

## **CONTRACT FOR SUBSCRIPTION OF WEB-BASED E-MAIL APPLICATION**

THIS CONTRACT made and entered into by and between the following:

**DEPARTMENT OF BUDGET AND MANAGEMENT**, a government agency created by virtue of the laws of the Philippines, with principal office located at Mabini Hall, Malacanang, Manila, represented herein by SEC. FLORENCIO B. ABAD (hereinafter called the "DBM");

- and -

**IP CONVERGE DATA CENTER, INC.** a corporation duly organized and existing under the laws of the Philippines, with principal office located at 34<sup>th</sup> floor, RCBC Tower II Plaza, 6819 Ayala Avenue, Makati City, represented herein by MR. REYNALDO HUERGAS (hereinafter called the "Supplier");

### **WITNESSETH:**

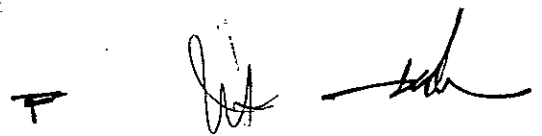
WHEREAS, the DBM conducted public bidding for the subscription of web-based e-mail application (hereinafter, the "Goods and Services") and the bid of the Supplier in the total amount of One Million Seven Hundred Eighty Four Thousand Seven Hundred Twenty Pesos (P1,784,720.00) (hereinafter called the "Contract Price") was determined to be the lowest calculated and responsive bid;

WHEREAS, the Notice of Award was issued to the Supplier last October 28, 2011, and Supplier posted its performance security last November 10, 2011.

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereby mutually stipulate and agree as follows:

1. In this Contract, words and expressions shall have the same meanings as are respectively assigned to them in the General and Special Conditions of Contract referred to in Annexes D and E, respectively.
2. The following documents shall form and be read and construed as part of this Contract:

Annex A	-	Bid Form and Price Schedule;
B	-	Schedule of Requirements;
C	-	Technical Specifications;
D	-	General Conditions of Contract;
E	-	Special Conditions of Contract;
F	-	Notice of Award; and
G	-	Performance Security.




Other documents referred to in Section 37.2.3 of the Implementing Rules of Republic Act No. 9184 shall likewise form part of this Contract.

3. In consideration of the payments to be made by the DBM to the Supplier, the Supplier hereby covenants with the DBM to provide the Goods and Services and to remedy defects therein in conformity with the provisions of the Contract
4. The DBM hereby covenants to pay the Supplier, in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the time and in the manner prescribed by the Contract.

IN WITNESS WHEREOF, the parties hereto have signed this Contract on this 10<sup>th</sup> day of November, 2011 at Manila, Philippines.

DEPARTMENT OF BUDGET  
AND MANAGEMENT

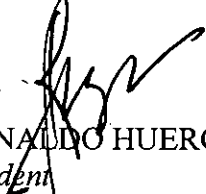
By:



FLORENCIO B. ABAD  
*Secretary*

IP CONVERGE DATA CENTER,  
INC.

By:

  
REYNALDO HUERGAS  
*President*

SIGNED IN THE PRESENCE OF

  
JOCELYN T. CENTENO  
*Chief, General Services Division*  
PATRICK DAVID DE LEON  
*Chief Finance Officer*

Funds Available:

*Esperanza Q. Ignacio*  
ESPERANZA Q. IGNACIO  
Chief Accountant

*WON# 2011-11-1548*  
*11/24/2011*

## ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES )  
CITY OF MANILA ) S.S.

BEFORE ME, a Notary Public for and in the City of Manila, Philippines, personally appeared the following:


Name	Community Tax Certificate/ Government ID No.	Date and Place Issued
FLORENCIO B. ABAD	CTC No. 09309238 DBM ID No. 3706	Jan. 1, 2011; Basco, Batanes Manila
REYNALDO HUERGAS	XX1085067	May 2008 / Manila
PATRICK DAVID DE LEON	XX4813771	October 2009 / Manila


known to me to be the same persons who executed the foregoing Contract and who acknowledged to me that the same is their free and voluntary act and deed and of the entities they respectively represent.

This Contract for the Subscription of Web-based E-mail Application was signed by the parties, and signed/initialed by their material witnesses on each and every page thereof.

WITNESS MY HAND AND SEAL this 28<sup>th</sup> day of November, 2011.

Doc. No. ; 171  
Page No. ; 27  
Book No. ; 5  
Series of 2011.

  
**MARIA LIBERTY D. MORALES**  
NOTARY PUBLIC-MANILA  
COMMISSION SERIAL NO. 2011-134  
UNTIL DECEMBER 31, 20 12  
ROLL NO. 58360, IBP NO. 809358  
PTR NO. 9301041 Manila Jan. 14, 2011  
LEGAL SERVICE, DBM  
MABINI HALL, MALACAÑANG  
MANILA



## Bid Form

Date: September 20, 2011

**The Chairperson.**

DBM-Bids and Awards Committee  
Department of Budget and Management  
Malacañang, Manila

Gentlemen and/or Ladies:

Having examined the Bidding Documents including Bid Bulletin Addendum Number 1, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to *deliver web-based enterprise e-mail application* in conformity with the said Bidding Documents for the sum of *One Million Seven Hundred Eighty Four Thousand Seven Hundred Twenty Pesos (Php1,784,720.00)* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Bid.

PARTICULARS	Unit Cost (Inclusive of VAT)	Total Price (Inclusive of VAT)
1 Subscription of Web Based Enterprise e-Mail Application for 750 users	Php2,304.96	Php1,728,720.00
2 Training and On-site Support	Php56,000.00	Php56,000.00
<b>TOTAL</b>	<b>Php58,304.96</b>	<b>Php1,784,720.00</b>

We undertake, if our Bid is accepted, to deliver the goods in accordance with the delivery schedule specified in the Schedule of Requirements.

If our Bid is accepted, we undertake to provide a performance security in the form, amounts, and within the times specified in the Bidding Documents.

We agree to abide by this Bid for the Bid Validity Period specified in **BDS** provision for **ITB** Clause 18.2 and it shall remain binding upon us and may be accepted at any time before the expiration of that period.


Until a formal Contract is prepared and executed, this Bid, together with your written acceptance thereof and your Notice of Award, shall be binding upon us.

We understand that you are not bound to accept the lowest or any Bid you may receive.

We certify/confirm that we comply with the eligibility requirements as per **ITB** Clause 5 of the Bidding Documents.

Dated this 20<sup>th</sup> day of September 2011.

  
\_\_\_\_\_  
Reynaldo D. Huergas

  
\_\_\_\_\_  
President

Duly authorized to sign Bid for and on behalf of IP-Converge Data Center, Inc.

## ***Section VI. Schedule of Requirements***

### **A. Background**

E-mail and collaboration applications are essential tools in performing work related tasks in all government agencies. The need for a proper and timely communication system ranging from document collaboration and sharing, e-mailing, chatting, voice communication and video conferencing is critical for an efficient and productive government agency.

Currently, the Department of Budget and Management (DBM) uses Lotus Notes for its communication and e-mail services. However, due to its unreliability, limited capability, and functionality, most DBM personnel have resorted to using different methods of collaboration and communication that is both highly ineffective, inconsistent, and not secure (e.g. use of personal e-mail to conduct business transactions and send confidential information, etc.). Such practices contribute to the difficulty in ensuring proper oversight and enforcing security policies within DBM.

In view of DBM's continued mandate to improve its services and in preparation for more agency and interagency communication and collaboration efforts, a more robust, effective, and reliable email, intranet portal, collaboration and communication system is needed.

### **B. Objectives**

This project aims to implement and administer a service, application, and/or software that will enable DBM to effectively address its electronic communication and collaboration requirements within its agency and throughout other concerned entities.

### **C. Scope of Services**

1. Subscription of web-based e-mail, intranet portal, and collaboration service, software, and/or application for a maximum of 750 concurrent users (with the first month free of charge);
2. Implement the service, software, and/or application at DBM in accordance with the given technical specifications and requirements;
3. Test the service, software, and/or application for full functionality within the agency;
4. Administer the service, software and/or application;
5. Provide training and support for in-house administration and/or technical staff.

### **D. Schedule and Term**

Provision of services shall start not later than fifteen (15) days from issuance of Notice to Proceed.



Project duration will be for a period of one (1) year, subject to renewal and/or extension.

**E. Eligibility Requirement**

Prospective bidder must be a Certified Service Provider and have authority to sell, deploy, manage and provide support services for the proposed application solution issued by the product owner/manufacture;

**I hereby certify to comply and deliver all the above requirements.**

IP-Converge Data Center, Inc.



**Name of Company/Bidder**

Reynaldo D. Huergas

**Signature Over Printed Name of  
Representative**

September 20, 2011



**Date**

## *Section VII. Technical Specifications*

### **Technical Specifications**

Item	Specification	Bidder's Statement of Compliance
		<p>Bidders must state here either "Comply" or "Not Comply" against each of the individual parameters of each Specification stating the corresponding performance parameter of the equipment offered. Statements of "Comply" or "Not Comply" must be supported by evidence in a Bidders Bid and cross-referenced to that evidence. Evidence shall be in the form of manufacturer's un-amended sales literature, unconditional statements of specification and compliance issued by the manufacturer, samples, independent test data etc., as appropriate. A statement that is not supported by evidence or is subsequently found to be contradicted by the evidence presented will render the Bid under evaluation liable for rejection. A statement either in the Bidders statement of compliance or the supporting evidence that is found to be false either during Bid evaluation, post-qualification or the execution of the Contract may be regarded as fraudulent and render the Bidder or supplier liable for prosecution subject to the provisions of ITB Clause 3.1(a)(ii) and/or GCC Clause 35.1(a)(ii).</p>
	Platform: Cloud (can be accessed by any web browser) for a maximum of 750 concurrent users	
	Each account must be able to provide the following:	
1.	Personalized agency domain	Comply
2.	Universally accessible through the Local Area Network or through the Internet with any communication enabled digital device (e.g. PC, mobile devices, tablets, or any internet/networking compliant digital device) through a browser or similar application	Comply
3.	Capable of office document creation, sharing and collaboration.	Comply


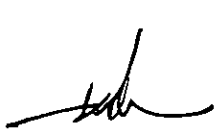
4.	Capable of sending and receiving e-mails with documents and other attachments.	Comply
5.	Capable of creating and sharing calendaring/scheduling information.	Comply
6.	Capable of instant messaging and chatting over the Local Area Network or over the Internet.	Comply
7.	Capable of delivering on-line voice communication and voice/multimedia conferencing over the internet (e.g., voice over internet and video conferencing capability)	Comply
8.	Customization capabilities to address unique agency requirements	Comply
9.	Easy to use, uncomplicated and user friendly	Comply
10.	Not involve too much hardware, software, or personal acquisition	Comply
11.	Reliable and consistent (24/7 availability, 99.9% uptime)	Comply
12.	Secure (anti-virus, anti-hacking, anti-spam capability)	Comply
13.	Disaster proof (and/or has disaster recovery systems)	Comply
14.	Capable of providing DBM with a Service Level Agreement indicating the quality of services to be rendered	Comply
15.	Capable of providing DBM with a Security Certification certifying that the procedures and processes used are in compliance with standards for security requirements for information and information systems	Comply

**I hereby certify to comply with all the above Technical Specifications.**

IP-Converge Data Center, Inc.  
Name of Company/Bidder

Reynaldo D. Huergas  
Signature Over Printed Name of Representative

September 20, 2011  
Date



## ***Section IV. General Conditions of Contract***

### **1. Definitions**

1.1. In this Contract, the following terms shall be interpreted as indicated:

- (a) "The Contract" means the agreement entered into between the Procuring Entity and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) "The Contract Price" means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.
- (c) "The Goods" means all of the supplies, equipment, machinery, spare parts, other materials and/or general support services which the Supplier is required to provide to the Procuring Entity under the Contract.
- (d) "The Services" means those services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, and other such obligations of the Supplier covered under the Contract.
- (e) "GCC" means the General Conditions of Contract contained in this Section.
- (f) "SCC" means the Special Conditions of Contract.
- (g) "The Procuring Entity" means the organization purchasing the Goods, as named in the SCC.
- (h) "The Procuring Entity's country" is the Philippines.
- (i) "The Supplier" means the individual contractor, manufacturer distributor, or firm supplying/manufacturing the Goods and Services under this Contract and named in the SCC.
- (j) The "Funding Source" means the organization named in the SCC.
- (k) "The Project Site," where applicable, means the place or places named in the SCC.
- (l) "Day" means calendar day.

- (m) The "Effective Date" of the contract will be the date of receipt by the Supplier of the Notice to Proceed or the date provided in the Notice to Proceed. Performance of all obligations shall be reckoned from the Effective Date of the Contract.
- (n) "Verified Report" refers to the report submitted by the Implementing Unit to the Head of the Procuring Entity setting forth its findings as to the existence of grounds or causes for termination and explicitly stating its recommendation for the issuance of a Notice to Terminate.

## **2. Corrupt, Fraudulent, Collusive, and Coercive Practices**

2.1. Unless otherwise provided in the SCC, the Procuring Entity as well as the bidders, contractors, or suppliers shall observe the highest standard of ethics during the procurement and execution of this Contract. In pursuance of this policy, the Procuring Entity:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) "corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contract execution; entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby, and similar acts as provided in Republic Act 3019.
  - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practices among Bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.
  - (iii) "collusive practices" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring Entity, designed to establish bid prices at artificial, non-competitive levels.
  - (iv) "coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;
  - (v) "obstructive practice" is

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to an administrative proceedings or investigation or making false statements to investigators in order to materially impede an administrative proceedings or investigation of the Procuring Entity or any foreign government/foreign or international financing institution into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the administrative proceedings or investigation or from pursuing such proceedings or investigation; or

(bb) acts intended to materially impede the exercise of the inspection and audit rights of the Procuring Entity or any foreign government/foreign or international financing institution herein.

(b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in any of the practices mentioned in this Clause for purposes of competing for the contract.

2.2. Further the Funding Source, Borrower or Procuring Entity, as appropriate, will seek to impose the maximum civil, administrative and/or criminal penalties available under the applicable law on individuals and organizations deemed to be involved with any of the practices mentioned in GCC Clause 2.1(a).

### **3. Inspection and Audit by the Funding Source**

The Supplier shall permit the Funding Source to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the Funding Source, if so required by the Funding Source.

### **4. Governing Law and Language**

4.1. This Contract shall be interpreted in accordance with the laws of the Republic of the Philippines.

4.2. This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract. All correspondence and other documents pertaining to this Contract exchanged by the parties shall be written in English.

### **5. Notices**

5.1. Any notice, request, or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request, or consent shall be deemed to have been given or made when received by the

concerned party, either in person or through an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram, or facsimile to such Party at the address specified in the SCC, which shall be effective when delivered and duly received or on the notice's effective date, whichever is later.

- 5.2. A Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to the provisions listed in the SCC for GCC Clause 5.1.

## **6. Scope of Contract**

- 6.1. The Goods and Related Services to be provided shall be as specified in Section VI. Schedule of Requirements.
- 6.2. This Contract shall include all such items, although not specifically mentioned, that can be reasonably inferred as being required for its completion as if such items were expressly mentioned herein. Any additional requirements for the completion of this Contract shall be provided in the SCC.

## **7. Subcontracting**

- 7.1. Subcontracting of any portion of the Goods, if allowed in the BDS, does not relieve the Supplier of any liability or obligation under this Contract. The Supplier will be responsible for the acts, defaults, and negligence of any subcontractor, its agents, servants or workmen as fully as if these were the Supplier's own acts, defaults, or negligence, or those of its agents, servants or workmen.
- 7.2. Subcontractors disclosed and identified during the bidding may be changed during the implementation of this Contract, subject to compliance with the required qualifications and the approval of the Procuring Entity.

## **8. Procuring Entity's Responsibilities**

- 8.1. Whenever the performance of the obligations in this Contract requires that the Supplier obtain permits, approvals, import, and other licenses from local public authorities, the Procuring Entity shall, if so needed by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner.
- 8.2. The Procuring Entity shall pay all costs involved in the performance of its responsibilities in accordance with GCC Clause 6.

## **9. Prices**

- 9.1. For the given scope of work in this Contract as awarded, all bid prices are considered fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB in accordance with Section 61 of R.A. 9184 and its IRR or except as provided in the SCC.

- 9.2. Prices charged by the Supplier for Goods delivered and/or services performed under this Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any change in price resulting from a Change Order issued in accordance with GCC Clause 29.

## 10. Payment

- 10.1. Payments shall be made only upon a certification by the Head of the Procuring Entity to the effect that the Goods have been rendered or delivered in accordance with the terms of this Contract and have been duly inspected and accepted. Except with the prior approval of the President no payment shall be made for services not yet rendered or for supplies and materials not yet delivered under this Contract. Ten percent (10%) of the amount of each payment shall be retained by the Procuring Entity to cover the Supplier's warranty obligations under this Contract as described in GCC Clause 17.
- 10.2. The Supplier's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and/or Services performed, and by documents submitted pursuant to the SCC provision for GCC Clause 6.2, and upon fulfillment of other obligations stipulated in this Contract.
- 10.3. Pursuant to GCC Clause 10.2, payments shall be made promptly by the Procuring Entity, but in no case later than sixty (60) days after submission of an invoice or claim by the Supplier.
- 10.4. Unless otherwise specified in the SCC, the currency in which payment is made to the Supplier under this Contract shall be in Philippine Pesos.

## 11. Advance Payment

- 11.1. Advance payment shall be made only after prior approval of the President, and shall not exceed fifteen percent (15%) of the Contract amount, unless otherwise directed by the President or in cases allowed under Annex "D" of RA 9184.
- 11.2. For Goods supplied from abroad, the terms of payment shall be as follows:
- (a) On Contract Signature: Ten percent (10%) of the Contract Price shall be paid within sixty (60) days from signing of the Contract and upon submission of a claim and a bank guarantee for the equivalent amount valid until the Goods are delivered and in the form provided in Section VIII. Bidding Forms.
  - (b) On Delivery: Seventy percent (70%) of the Contract Price shall be paid to the Supplier within sixty (60) days after the date of receipt of the Goods and upon submission of the documents (i) through (vi) specified in the SCC provision on Delivery and Documents.
  - (c) On Acceptance: The remaining twenty percent (20%) of the Contract Price shall be paid to the Supplier within sixty (60) days after the date of submission of the acceptance and inspection certificate for the

respective delivery issued by the Procuring Entity's authorized representative. In the event that no inspection or acceptance certificate is issued by the Procuring Entity's authorized representative within forty five (45) days of the date shown on the delivery receipt the Supplier shall have the right to claim payment of the remaining twenty percent (20%) subject to the Procuring Entity's own verification of the reason(s) for the failure to issue documents (vii) and (viii) as described in the SCC provision on Delivery and Documents.

- 11.3. All progress payments shall first be charged against the advance payment until the latter has been fully exhausted.

## **12. Taxes and Duties**

The Supplier, whether local or foreign, shall be entirely responsible for all the necessary taxes, stamp duties, license fees, and other such levies imposed for the completion of this Contract.

## **13. Performance Security**

- 13.1. Within ten (10) calendar days from receipt of the Notice of Award from the Procuring Entity but in no case later than the signing of the contract by both parties, the successful Bidder shall furnish the performance security in any the forms prescribed in the ITB Clause 33.2.
- 13.2. The performance security posted in favor of the Procuring Entity shall be forfeited in the event it is established that the winning bidder is in default in any of its obligations under the contract.
- 13.3. The performance security shall remain valid until issuance by the Procuring Entity of the Certificate of Final Acceptance.
- 13.4. The performance security may be released by the Procuring Entity and returned to the Supplier after the issuance of the Certificate of Final Acceptance subject to the following conditions:
- (a) There are no pending claims against the Supplier or the surety company filed by the Procuring Entity;
  - (b) The Supplier has no pending claims for labor and materials filed against it; and
  - (c) Other terms specified in the SCC.
- 13.5. In case of a reduction of the contract value, the Procuring Entity shall allow a proportional reduction in the original performance security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original performance security.

## **14. Use of Contract Documents and Information**

- 14.1. The Supplier shall not, except for purposes of performing the obligations in this Contract, without the Procuring Entity's prior written consent, disclose this Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring Entity. Any such disclosure shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.
- 14.2. Any document, other than this Contract itself, enumerated in GCC Clause 14.1 shall remain the property of the Procuring Entity and shall be returned (all copies) to the Procuring Entity on completion of the Supplier's performance under this Contract if so required by the Procuring Entity.

## **15. Standards**

The Goods provided under this Contract shall conform to the standards mentioned in the Section VII. Technical Specifications; and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods' country of origin. Such standards shall be the latest issued by the institution concerned.

## **16. Inspection and Tests**

- 16.1. The Procuring Entity or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Procuring Entity. The SCC and Section VII. Technical Specifications shall specify what inspections and/or tests the Procuring Entity requires and where they are to be conducted. The Procuring Entity shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 16.2. If applicable, the inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery, and/or at the goods' final destination. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity. The Supplier shall provide the Procuring Entity with results of such inspections and tests.
- 16.3. The Procuring Entity or its designated representative shall be entitled to attend the tests and/or inspections referred to in this Clause provided that the Procuring Entity shall bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 16.4. The Procuring Entity may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity, upon giving a notice pursuant to GCC Clause 5.

- 16.5. The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Procuring Entity or its representative, shall release the Supplier from any warranties or other obligations under this Contract.

## **17. Warranty**

- 17.1. The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials, except when the technical specifications required by the Procuring Entity provides otherwise.
- 17.2. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship or from any act or omission of the Supplier that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.
- 17.3. In order to assure that manufacturing defects shall be corrected by the Supplier, a warranty shall be required from the Supplier for a minimum period specified in the SCC. The obligation for the warranty shall be covered by, at the Supplier's option, either retention money in an amount equivalent to at least ten percent (10%) of the final payment, or a special bank guarantee equivalent to at least ten percent (10%) of the Contract Price or other such amount if so specified in the SCC. The said amounts shall only be released after the lapse of the warranty period specified in the SCC; provided, however, that the Supplies delivered are free from patent and latent defects and all the conditions imposed under this Contract have been fully met.
- 17.4. The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty. Upon receipt of such notice, the Supplier shall, within the period specified in the SCC and with all reasonable speed, repair or replace the defective Goods or parts thereof, without cost to the Procuring Entity.
- 17.5. If the Supplier, having been notified, fails to remedy the defect(s) within the period specified in GCC Clause 17.4, the Procuring Entity may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract and under the applicable law.

## **18. Delays in the Supplier's Performance**

- 18.1. Delivery of the Goods and/or performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Procuring Entity in Section VI. Schedule of Requirements.
- 18.2. If at any time during the performance of this Contract, the Supplier or its Subcontractor(s) should encounter conditions impeding timely delivery of the Goods and/or performance of Services, the Supplier shall promptly notify the Procuring Entity in writing of the fact of the delay, its likely duration and its



cause(s). As soon as practicable after receipt of the Supplier's notice, and upon causes provided for under GCC Clause 22, the Procuring Entity shall evaluate the situation and may extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of Contract.

- 18.3. Except as provided under GCC Clause 22, a delay by the Supplier in the performance of its obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 19, unless an extension of time is agreed upon pursuant to GCC Clause 29 without the application of liquidated damages.

## **19. Liquidated Damages**

Subject to GCC Clauses 18 and 22, if the Supplier fails to satisfactorily deliver any or all of the Goods and/or to perform the Services within the period(s) specified in this Contract inclusive of duly granted time extensions if any, the Procuring Entity shall, without prejudice to its other remedies under this Contract and under the applicable law, deduct from the Contract Price, as liquidated damages, the applicable rate of one tenth (1/10) of one (1) percent of the cost of the unperformed portion for every day of delay until actual delivery or performance. The maximum deduction shall be ten percent (10%) of the amount of contract. Once the maximum is reached, the Procuring Entity shall rescind the Contract pursuant to GCC Clause 23, without prejudice to other courses of action and remedies open to it.

## **20. Settlement of Disputes**

- 20.1. If any dispute or difference of any kind whatsoever shall arise between the Procuring Entity and the Supplier in connection with or arising out of this Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 20.2. If after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.
- 20.3. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under this Contract.
- 20.4. In the case of a dispute between the Procuring Entity and the Supplier, the dispute shall be resolved in accordance with Republic Act 9285 ("R.A. 9285"), otherwise known as the "Alternative Dispute Resolution Act of 2004."
- 20.5. Notwithstanding any reference to arbitration herein, the parties shall continue to perform their respective obligations under the Contract unless they

otherwise agree; and the Procuring Entity shall pay the Supplier any monies due the Supplier.

## **21. Liability of the Supplier**

- 21.1. The Supplier's liability under this Contract shall be as provided by the laws of the Republic of the Philippines, subject to additional provisions, if any, set forth in the SCC.
- 21.2. Except in cases of criminal negligence or willful misconduct, and in the case of infringement of patent rights, if applicable, the aggregate liability of the Supplier to the Procuring Entity shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

## **22. Force Majeure**

- 22.1. The Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that the Supplier's delay in performance or other failure to perform its obligations under the Contract is the result of a *force majeure*.
- 22.2. For purposes of this Contract the terms "*force majeure*" and "fortuitous event" may be used interchangeably. In this regard, a fortuitous event or *force majeure* shall be interpreted to mean an event which the Contractor could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Contractor. Such events may include, but not limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 22.3. If a *force majeure* situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the *force majeure*.

## **23. Termination for Default**

- 23.1. The Procuring Entity shall terminate this Contract for default when any of the following conditions attends its implementation:
- (a) Outside of *force majeure*, the Supplier fails to deliver or perform any or all of the Goods within the period(s) specified in the contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the Supplier prior to the delay, and such failure amounts to at least ten percent (10%) of the contract price;

- (b) As a result of *force majeure*, the Supplier is unable to deliver or perform any or all of the Goods, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the Procuring Entity stating that the circumstance of force majeure is deemed to have ceased; or
  - (c) The Supplier fails to perform any other obligation under the Contract.
- 23.2. In the event the Procuring Entity terminates this Contract in whole or in part, for any of the reasons provided under GCC Clauses 23 to 26, the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Procuring Entity for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of this Contract to the extent not terminated.
- 23.3. In case the delay in the delivery of the Goods and/or performance of the Services exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the Supplier, the Procuring Entity may terminate this Contract, forfeit the Supplier's performance security and award the same to a qualified Supplier.

#### **24. Termination for Insolvency**

The Procuring Entity shall terminate this Contract if the Supplier is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the Supplier.

#### **25. Termination for Convenience**

- 25.1. The Procuring Entity may terminate this Contract, in whole or in part, at any time for its convenience. The Head of the Procuring Entity may terminate a contract for the convenience of the Government if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and national government policies.
- 25.2. The Goods that have been delivered and/or performed or are ready for delivery or performance within thirty (30) calendar days after the Supplier's receipt of Notice to Terminate shall be accepted by the Procuring Entity at the contract terms and prices. For Goods not yet performed and/or ready for delivery, the Procuring Entity may elect:
- (a) to have any portion delivered and/or performed and paid at the contract terms and prices; and/or

- (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed and/or performed goods and for materials and parts previously procured by the Supplier.
- 25.3. If the Supplier suffers loss in its initial performance of the terminated contract, such as purchase of raw materials for goods specially manufactured for the Procuring Entity which cannot be sold in open market, it shall be allowed to recover partially from this Contract, on a *quantum meruit* basis. Before recovery may be made, the fact of loss must be established under oath by the Supplier to the satisfaction of the Procuring Entity before recovery may be made.

## 26. Termination for Unlawful Acts

- 26.1. The Procuring Entity may terminate this Contract in case it is determined *prima facie* that the Supplier has engaged, before or during the implementation of this Contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:
- (a) Corrupt, fraudulent, and coercive practices as defined in ITB Clause 3.1(a);
  - (b) Drawing up or using forged documents;
  - (c) Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
  - (d) Any other act analogous to the foregoing.

## 27. Procedures for Termination of Contracts

- 27.1. The following provisions shall govern the procedures for termination of this Contract:
- (a) Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Implementing Unit shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;
  - (b) Upon recommendation by the Implementing Unit, the Head of the Procuring Entity shall terminate this Contract only by a written notice to the Supplier conveying the termination of this Contract. The notice shall state:
    - (i) that this Contract is being terminated for any of the ground(s) afore-mentioned, and a statement of the acts that constitute the ground(s) constituting the same;

- (ii) the extent of termination, whether in whole or in part;
  - (iii) an instruction to the Supplier to show cause as to why this Contract should not be terminated; and
  - (iv) special instructions of the Procuring Entity, if any.
- (c) The Notice to Terminate shall be accompanied by a copy of the Verified Report;
  - (d) Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier shall submit to the Head of the Procuring Entity a verified position paper stating why this Contract should not be terminated. If the Supplier fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the Procuring Entity shall issue an order terminating this Contract;
  - (e) The Procuring Entity may, at anytime before receipt of the Supplier's verified position paper described in item (d) above withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Supplier's receipt of the notice;
  - (f) Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the Procuring Entity shall decide whether or not to terminate this Contract. It shall serve a written notice to the Supplier of its decision and, unless otherwise provided, this Contract is deemed terminated from receipt of the Supplier of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate;
  - (g) The Head of the Procuring Entity may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the Head of the Procuring Entity; and
  - (h) The Supplier must serve a written notice to the Procuring Entity of its intention to terminate the contract at least thirty (30) calendar days before its intended termination. The Contract is deemed terminated if it is not resumed in thirty (30) calendar days after the receipt of such notice by the Procuring Entity.

## **28. Assignment of Rights**

The Supplier shall not assign his rights or obligations under this Contract, in whole or in part, except with the Procuring Entity's prior written consent.

## **29. Contract Amendment**

Subject to applicable laws, no variation in or modification of the terms of this Contract shall be made except by written amendment signed by the parties.

### **30. Application**

These General Conditions shall apply to the extent that they are not superseded by provisions of other parts of this Contract.

## *Section V. Special Conditions of Contract*

GCC Clause	
1.1 (g)	The Procuring Entity is the <b>Department of Budget and Management (DBM)</b> .
1.1 (i)	The Supplier is <b>IP Converge Data Center, Inc.</b>
1.1 (j)	<p>The Funding Source is:</p> <p>The Government of the Philippines (GOP) through the authorized appropriation for FY 2011 in the amount of One Million Eight Hundred Thousand Pesos (P1,800,000.00).</p>
1.1 (k)	Department of Budget and Management, Gen. Solano St., San Miguel, Manila.
5.1	<p><b><u>The Procuring Entity's address for Notices is:</u></b></p> <p>Department of Budget and Management  Mabini Hall, Malacañang, Manila  Tel Nos. (02)735-1991  Fax No. (02)735-4929</p> <p>Attn: Usec. Richard E. Moya  Chief Information Officer</p> <p><b><u>The Supplier's address for Notices is:</u></b></p> <p>IP Converge Data Center, Inc.  34<sup>th</sup> Floor, RCBC Tower II Plaza  6819 Ayala Avenue, Makati City  Tel Nos. (02) 848 8700  Fax No. (02) 757 1733</p> <p>Attn: Mr. Reynaldo Huergas  President</p>
6.1	At the option of the DBM the number of Goods referred in Section VI. Schedule of Requirements may be increased or decreased provided that the ABC is not exceeded.
6.2	<p>Upon provision of the Goods and Services, the Supplier shall bill DBM, as follows:</p> <p>Not later than fifteen (15) calendar days after the end of each month during the period for provision of the Goods and Services, the Supplier shall submit to DBM in duplicate, copies of its billing statement or invoice. Said invoice must be accompanied by a Certificate of Acceptance issued by DBM reflecting the total amount payable for such month.</p> <p>The Supplier is required to provide all of the goods and services specified in Section VI. Schedule of Requirements. In addition, the following confidentiality obligation must be</p>

	<p>strictly complied with:</p> <p>(i) Except with the prior written consent of DBM, the Supplier and its personnel shall not at any time communicate to any person or entity any confidential information acquired through various means of communication including but not limited to electronic and telephonic communications and meetings, documents, archives, files, records, and other materials belonging to DBM, nor shall the Supplier and its personnel make public the recommendations formulated in the course of, or as a result of, the Services. For purposes of this clause, "Confidential Information" means any information or knowledge acquired by the Supplier and/or its personnel arising out of, or in connection with, the performance of the Services under this Contract that is not otherwise available to the public.</p> <p>(ii) The Supplier acknowledges that all information such as, but not limited to, systems, processes, reports, correspondences, meeting records, information and data exchanged in meetings or discussions, e-mails, faxes, documentation and other works (collectively referred to as "Information Source") shall be the property of DBM, and the Supplier acquires no right, title, or interest therein. The Supplier covenants that it shall not use, copy, disclose, distribute, store, retrieve or destroy any such information for any purpose without the prior written consent of DBM.</p> <p>(iii) The Supplier shall employ reasonable efforts to prevent any unauthorized use or access to the foregoing Confidential Information and/or Information Resource and in case any unauthorized use or access comes to the attention of the Supplier, it shall immediately notify DBM and rectify or terminate said unauthorized use or access.</p> <p>The Contract Price for the Goods and Services shall include the prices charged by the Supplier for incidental services and shall not exceed the prevailing rates charged to other parties by the Supplier for similar goods and services. The Supplier warrants that all of the benefits and terms granted herein are at least as favorable as the benefits and terms granted by it to any previous or present buyer of the Goods and Services described in this Agreement.</p> <p>Pursuant to Supplemental Bid Bulletin No. 1 dated September 14, 2011, project duration will be for a period of thirteen (13) months, with the first month being free of charge, subject to renewal or extension for another twelve (12) months at the option of DBM.</p> <p>The Supplier shall indemnify the Procuring Entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from the Use of the Goods or any part thereof.</p>
9.2	<p>Should the Supplier, during contract implementation, enter into a subsequent contract with any other government agency, which provides for benefits or terms more favorable than those contained in this Contract, such as, a lower price for the same scope of services, then this Contract shall be deemed to be modified to provide the Procuring Entity with these more favorable benefits and terms.</p> <p>Supplier shall notify the Procuring Entity promptly of the existence of such more favorable benefits and terms and Supplier shall have the right to receive the more favorable benefits and terms immediately. If requested in writing by the Procuring Entity, Supplier shall amend this Contract to contain the more favorable terms and conditions.</p>
10.4	No further instructions.





REPUBLIC OF THE PHILIPPINES  
**Department of Budget and Management**  
Malacañang, Manila

**NOTICE OF AWARD**

October 28, 2011

**MR. REYNALDO D. HUERGAS**

*President*

IP-Converge Data Center, Inc.  
34/F Tower II, RCBC Plaza  
Ayala Avenue, Makati City

**Dear Mr. Huergas:**

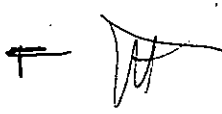
Based on Department of Budget and Management Bids and Awards Committee Resolution No. 2011-36, we are pleased to inform you that the contract for the "Subscription of Web-based e-Mail Application" is hereby awarded to you in the amount of One Million Seven Hundred Eighty Four Thousand Seven Hundred Twenty Pesos (P1,784,720.00).

In this regard, you are hereby required to post a performance security in the amount and form as stated in Section 39 of the Revised Implementing Rules and Regulations of Republic Act No. 9184 prior to signing of the contract.

Very truly yours,

  
**FLORENCIO B. ABAD**

*Secretary*



FOR PAYEE'S ACCT. ONLY

ACCOUNT NO.  
000-000-00400-2

# MANAGER'S CHECK

CHECK NO. 0000383424  
R/T NO. 01086  
014-6  
DATE NOVEMBER 10, 2011

PAY TO THE ORDER OF \*\*DEPARTMENT OF BUDGET AND MANAGEMENT\*\*

P \*\*\*89,236.00\*\*

PESOS

89,236.00



PESOS EIGHTY-NINE THOUSAND TWO HUNDRED THIRTY-SIX AND 00/100

## EXPORT AND INDUSTRY BANK

BUENDIA-PASONG TAMO BRANCH  
G/F EXPORTBANK PLAZA EXPORTBANK DRIVE  
CORNER SENATOR GIL PUYAT AVE., MAKATI CITY

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

⑈0000383424⑈01086⑈0146⑈000000004002⑈

Received by:  
Antonio C. Guevara  
10 NOV. 2011  
11:00 AM

+



REPUBLIC OF THE PHILIPPINES  
**Department of Budget and Management**  
Malacañang, Manila

**NOTICE TO PROCEED**

November 28, 2011

**Ms. CHE T. LAZARO**

*Business Development Manager*  
IP-CONVERGE DATA CENTER INC.  
Tower II Plaza, 6819 Ayala Avenue  
Makati City

**Dear Ms. Lazaro:**

We are pleased to inform you that the attached Contract for the Subscription of Web-Based E-Mail Application has been approved.

Consequently, you are hereby notified that performance of services shall commence on December 1, 2011 and terminate on December 31, 2012, subject to renewal or extension for another year at the option of this department. Further, services for the first month (December 2011) shall be free of charge pursuant to the terms of the Contract.

Please formally acknowledge receipt of this notice by signing in the space provided below.

Very truly yours,

**FLORENCIO B. ABAD**

*Secretary*

Received by:

**CHE T. LAZARO**  
(Name and Signature)

12-01-2011  
(Date)