is executed in the English language which shall be the sole and controlling language used in interpreting or construing its meaning. All documents, notices, waivers, and all other communications written or otherwise between the Purchaser and the Contractor in connection with this Contract, shall be in the English language, except as otherwise specifically provided to the contrary.

41.10 Counterparts

This Contract may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

41.11 Effectiveness of Contract

41.11.1 This Contract shall become effective and the Parties shall become bound by all terms and conditions of this Contract on the date ("Effective Date") when the conditions set forth below have been fully satisfied or waived by Purchaser:

- (a) This Contract has been duly authorized, executed, and delivered by the Parties;
- (b) All authorizations necessary for the execution, delivery, performance of this Contract and the transactions contemplated hereby have been obtained and are in full force and effect; and
- (c) The Loan Agreement has come into effective.

41.11.2 The Purchaser shall advise the Contractor of the Effective Date after its occurrence by sending to the Contractor a notice ("Notice to Proceed"). The Notice to Proceed may be issued at any time after the occurrence of the Effective Date, but in any case no later than ten (10) calendar days, or such later date as mutually agreed between the Purchaser and Contractor.

41.12 Conditions Precedent for the Effectivity of the Contract

The Effectivity of this Contract shall be subject to the fulfillment of the following conditions precedent:



- 41.12.1 Issuance of a Forward Obligation Authority (FOA) by the Department of Budget and Management (DBM) of the Government of the Republic of the Philippines;
- 41.12.2 Conclusion of the Loan Agreement between Export-Import Bank of China and the Department of Finance (DOF) of the Government of the Republic of the Philippines;
- 41.12.3 Legal opinion on the procurement process by the Department of Justice of the Government of the Republic of the Philippines.
- 41.12.4 The ratification by the Government of the Republic of the Philippines and the People's Republic of China of the Executive Agreement evidenced by the letter dated 02 December 2006 of Chinese Ambassador Li Jinjun to Presidential Chief of Staff Michael T. Defensor relating to the NBN Project and the letter of NEDA Secretary dated 20 April 2007 addressed to Honorable Minister Bo Xilai, Ministry of Commerce and Honorable Li Ruogu, Chairman and President, of the Export-Import Bank of China, People's Republic of China nominating the NBN Project.
- 41.13 Representative of the Purchaser and Evidence of Authority**
- 41.13.1 The Department of Transportation and Communications (DOTC) is designated as representative of the Purchaser. For the purpose of this Article 41.13.1, DOTC will, on behalf of the Purchaser, take any action or execute any documents required or permitted to be taken or executed by the Purchaser under this Contract.
- 41.13.2 The Purchaser shall furnish to the Contractor sufficient evidence of the authority of DOTC who will, on behalf of the Purchaser, take any action or execute any documents required or permitted to be taken or executed by the Purchaser under this Contract.
- 41.13.3 The Purchaser shall provide or cause to be provided, promptly as needed, the funds, facilities, services and other resources necessary or appropriate to enable DOTC to perform the obligations of the Purchaser under this Contract.


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IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized representatives as of the date first above written.

For and on behalf of
The Government of the Republic the Philippines
through the Department of Transportation and
Communications

For and on behalf of
ZTE Corporation

By:  0-284
LEANDRO R. MENDOZA
Secretary

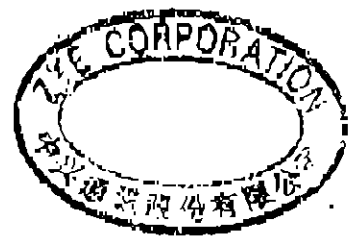
By: 
YU YONG
Vice President



Signed in the presence of.


LORENZO G. FORMOSO III
Assistant Secretary


HOU WEIGUI
Chairman



ACKNOWLEDGEMENT

Republic of the Philippines)

_____) S.S

BEFORE ME, a Notary Public in and for City of _____ Philippines, this _____ th day of _____ 2007, personally appeared:

Name	CTC/Passport No.	Date & Place Issued
Government of the Philippines Represented by: LEANDRO R. MENDOZA Secretary		
ZTE Corporation Represented by: YU YONG Vice President		

all known to me to me known to be the same person who executed the foregoing contract and they acknowledged to me that the same is their and free and voluntary act and deed and that of the corporation or entity they represent.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the date and at the place first above written.

NOTARY PUBLIC