

**CONTRACT FOR THE SUPPLY/DELIVERY OF DRINKING
WATER, WITH NEW HOT AND COLD DISPENSER
FOR CY 2011**

KNOW ALL MEN BY THESE PRESENTS:

This Contract made and entered into by and between:

The **DEPARTMENT OF BUDGET AND MANAGEMENT (DBM)**, a government agency created by virtue of the laws of the Republic of the Philippines, with principal office address at Mabini Hall, Malacanang, Manila, represented herein by its Secretary, **FLORENCIO B. ABAD**, ("the Client");

- and -

The **OHIO FOOD INDUSTRIES**, with office address at No. 60 Maryland St., Brgy. Pinagkaisahan, Cubao, Quezon City, represented by its President, **JAMES W. YONG LOOK**, ("the Contractor");

WITNESSETH:

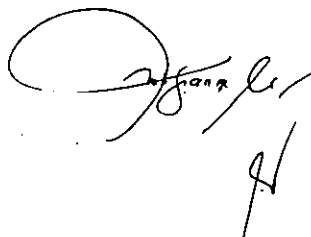
WHEREAS, the Client requires the supply of purified drinking water with new hot and cold water dispenser for CY 2011 ("the Project"), with and Approved Budget for the Contract in the amount of P395,000.00;

WHEREAS, in accordance with Sections 53.9 and 54.2 of the Revised Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 9184, the Request for Price Quotation was posted in the PhilGEPS and DBM Website, and in all DBM Bulletin Boards on December 9, 2010;

WHEREAS, during the submission and opening of bids on December 17, 2010, the Bids and Awards Committee (BAC), using non-discretionary "pass/fail" criteria, declared the Contractor as the Lowest Calculated bid in the amount of Two Hundred Twenty Seven Thousand Six Hundred Fifty Four Pesos and Forty Centavos (P227,654.40);

WHEREAS, upon careful examination, validation and verification of the eligibility, technical and financial proposal, the BAC found the submission of the Contractor as "responsive" to all the requirements of the Project, and thereafter declared said entity's bid as the Lowest Calculated and Responsive Bid in the amount of P227,654.40;

WHEREAS, on January 12, 2011, the BAC recommended, and the DBM Secretary approved, the award of the Contract to the Contractor through BAC Resolution No. 2011-04;



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

1. The following documents shall form part of this Contract, namely:


Annex	Description of Document	No. of Pages
A.	Request for Price Quotation	2
B.	Schedule of Requirements	1
C.	Technical specifications	1
D.	Financial Proposal Submission Sheet	2
E.	General Conditions of Contract	14
F.	Special Conditions of Contract	2
G.	Notice of Award	1

2. In consideration of the payments to be made by the Client to the Contractor, the latter agrees to provide the services and perform its obligations in conformity with the provisions of this Contract.
3. The Client agrees to pay the Contractor in consideration of the performance of the services, the contract price or such other amounts as may become payable under the provisions of this Contract at the time and in the manner prescribed herein.

IN WITNESS WHEREOF, the parties hereto have signed this Contract this ___ day of January, 2011 at the DBM, Malacanang, Manila, Philippines.

DEPARTMENT OF BUDGET
AND MANAGEMENT

By:

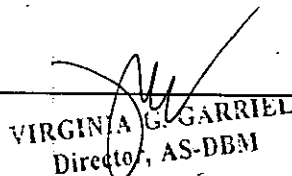

FLORENCIO B. ABAD
Secretary

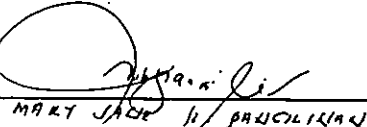
OHIO FOOD INDUSTRIES,
INC.

By:

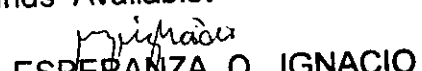

JAMES W. YONG LOOK
President

SIGNED IN THE PRESENCE OF:


VIRGINIA G. GARRIEL
Director, AS-DBM


MARK JAKE H. BRUCOLIANO

Funds Available:


ESPERANZA Q. IGNACIO
Chief Accountant

06644 2011-1-0062
1/25/2011

ACKNOWLEDGMENT

Republic of the Philippines)
CITY OF MANILA) S.S.

BEFORE ME, a Notary Public for and in the City of Manila,
Philippines on this JAN 31 2011 day of January, 2011 personally appeared the following:

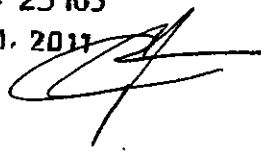
NAME	CTC AND VALID ID NO.	DATE & PLACE ISSUED
FLORENCIO B. ABAD	Driver's license # N02-88-080360	
JAMES W. YONG LOOK	CTC #: 10604811 / SSS #: 09-1886612-9	01/12/11 - MANILA

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.

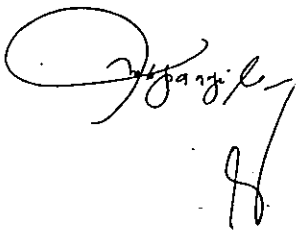
This **CONTRACT FOR THE SUPPLY AND DELIVERY OF DRINKING WATER WITH NEW HOT AND COLD DISPENSER FOR CY 2011** was signed by the parties and their material witnesses on each and every page thereof.

WITNESS MY HAND AND SEAL this JAN 31 2011 day of January, 2011.

ATTY. JOEL G. GORDOLA
NOTARY PUBLIC
PTR # 4559910-1-3-11-GG.
ROLL # 25103
UNTIL DEC. 31, 2011



Doc No. 218
Page No. 44
Book No. 67200
Series of 2011





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

REQUEST FOR QUOTATION

The Department of Budget and Management (DBM), through its Bid and Awards Committee (BAC), will undertake a Negotiated Procurement (Small Value Procurement) for the project, Supply and Delivery of Drinking Water with Hot and Cold Dispenser for CY 2011, in accordance with Section 53.9 of the Revised Implementing Rules and Regulation of Republic Act No. 9184.

Name of Project : Supply and Delivery of Drinking Water with New Hot and Cold Dispenser for CY 2011

Location : DBM Buildings in Gen. Solano St., San Miguel, Manila and Mabini Hall, Malacañang, Manila

Brief Description : Weekly supply and delivery of 167 bottles at 5 gallons per bottle of purified drinking water and one time delivery of 39 units of hot and cold dispenser.

Approved Budget : Three Ninety Five Thousand Pesos (P395,000.00)

Contract Duration : January 1, 2011 to December 31, 2011

A complete set of quotation documents may be purchased by interested proponents on December 9, 2010 from the BAC Secretariat at the Administrative Service (AS) Conference Room, G/F Mabini Hall, Malacañang, Manila upon payment of a non-refundable fee of Five Hundred Pesos (P500.00). Moreover, eligibility documents to be submitted are (i) photocopy of proponent's Department of Trade and Industry or Securities and Exchange Commission Registration Certificate, as the case maybe; (ii) Mayor's Permit; and (iii) list of previous works done and respective clients.

Submission of eligibility and quotation documents is on or before December 17, 2010 at 9:00 a.m. while opening of said documents will follow thereafter at the same address indicated above. Late submission shall not be accepted.

The forms, which are part of the quotation documents, shall be the same forms to be submitted by the proponents for their compliance with the schedule of requirements, technical specifications, and financial proposal submission sheet. Non-compliance therewith shall be a ground for disqualification. The "No Contact Rule" shall apply. Bidders are not allowed to call or talk to any member of the BAC, TWG, or Secretariat right after the opening of the eligibility and quotation documents:

[Handwritten signatures]



The proponent determined to have the Lowest Calculated Bid shall be required to furnish the BAC a copy of the following documents within three (3) calendar days from receipt of notice thereof:

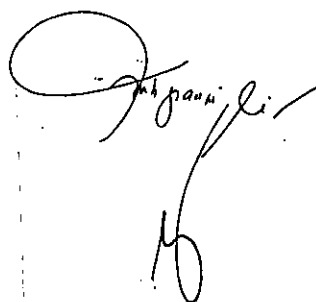

- 1) Certificate of PhilGEPS Registration;
- 2) DOH or accredited Laboratory Water Testing Certificate;
- 3) Sanitary Permit;
- 4) Microbiological Test;
- 5) Physical/Chemical Test; and
- 6) Certificate of Potability

For inquiry, you may call the BAC Secretariat at telephone no. 735-49-02.

Very truly yours,



DIR. ROWENA CANDICE M. RUIZ
Vice Chairperson
DBM BAC

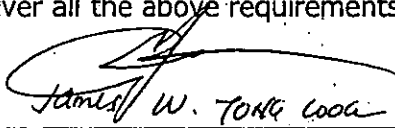



Schedule of Requirements

Item No.	Description	Quantity	Total
1	Supply and Delivery of Purified Drinking Water	Minimum of 167 bottles of 5 gallons per week	Minimum of 668 bottles of 5 gallons per month
2	Provision of New Hot and Cold Water Dispenser	39 units	39 units

DBM hereby reserves the right to increase or decrease the supply and delivery of purified drinking water for any reason, and in such event, there shall be a corresponding upward or downward adjustment in the consideration in such sum as may be agreed upon by the parties and/or reduction or extension of the term of the services rendered.

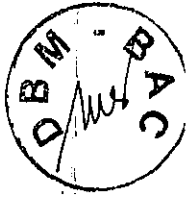
I hereby certify to comply and deliver all the above requirements.

<i>OHIO FOODS INDUSTRIES, INC.</i>	 <i>James W. Tongue</i>	<i>1/27/11</i>
Name of Company/Bidder	Signature over Printed Name of Bidder or Representative	Date





16



Technical Specifications

Item No.	Specifications	Statement of Compliance
1	Purified Drinking Water	
2	Minimum of 16 stages purification process	
3	Content: 5 gallons per bottle	
4	Shape and Quality of bottle: Round and Poly carbonated resin type	
5	39 units, New Hot and Cold Water Dispenser Power Source: 220V/60Hz Rated Power Input Hot: 500W Rated Power Input Cold: 80W Refrigerant/Pour: R12/42g	

Note: Bidders must state either "Comply" or Not Comply" in the column "Statement of Compliance" against each of the individual parameters of each "Specification", stating the corresponding performance parameter of the equipment offered.

I hereby commit to comply with all the above Technical Specifications.

ORIO FOODS INDUSTRIES, INC.

Name of Company/Bidder

JAMES W. LONG

Signature over Printed Name of Bidder
or Representative.

1/28/11

Date

[Handwritten signature]

[Handwritten signature]



Financial Proposal Submission Sheet

Date: _____

The Chairperson
Bids and Awards Committee
Department of Budget and Management
Mabini Hall, Malacañang, Manila.

Madam:

After having carefully read and accepted the terms and conditions in your Request for Quotation, hereunder is our quotation for the project, Supply and Delivery of Drinking Water with New Hot and Cold Dispenser for CY 2011:



1. Cost per bottle of 5 gallons purified drinking water	Amount: P _____ In words: _____
2. Cost or deposit of plastic container	Amount: _____ In words: _____
3. Delivery Charge	Amount: P _____ In words: _____
4. Charge/cost of Plastic container (if damaged or lost) per bottle	Amount: P _____ In words: _____
5. Cost of Hot and Cold Dispenser	Amount: P _____ In words: _____
6. Monthly servicing/maintenance/cleaning of water dispenser	Amount: P _____ In words: _____
7. Monthly Contract Cost	Amount: P _____ (VAT inclusive) In words: _____
8. Total Contract Cost	Amount: P _____ (VAT inclusive) In words: _____

Very truly yours,

Name of Company

Name/Signature of Representative

Date

5



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Section VII. Technical Specifications

Item No.	Specifications	Statement of Compliance
1.	Purified Drinking Water	COMPLY
2.	Minimum of 18 stages purification process	COMPLY
3.	Content: 5 gallons per bottle	COMPLY
4.	Shape and quality of bottle: Round and poly carbonated resin type	COMPLY
5.	39 units new Hot and Cold water dispenser Power Source: 220V/60Hz Rated Power Input Hot: 500W Rated Power Input Cold: 80W Refrigerant/Pour: R12/42g	COMPLY

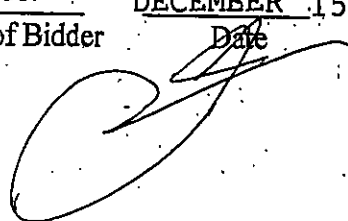
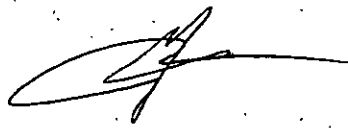
Note: Bidders must state either "Comply" or "Not Comply" in the column "Statement of Compliance" against each of the "Specification".

I hereby commit to comply with all the above requirements.

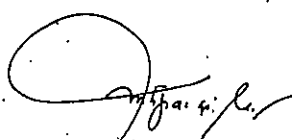


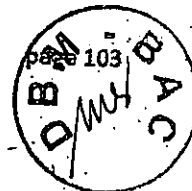
OHIO FOODS INDUSTRIES, INC.
Name of Company/Bidder

JAMES W. YONGLOOK
Signature over Printed Name of Bidder
Or Representative

DECEMBER 15, 2010
Date

20a

Bid Form

Date: December 15, 2010

Invitation to Bid^s N^o:

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 Number/s, the receipt of which is hereby duly acknowledged, we the undersigned, offer to **SUPPLY AND DELIVERY OF DRINKING WATER WITH NEW HOT AND COLD DISPENSER, FOR FY 2011** in conformity with the said Bidding Documents for the sum stated hereunder:

TWO HUNDRED TWENTY SEVEN THOUSAND SIX HUNDRED FIFTY FOUR PESOS AND 40/100 (Php227,654.40) FOR ONE YEAR. (TWENTY EIGHT PESOS AND 40/100 (Php28.40) PER 5 GALLON CONTAINER WITH CONTENT).

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.

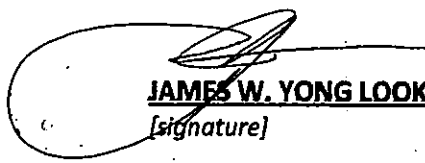
We agree to abide by this Bid for the Bid Validity Period specified in **BDS** provision for ITB Clause 17 and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

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 12 of the Bidding Documents.

Dated this 15th day of December, 2010.


JAMES W. YONG LOOK
 [signature]


Managing Director/ President
 [In the capacity of]

Duly authorized to sign Bid for and on behalf of **OHIO FOODS INDUSTRIES, INC.**



FINANCIAL PROPOSAL SUBMISSION SHEET

Date: December 15, 2010

The Chairperson
Bids and Awards Committee
Department of Budget and Management
Malacañang, Manila

Sir/Madam:

After having carefully read and accepted the terms and conditions in your Bidding Documents, hereunder is our bid for the Supply and Delivery of Drinking Water, with New Hot and Cold Dispenser, for FY 2011:

1. Cost per bottle of 5 gallons purified drinking water	Amount: <u>P28.40</u> In Words: <u>TWENTY EIGHT PESOS AND 40/100</u>
2. Cost or deposit of plastic container	Amount: P In Words: <u>WAIVE/FREE</u>
3. Delivery charge	Amount: P In Words: <u>FREE DELIVERY</u>
4. Charge/cost of plastic container (if damaged or lost) per bottle	Amount: <u>P150.00</u> In Words: <u>ONE HUNDRED FIFTY PESOS</u>
5. Cost of new Hot and Cold Dispenser	Amount: P In Words: <u>Free Use to be returned after contract.</u>
6. Monthly servicing/maintenance/cleaning of water dispenser	Amount: P In Words: <u>Free monthly servicing/maintenance/cleaning of dispenser</u>
7. Monthly Contract Cost	Amount: <u>P 18,971.20</u> (VAT Inclusive) In Words:
8. Total Contract Cost	Amount: <u>P227,654.40</u> (VAT inclusive) In Words: <u>TWO HUNDRED TWENTY SEVEN THOUSAND SIX HUNDRED FIFTY FOUR PESOS AND 40/100</u>

Very truly yours,

OHIO FOODS INDUSTRIES, INC.

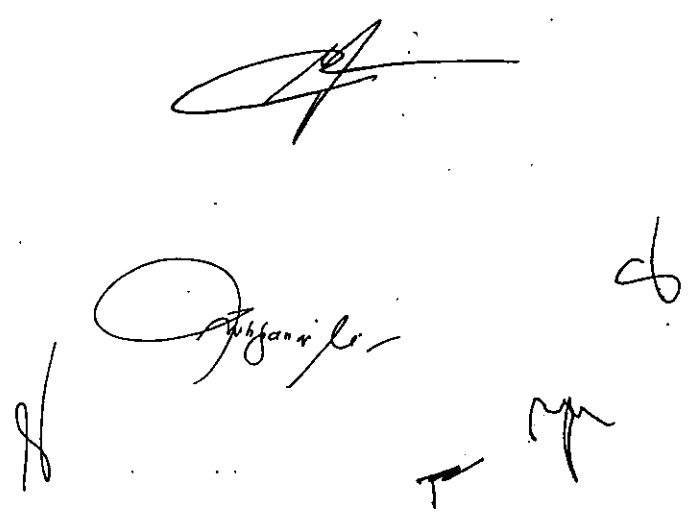
Name of Company


JAMES W. YONG LOOK

Name/Signature of Bidder/Representative

December 15, 2010

Date



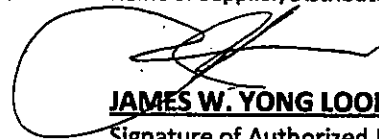
For Goods Offered From Within the Philippines

Name of Bidder **OHIO FOODS INDUSTRIES, INC.** Invitation to Bid Number. Page of ____.

1	2	3	4	5	6	7	8	9	10
Item	Description	Country of origin	Quantity	Unit price EXW per item	Cost of local labor, raw material, and component	Total price EXW per item (cols. 4x5)	Unit prices per item final destination and unit price of other incidental services	Sales and other taxes payable per item if Contract is awarded	Total price delivered Final Destination (col. 8+9) x 4
1	5 gallon	Philippines	8,016	P25.35	0	P203,205.60	P25.35	P3.05	P227,654.40
2	Hot and Cold Dispenser	Philippines	39 units	Free Use	Free Use	Free Use	Free Use	Free Use	Free Use

OHIO FOODS INDUSTRIES, INC.

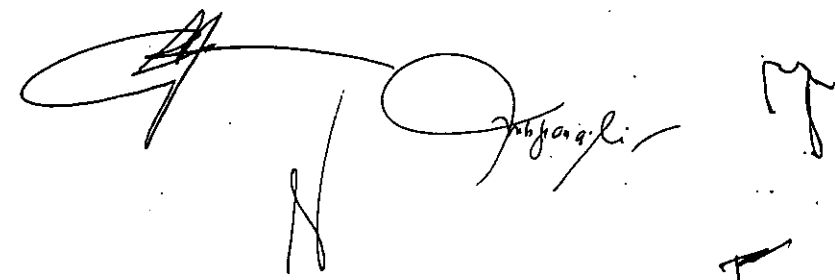
Name of Supplier/Distributor/Manufacturer



JAMES W. YONG LOOK

Signature of Authorized Representative

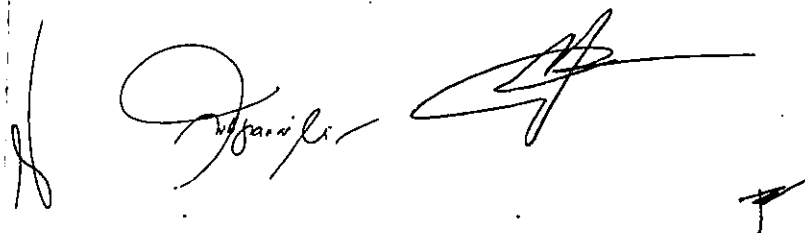
Date: December 15, 2010



General Conditions of Contract

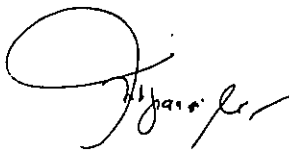
TABLE OF CONTENTS

1.	DEFINITIONS.....	6
2.	CORRUPT, FRAUDULENT, COLLUSIVE, AND COERCIVE PRACTICES.....	7
3.	INSPECTION AND AUDIT BY THE FUNDING SOURCE	8
4.	GOVERNING LAW AND LANGUAGE	8
5.	NOTICES	8
6.	SCOPE OF CONTRACT	8
7.	SUBCONTRACTING	8
8.	PROCURING ENTITY'S RESPONSIBILITIES	9
9.	PRICES	9
10.	PAYMENT	9
11.	ADVANCE PAYMENT.....	9
12.	TAXES AND DUTIES.....	10
13.	PERFORMANCE SECURITY.....	10
14.	USE OF CONTRACT DOCUMENTS AND INFORMATION.....	11
15.	STANDARDS	11
16.	INSPECTION AND TESTS.....	11
17.	WARRANTY	12
18.	DELAYS IN THE SUPPLIER'S PERFORMANCE	12
19.	LIQUIDATED DAMAGES	13
20.	SETTLEMENT OF DISPUTES.....	13
21.	LIABILITY OF THE SUPPLIER	14
22.	FORCE MAJEURE.....	14
23.	TERMINATION FOR DEFAULT.....	14
24.	TERMINATION FOR INSOLVENCY	50
25.	TERMINATION FOR CONVENIENCE.....	50
26.	TERMINATION FOR UNLAWFUL ACTS	16
27.	PROCEDURES FOR TERMINATION OF CONTRACTS.....	16
28.	ASSIGNMENT OF RIGHTS.....	17



29. CONTRACT AMENDMENT 17

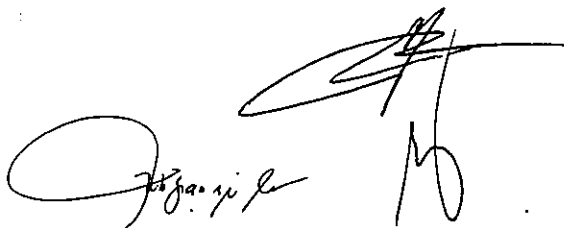
30. APPLICATION 18

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1. DEFINITIONS

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

1. "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.
2. "The Contract Price" means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.
3. "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.
4. "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.
5. "GCC" means the General Conditions of Contract contained in this Section.
6. "SCC" means the Special Conditions of Contract
7. "The Procuring Entity" means the organization purchasing the Goods, as named in the SCC.
8. "The Procuring Entity's country" is the Philippines.
9. "The Supplier" means the individual contractor, manufacturer distributor, or firm supplying/manufacturing the Goods and Services under this Contract and named in the SCC.
10. The "Funding Source" means the organization named in the SCC.
11. "The Project Site," where applicable, means the place or places named in the SCC.
12. "Day" means calendar day.
13. 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.
14. "Verified Report" refers to the report submitted by the Implementing Unit to the Head of the Procuring Entity setting forth its findings as to

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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 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.

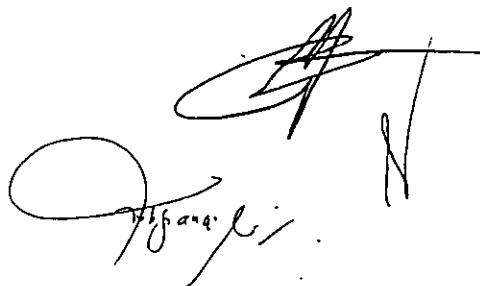
(ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practices among Bidders (prior to or after bid submission) designed to establish bid prices at artificial, 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;

(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.



Handwritten signatures and initials are present at the bottom of the page, including a large signature that appears to be 'J. Garcia' and other initials.

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.

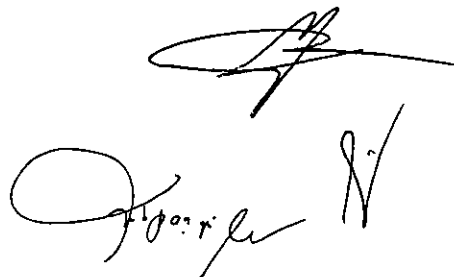
6. Scope of Contract

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.



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- 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.

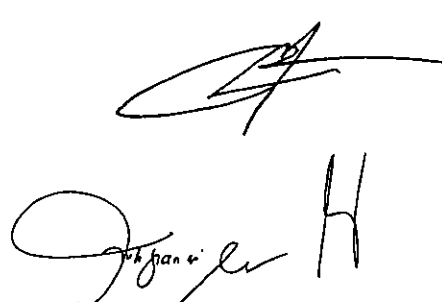
9. Prices

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 A.a)29, or if applicable, adjustments authorized in accordance with the price adjustment provisions specified in the **SCC**.

10. Payment

- 10.1 Unless otherwise specified in the **SCC**, 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 A.a)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.

8 Advance Payment



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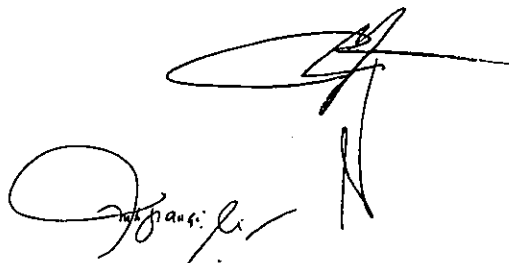
- 11.1 Advance payment shall be made only after prior approval of the President, and shall not exceed fifteen percent (15%) of the Contract amount, unless otherwise directed by the President or in cases allowed under Annex "D" of RA 9184.
- 11.2 For Goods supplied from abroad, ten percent (10%) of the Contract price shall be paid within sixty (60) calendar days from signing of the contract and upon submission of a claim and a bank guarantee issued by a licensed bank for the equivalent amount valid until the Goods are delivered and in the form provided in **Error! Reference source not found.**
- 11.3 All progress payments shall first be charged against the advance payment until the latter has been fully exhausted.

9 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 Unless otherwise specified in the SCC, 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 **Error! Reference source not found.**
- 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 Unless otherwise specified in the SCC, 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



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reductions is not more than fifty percent (50%) of the original performance security.

14. Use of Contract Documents and Information

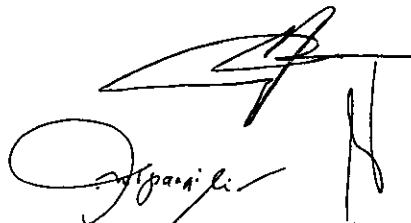
- 14.1 The Supplier shall not, except for purposes of performing the obligations in this Contract, without the Procuring Entity's prior written consent, disclose this Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of 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 **Error! Reference source not found.**; 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 **Error! Reference source not found.** 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.
- 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

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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.

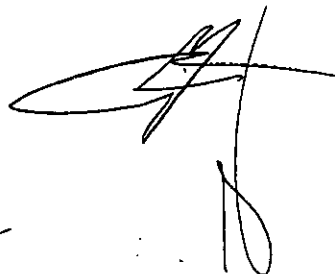

- 16.5 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Procuring Entity or its representative, shall release the Supplier from any warranties or other obligations under this Contract.

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 every progress 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.



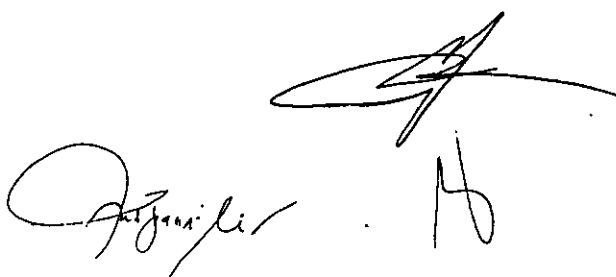
- 18.2 If at any time during the performance of this Contract, the Supplier or its Subcontractor(s) should encounter conditions impeding timely delivery of the Goods and/or performance of Services, the Supplier shall promptly notify the Procuring Entity in writing of the fact of the delay, its likely 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 A.a)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, a sum equivalent to the percentage specified in the **SCC** of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the **SCC**. Once the maximum is reached, the Procuring Entity shall rescind the Contract pursuant to **GCC** Clause A.a)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 Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the **SCC**.



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- (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

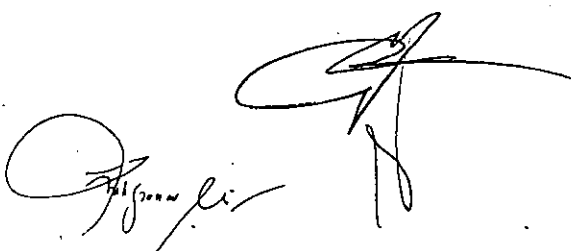
The Procuring Entity shall terminate this Contract if the Supplier is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any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

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- (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

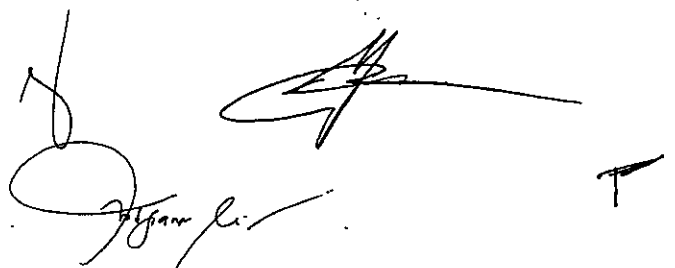
26.1 The Procuring Entity may terminate this Contract in case it is determined *prima facie* that the Supplier has engaged, before or during the implementation of this Contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited 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;



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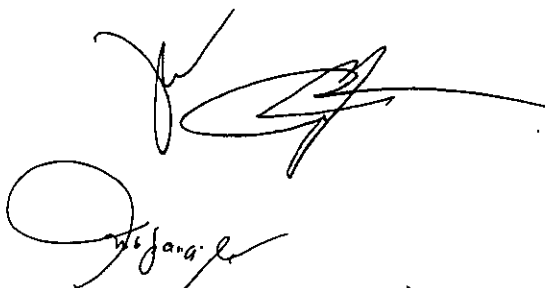
- (iii) an instruction to the Supplier to show cause as to why this Contract should not be terminated; and
 - (iv) special instructions of the Procuring Entity, if any.
- (c) The Notice to Terminate shall be accompanied by a copy of the Verified Report;
- (d) Within a period of seven (7) calendar days 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 to 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

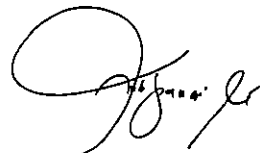
Subject to applicable laws, no variation in or modification of the terms of this Contract shall be made except by written amendment signed by the parties.



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30. Application

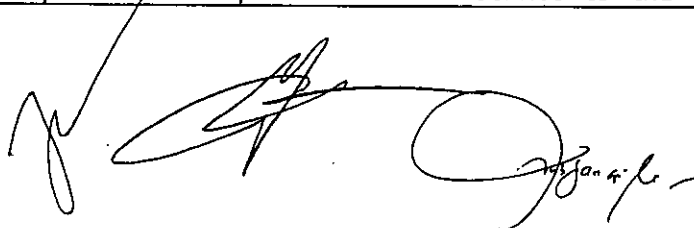
These General Conditions shall apply to the extent that they are not superseded by provisions of other parts of this Contract.

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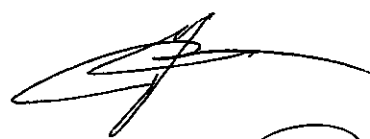
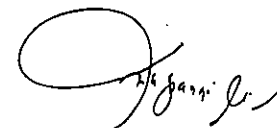
Special Conditions of Contract

GCC Clause	
1.1 g)	The Procuring Entity is the Department of Budget and Management (DBM).
1.1 (i)	The Supplier is Ohio Foods Industries, Inc.
1.1 (j)	<p>The Funding Source is:</p> <p>The Government of the Philippines (GOP) available funds in FY 2011 in the amount of Two Hundred Twenty Seven thousand Six Hundred Fifty Four Pesos and Forty Centavos (P227,654.40).</p>
1.1 (k)	The project site is DBM Buildings I, II, III, IV, General Solano St., San Miguel, Manila; Mabini Hall, Malacañang, Manila; and DLLO, Batasan, Quezon City.
5.1	<p><u>The Procuring Entity's address for Notices is:</u></p> <p style="padding-left: 40px;">Director Virginia G. Garriel Department of Budget and Management Room 109, Mabini Hall, Malacañang, Manila Tel. No. (02) 735-4902; 735-49-21 Fax No. (02) 735-4979</p> <p><u>The Supplier's address for Notices is:</u></p> <p style="padding-left: 40px;">James W. Yong Look, President Ohio Foods Industries, Inc. No. 60 Maryland St., Brgy. Pinagkaisahan, Cubao, Quezon City Tel. No. (02) 4128040; 7266791</p>
6.2	The DBM reserves the right to increase or decrease the supply and delivery of purified drinking water for any reason, and in such event, there shall be a corresponding downward or upward adjustment in the consideration in such sum as may be agreed upon by the parties provided that the resulting cost of said increase or decrease shall not exceed the ABC.
9.	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 Government Procurement Policy Board in accordance with Section 61 of Republic Act No. 9184 and its Implementing Rules and Regulations (IRR).
10.1	<p>Payment shall be made within ten (10) working days upon complete submission of the following documents:</p> <p style="padding-left: 40px;">a) Invoice, or Billing, or Statement of Account, for the period covered;</p> <p style="padding-left: 40px;">b) Periodic Microbiological/Bacteriological Test, Physical/Chemical Test; and Certificate of Potability.</p> <p style="padding-left: 40px;">c) Certification by the Director, Administrative Service to the effect that</p>



	Goods/Services have been delivered or rendered in accordance with the terms of the Contract.
10.4	In accordance with Section 54.5 of the IRR, performance securities are not required for small value procurement.
13.1	In accordance with Section 54.5 of the IRR, performance securities are not required for small value procurement.
13.4(c)	In accordance with Section 54.5 of the IRR, performance securities are not required for small value procurement.
16.1	Anytime during contract duration, the Client shall require the Contractor to conduct the physical and chemical test which includes odor, color, turbidity, Res. Chlorine, pH, acidity, alkalinity, nitrite, total iron, fluoride, calcium, magnesium, manganese, silica, sulfate, total solids, total dissolved solids, total suspended solids, and heavy metals (Cu, Cr, Pb), at the Contractor's expense to a laboratory accredited by the Department of Health.
17.4 and 17.5	<p><i>Expendable Goods.</i> The warranty shall be three (3) months after acceptance by the Procuring Entity of the delivered Goods or after the Goods are consumed, whichever is earlier.</p> <p><i>In case of Non-expendable Goods:</i> One (1) year after acceptance by the Procuring Entity of the delivered Goods.</p> <p>However, in accordance with Section 54.5 of the IRR, the Supplier is not required to give a warranty security</p>
19.1	<p>The applicable rate is one tenth (1/10) of one percent (1%) of the cost of the unperformed portion for every day of delay.</p> <p>The maximum deduction shall be ten percent (10%) of the amount of contract. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, the procuring entity shall rescind the contract, without prejudice to other courses of action and remedies open to it.</p> <p>The amount of 10% of the contract cost shall also be imposed on the Supplier for non-performance of its obligations under the Contract through no fault of the Procuring Entity.</p>
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."
21.1	No additional provision.

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REPUBLIC OF THE PHILIPPINES

Department of Budget and Management
Malacañang, Manila

NOTICE OF AWARD

January 21, 2011

ORIGINAL RECEIVED

MR. JAMES W. YONG LOOK
President
Ohio Foods Industries, Inc.
No. 60 Maryland St., Brgy. Pinagkaisahan
Cubao, Quezon City

By: JOJO MACASINAO
Designation: PH. TECHNICIAN
Office: DHD FOOD INDS. IN.
Date: 1-21-11

Dear Mr. Yong Look:

Based on the Department of Budget and Management Bids and Awards Committee Resolution No. 2011-04, we are pleased to inform you that the contract for the project "Supply and Delivery of Drinking Water with New Hot and Cold Dispenser for CY 2011" is hereby awarded to your company in the amount of Two Hundred Twenty Seven Thousand Six Hundred Fifty-Four Pesos and Forty Centavos (P227,654.40).

Very truly yours,

FLORENCIO B. ABAD
Secretary

