

DATA SERVICE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Data Service Agreement is made, executed and entered into, by and between:

INNOVE COMMUNICATIONS, INC., a stock corporation duly organized and existing under the laws of the Republic of the Philippines, with address at the 14th Floor, Valero St., Salcedo Village, Makati City, represented by its Head, Enterprise Segments, Business Customer Facing Unit (BCFU), **CECILIA GRACE J. CASTILLO**, hereinafter referred to as "**INNOVE**";

- AND -

TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY (TESDA), a national government agency organized and existing under and by virtue of Republic Act No. 7796, with office at East Service Road, South Super Highway, Taguig City, represented herein by its Director General, **EMMANUEL JOEL J. VILLANUEVA**, hereinafter referred to as "**CLIENT**";

WITNESSETH: THAT -

WHEREAS, **INNOVE** is an entity duly authorized to render telecommunication services in the Philippines, including the provision of Direct Internet Service, hereinafter referred to as the "**Service**";

WHEREAS, **CLIENT** in pursuit of its legal mandate to ensure the provision of quality Technical and Vocational Education and Training (TVET) services to Filipino Citizens by its network of public and private training providers, desires full internet accessibility to and by its stakeholders;

WHEREAS, the Service utilizes leased line technology to deliver dedicated internet access and is directly connected to major Internet backbones to the U.S. and Asia for efficient IP routing. Aside from the international trunks, the Service is likewise connected via multiple direct peering with major local ISPs to address the volume of domestic Internet traffic. The Service further provides increased network stability as it is directly terminated on the customer router. This package also comes with Value Added Services such as: a) 1GB web hosting space; b) Back-up email provision (1GB email hosting space or up to 200 email accounts @ 5MB per email account or via customized plan of 35 email account with 100MB of email space); c) 1 Domain Name Registration for .ph; d) 1 Domain Name Hosting; e) /29 IP Block (for 7 Floor LAN of Admin Bldg of Client/for executives); f) /28 IP Block (for eTESDA/online learning); g) /28 IP Block (for the rest of TESDA Corporate Staff); h) 24hourx7days monitoring of bandwidth usage via MRTG; i) 24hourx7days customer support via FMCC; and j) Static routing. Further, the Service's Committed Information Rate (CIR) that shall be provided by **INNOVE** to ensure the provision of the dedicated internet access services in TESDA Taguig Complex is 12 Mbps which is allocated as follows: (a) 6 Mbps to the eTESDA in support of its online training programs and other interactive applications; (b) 2 Mbps to the 7th Floor of the TESDA Main (Admin.) Building which houses the Office of the Director General including the Offices of the Deputy Directors General to ensure uninterrupted access to the public and connection to oversight agencies (such as the DOLE and PMS), and in support of bandwidth hungry applications like Facebook and Twitter accounts and other applications; and (c) 4 Mbps for the Operating Units within the TESDA Complex and for hosting of various web applications and information systems;

WHEREAS, **INNOVE** offered the Service to **CLIENT** and the latter has agreed to avail of the same;

WHEREFORE, the parties now agree to the following terms and conditions:

1. **INNOVE** shall provide to **CLIENT** the Service in accordance with the specifications set forth in Attachment I ("Bid Form"), Attachment II (For Goods Offered from within the Philippines) and Attachment III (Technical Plan) attached hereto and made an integral part hereof. The Service shall be available for use by **CLIENT**, for the two-way transmission of information twenty-four (24) hours per day, seven (7) days per week, including holidays. Provision of Service by **INNOVE** shall include the following:

- i) Site survey, planning, installation, activation and testing of circuits;
- ii) Labor and materials which are to the account of **INNOVE** to construct and install the Service;
- iii) Maintenance of the following ancillary equipment for **CLIENT**'s use:
 - o SDH Mux;
 - o Cisco Router (C1941); and
 - o 1-pair of Actelis Modem

Except the Cisco Router (C1941), ownership of the ancillary equipment stated above shall belong to **INNOVE**; and

- iv) Securing of permits, licenses and approvals that are necessary in the construction and installation of circuits from the National Telecommunications Commission (NTC) or other relevant government agencies, both local and/or national.

2. **CLIENT**'s responsibilities shall include but not be limited to the following:

- i) **CLIENT** shall grant **INNOVE**'s authorized representatives access to its premises, equipment and all facilities located therein to perform its obligations under this Agreement.
- ii) Except for the permits, licenses and approvals referred to in 1.iv above, **CLIENT** shall secure the requisite building permits and approvals necessary for construction, installation and operation of the facilities used for rendering the telecommunications service/s herein contemplated.
- iii) **CLIENT** shall use **INNOVE** facilities and/or **INNOVE** services provided only for the purpose herein stated and shall not use the same to conduct any service such as callback, unauthorized audiotex, International Simple Resale (ISR), and other analogous services which are prohibited in the Philippines, or which operation or service constitutes a bypass defrauding **INNOVE** and/or its interconnect partners of the rightful access/termination charges due them.

In the event that **CLIENT** uses **INNOVE**'s facilities and services for any illegal or unauthorized services including but not limited to those enumerated above, **CLIENT** shall immediately compensate **INNOVE** an amount equivalent to the rightful access or termination charge prevailing at the time the bypass was committed for the type of traffic passed via the bypass service or practice committed by **CLIENT** to the applicable Philippine network (including without limitation, an **INNOVE** network, or the network of any other carrier with whom **INNOVE** has an interconnect agreement, whether mobile or landline) plus fifty percent (50%) of such access or termination charge (the "Bypass Compensation").

Such Bypass Compensation shall be payable, without limitation, from the time the bypass activity was conducted by **CLIENT** until complete payment thereof by **CLIENT**, and such Bypass Compensation shall be computed from the time the bypass occurred until the actual cessation of bypass. **INNOVE** shall likewise pass on, and **CLIENT** agrees to accept and immediately pay, all other claims and damages demanded by any of

INNOVE's interconnect partners who may have been affected, directly or indirectly, by the unauthorized service. This shall not be subject to any limitation of liability provided in this Agreement.

- iv) **CLIENT** acknowledges **INNOVE's** ownership over the ancillary Customer Premises Equipment (CPE). Accordingly, **CLIENT** shall be responsible for the safe custody and use of these equipment after installation at the premises and shall exercise due care, as may be necessary, in handling the same. Any loss, damage or deterioration of these equipments during the Term of the Agreement, other than those solely attributable to ordinary wear and tear or factors that are beyond the control of **CLIENT**, shall be for the account of **CLIENT**, and **INNOVE** shall be compensated adequately therefor.
3. In consideration of the provision of Service, the Monthly Recurring Charges (MRC) for the Service shall be that listed in Attachment II. It is understood that the MRC is Value-added Tax (VAT) inclusive. The MRC shall be paid by **CLIENT** within fifteen (15) working days from receipt of **INNOVE's** billing/invoice. If **CLIENT** fails to pay the MRC within the said period, **INNOVE** reserves the right, without incurring any liability, to suspend or temporarily disconnect the Service until the unpaid invoice is paid in full, as well as to immediately terminate this Agreement by service of a written notice to **CLIENT**.
4. Upon completion of installation and testing of the Service, the Service will be turned over to **CLIENT** for usage. **INNOVE** shall provide a Service Completion Notice to **CLIENT**.
- Billing of **CLIENT** by **INNOVE** for the Service rendered shall commence on the day after the signing of **INNOVE's** Technical Compliance or Circuit Acceptance Form by **CLIENT** ("Billing Commencement Date").
- Any customer provided equipment and/or facilities not installed, operational or otherwise available for use shall not be a sufficient ground for **CLIENT** not to accept the Service.
5. In case of interruption of the Service due to the failure of **INNOVE's** equipment or due to any cause within **INNOVE's** exclusive control, **CLIENT** shall be entitled to credit allowance in accordance with Attachment III ("Service Level Agreement"), attached hereto and made an integral part hereof. It is understood that this shall be the sole remedy and total limit of **INNOVE's** liability arising from or due to service interruption.
6. **INNOVE** shall not be liable for any loss or damages suffered by **CLIENT** as a result of failure of the Service to operate or function caused or brought about by natural occurrences or disturbances, or brought about by any cause beyond the control of **INNOVE**. Notwithstanding the foregoing, **INNOVE** shall repair or replace CPE it provided to **CLIENT** which is damaged due to force majeure or acts beyond the control of the Parties and make sure that interruption is cut down to a minimum level.
7. This Service Agreement shall be valid and binding for a period of six (6) months from Billing Commencement Date ("Initial Contract Period"). Thereafter, this Agreement may be renewed every year thereafter ("Renewal Contract Period"), under the same terms and conditions, provided that neither party has given a thirty (30) day notice of termination prior to the expiry of the Agreement. However, renewal of this Agreement shall be subject to the evaluation of the performance of **INNOVE**.
8. **INNOVE** reserves the right to summarily terminate all **INNOVE** services extended to **CLIENT** under this and any and all subscription agreements and contracts, for non-payment, or any other violation of this Agreement.

9. **INNOVE** shall abide by all the applicable safety procedures, policies and standards of **CLIENT** when performing repair, maintenance and/or installation/s of Service within the premises of **CLIENT**.
10. **INNOVE** shall take all necessary precautions to ensure the safety and health of its personnel.
11. If **CLIENT** pre-terminates this Agreement for causes other than substantial breach of this Contract by **INNOVE**, **CLIENT** shall pay **INNOVE** pre-termination charges in the amount of: fifty percent (50%) of the MRC for the remaining term of the Agreement if pre-termination is within the first half of the contract term, thirty-five percent (35%) of the MRC for the remaining term of the Agreement if pre-termination is after the first half of the contract term, and one hundred percent (100%) of the MRC for the remaining term of the Agreement for bundled CPE. Payment shall be made within thirty (30) days from such termination.
12. If a service downgrade is requested within the term of this Agreement, **CLIENT** shall pay **INNOVE** a penalty charge equivalent to one hundred percent (100%) of the difference between the MRC of the existing and downgraded Service multiplied by the unexpired portion of the applicable term.

$$P = 100\%(M_E - M_D) \times U$$

where: P – penalty charge

M_E – MRC of existing Service

M_D – MRC of downgraded Service

U – unexpired portion in no. of months

13. In case of cancellation of order:

- i) When installation works have been started before turnover of the Service, **CLIENT** shall pay the installation fee quoted or the actual charges incurred during the installation, whichever is higher.
- ii) If Service has been turned over but not formally accepted, **CLIENT** shall pay the cancellation charges consisting of the following:
- installation fee quoted or actual expenses incurred (whichever is higher),
 - one month's bill of the Service,
 - dismantling charges equivalent to the installation fee.

If installation fee is waived, actual expenses shall apply.

14. Additional Clauses:

- i) This Agreement and the attachments hereto shall be the repository of the entire Agreement between the parties and shall supersede any written or oral agreement with respect to the subject matter hereof. Accordingly, all amendments, modifications or any change to this Agreement or to any attachment hereto shall be in writing and signed by both parties.
- ii) Failure by either party to exercise any right under this Agreement shall not constitute a waiver of such rights.
- iii) Any and all cases for redress, damage and other causes of action arising out of or necessary in connection with the foregoing Agreement shall be instituted solely before the proper courts of Metro Manila.
- iv) **INNOVE** shall not be liable to **CLIENT** for any special, indirect, consequential or incidental damages, including loss of profits or revenues or loss of prospective business advantage, regardless of whether **INNOVE** had been advised of such damages or whether that liability arises in contract, tort, strict liability, breach of warranty, or otherwise.

- v) In the event **INNOVE** becomes liable under this Agreement, **INNOVE's** liability shall only be up to the amount/price of this Agreement.
- vi) Either party shall indemnify, defend and hold harmless the other from any third-party claim, suit or demand, which is due to gross negligence, fraudulent act or omission, or willful misconduct attributable to the other party.
- vii) The following instances serve as exemptions to the Confidentiality or Non-Disclosure Agreement (NDA):
 - **CLIENT** shall allow the submission of this Agreement for purposes of compliance with the bidding requirement participated by **INNOVE**;
 - **CLIENT** shall allow the inclusion of its name in the list of **INNOVE's** clients for marketing purposes.
- viii) All notices provided for herein (other than routing communications concerning the services to be provided hereunder) must be in writing and shall be effective when received by the other party. All notices sent by either party will be addressed as follows:

If to **INNOVE**:

INNOVE COMMUNICATIONS, INC.
 14th Floor
 Valero St., Salcedo Village
 Makati City
 Attention: Head, Enterprise Segments, BCFU

If to **CLIENT**:

TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY
 East Service Road, South Super Highway
 Taguig City
 Attention: Executive Director (Mr. Noel K. Villaflor)

- ix) If any of the provisions or any portion of the provisions in this Agreement shall be declared invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability will not invalidate the entire Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed this 4 th day of October 2012 by and through their duly authorized representatives.

INNOVE COMMUNICATIONS, INC.

By:

[Signature]
CECILIA GRACE J. CASTILLO
 Head, Enterprise Segments, BCFU

TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY

By:

[Signature]
SEC. EMMANUEL JOEL J. VILLANUEVA
 Director General

Signed in the Presence of:

[Signature]
CAROLINA DELA COSTA
 Senior Account Manager

[Signature]
NOEL K. VILLAFLOR
 Executive Director



ACKNOWLEDGMENT

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

BEFORE ME, a Notary Public in and for the above jurisdiction, this OCT 05 2012 day
of _____ personally appeared the following:

Name Government Issued ID No. Date/Place of Issue

CECILIA GRACE J. CASTILLO
INNOVE COMMUNICATIONS, INC.

known to me and to me known to be the same persons who executed the foregoing instrument of fifteen (15) pages including the page on which this Acknowledgment appears and acknowledged to me that the same is their free and voluntary act and deed; and the voluntary act and deed of the corporations herein represented.

Witness my hand and seal on the date and the place first herein above given.

Doc. No. 274
Page No. 56
Book No. 46
Series of 2012.

Ronald C. Ching
ATTY. RONALD SEGUNDINO C. CHING
NOTARY PUBLIC-CITY OF MANILA
ADMIN. NO. 2011-009-UNTIL DEC. 31, 2012
ROLL NO. 54899
IBP NO. 864212-12-28-II MLA.
PTR NO. 031422-12-19-II MLA.
MCLE NO. 111-0016300 MAY 12, 2012
NO. 945 BENAVIDEZ ST. TONDO MLA.
TEL. 333-7475

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of _____ personally appeared the following:

Name Government Issued ID No. Date/Place of Issue

EMMANUEL JOEL J. VILLANUEVA
TECHNICAL EDUCATION AND
SKILLS DEVELOPMENT AUTHORITY

known to me and to me known to be the same persons who executed the foregoing instrument of fifteen (15) pages including the page on which this Acknowledgment appears and acknowledged to me that the same is their free and voluntary act and deed; and the voluntary act and deed of the corporations herein represented.

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