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**CONTRACT FOR THE PROVISION OF
AN AUTOMATED ELECTION SYSTEM FOR THE
MAY 10, 2010 SYNCHRONIZED NATIONAL AND
LOCAL ELECTIONS**

KNOW ALL MEN BY THESE PRESENTS:

This Contract, made and entered into this 10th day of July, 2009, in Manila, Philippines, by and between:

THE COMMISSION ON ELECTIONS, an independent constitutional agency of the Republic of the Philippines mandated to enforce and administer election laws, with principal office address at Palacio del Gobernador, Postigo Street, Intramuros, Manila, Philippines, hereinafter referred to as "**COMELEC**", represented herein by its Chairman, Hon. Jose A. R. Melo,

- and -

SMARTMATIC TIM CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at Ground Floor, King's Court Building 2, 2129 Dela Rosa St., Don Chino Roces Avenue, Makati City, hereinafter referred to as the "**PROVIDER**", represented herein by its duly authorized representative and Chairman of the Board, Mr. Juan C. Villa, Jr..

WITNESSETH

WHEREAS, COMELEC is undertaking a modernization program of the Philippine Electoral System which includes the automation of the counting, transmission and canvassing of votes for the May 10, 2010 Synchronized National and Local Elections, with systems integration and over-all project management in a comprehensive and well-managed manner consisting of three (3) Components, (hereinafter called the "Project") as follows:

Component 1: Paper-Based Automated Election System (AES)

- 1-A. Election Management System (EMS)
- 1-B. Precinct-Count Optical Scan (PCOS) System
- 1-C. Consolidation/ Canvassing System (CCS)

Component 2: Provision for Electronic Transmission of Election Results using Public Telecommunications Network

Philippine Refman

Component 3: Overall Project Management

WHEREAS, the joint venture of Total Information Management Corporation (TIM) and Smartmatic International Corporation (SMARTMATIC) has passed the eligibility, technical and financial screening conducted by the Special Bids and Awards Committee (SBAC) and its Technical Working Group (TWG) composed of members from COMELEC, Department of Science and Technology (DOST) and the National Computer Center (NCC) in an open, competitive, public bidding;



WHEREAS, on June 9, 2009, COMELEC promulgated Resolution No. 8608 approving "the report/recommendation of the SBAC dated June 3, 2009 confirming TIM/SMARTMATIC as the bidder with the 'Lowest Calculated Responsive Bid' and awarding "the contract for the automation of the elections on May 10, 2010 to said joint venture";

WHEREAS, pursuant to the Joint Venture Agreement submitted by TIM and SMARTMATIC as part of their Eligibility Documents, TIM and SMARTMATIC incorporated a joint venture company, the PROVIDER herein, to enter into this Contract with COMELEC for the Project;

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants hereinafter set forth, the parties agree as follows:

**ARTICLE 1
DEFINITIONS**

The words and phrases herein used shall have the following meanings:

1.1 Bidding Documents

Bidding Documents refers to the Request for Proposal (RFP), also known as the Terms of Reference, issued by COMELEC, including all Bid Bulletins.

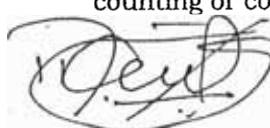


1.2 Contract

Contract refers to this agreement by and between COMELEC, on one hand, and the PROVIDER, on the other hand, together with all its Annexes or "Contract Documents", for the Project.

1.3 Continuity Plan

Continuity Plan is a list of contingency measures, and the policies for activation of such, that are put in place to ensure continuous operation of the AES. It shall cover risks to the AES at all points in the process such that a failure of elections, whether at voting, counting or consolidation may be avoided.



Technical Referee



It is also a logistical plan that presents how the parties will recover and restore partially or completely interrupted critical and/or urgent functions within a predetermined time after a disaster or extended disruption.

1.4 Customization

Customization means modification, conversion or adaptation of the software to suit the requirements of Philippine laws and general instructions of COMELEC on the conduct of the elections.

1.5 Delay

Delay means any disturbance or interruption and/or unavailability of any Service to be used and necessary for the Project's requirements, caused by any of the following:

- a) malfunction of any portion of the Project and/or the inability of any of the leased or purchased Equipment to provide Services adequate to meet its requirements in any precinct or canvassing center; or
- b) failure occurring in any of the leased or purchased Equipment; or
- c) non-availability of other Project-related resources; or
- d) other causes directly attributable to the fault of the PROVIDER and/or COMELEC; or
- e) other causes directly attributable to *Force Majeure*.

1.6 Development Set

Development set refers to the set of twenty (20) Precinct Count Optical Scan (PCOS) machines to be used during the System Development Life Cycle (SDLC) of the software solution (EMS, CCS, and PCOS applications)

1.7 Election Day

Election Day refers to May 10, 2010.

1.8 Equipment

Equipment refers to the hardware component of Goods, consisting of all devices to be used for the Project.

1.9 Financial Proposal

Financial Proposal means the Financial Bid submitted by TIM and SMARTMATIC to COMELEC during the bidding process for the Project.

1.10 Firmware

Firmware means the permanent instructions and data programmed directly into the circuitry of read-only memory for controlling the operation of the machines.

Financial Proposal

1.11 Force Majeure

Force Majeure means an event, condition, or circumstance which cannot be foreseen and which, though foreseen, is inevitable or beyond the control of the parties, absent their fault or negligence, which prevents or causes delay or disruption in the performance of any obligation of any of the parties, such as but not limited to, war, whether declared or not, hostilities, belligerence, blockade, revolution, insurrection, riot, terrorism, and natural disasters (including fire, flood, earthquake, volcanic eruption, storm, typhoon, lightning, tidal wave) and analogous circumstances.

1.12 Full-Time Basis

Full-time basis refers to the operation of the Project all the time, as needed, 24 hours a day, 7 days a week, during the Term as defined hereunder.

1.13 Functional System and Software Agreement

Functional System and Software Agreement refers to the complete description of the normative behavior of the system to be developed (Inputs, Processes and Reports). It includes a set of algorithms and heuristics that describe all of the interactions that the users will have with the software.

1.14 Goods

Goods refers to the precinct count optical scan (PCOS) machines and their peripherals, personal computers, servers, electronic transmission devices, printers, integrated software and other related equipment, both hardware and software, including all deliverable supplies, ballots and materials, except ballot boxes, as presented by TIM and SMARTMATIC in their Technical and Financial Proposals, and all other materials necessary to carry out the Project.

1.15 Implementing Unit

Implementing Unit means the Project Management Office (PMO) of COMELEC.

1.16 Project

Project refers to COMELEC's nationwide automation of the voting, counting, transmission, consolidation and canvassing of votes for the May 10, 2010 Synchronized National and Local Elections, consisting of the three (3) Components mentioned in the **Bidding Documents**.

1.17 Services

Services refers to all acts to be performed or provided by the PROVIDER to COMELEC for the operation and completion of the Project, enumerated and described in the Technical and Financial

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Proposals, as amended or expounded by the Bidding Documents, particularly in reference but not limited to Components 2 and 3.

1.18 Site

Site refers to each of the locations identified and designated by COMELEC where the PROVIDER shall install the Equipment including the PCOS machines.

1.19 Taxes

Taxes refers to any present or future taxes (including gross receipts tax or value-added tax), imposts, stamps, duties, filing and other fees or charges imposed by the Philippine Government or any political subdivision or taxing authority thereof, but excluding income taxes of the PROVIDER, whether or not subject to withholding.

1.20 Technical Proposal

Technical Proposal means the Technical Bid submitted by TIM and SMARTMATIC to COMELEC during the bidding process for the Project.

1.21 Updates

Updates shall mean changes made to the software to improve the efficiency or effectiveness of the current software functions.

1.22 Upgrades

Upgrades shall mean changes made to the software which add one (1) or more new functions or a new version to the current software that more than enhances the efficiency or effectiveness thereof.

**ARTICLE 2
EFFECTIVITY**

2.1 This Contract shall take effect upon the fulfilment of all of the following conditions:

- a) Submission by the PROVIDER of the Performance Security;
- b) Signing of this Contract in seven (7) copies by the parties; and
- c) Receipt by the PROVIDER of the Notice to Proceed.

2.2 The Term of this Contract begins from the date of effectivity until the release of the Performance Security, without prejudice to the surviving provisions of this Contract including the warranty provision as prescribed in Article 8.3 and the period of the option to purchase.

Richard Reforan

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**ARTICLE 3
SCOPE OF THE PROJECT**

3.1 The scope of the Project shall include:

(a) The provision of Goods consisting of hardware, software, supplies and materials as listed in the Financial and Technical Proposals, as follows:

- Annex "A" - List of Goods (Components 1-A and 1-B: Election Management System and Precinct Count Optical Scan);
- Annex "B" - List of Goods (Component 1-C: Consolidation/Canvassing System)
- Annex "C" - List of Goods for Ballots
- Annex "D" - List of Goods (Component 2: Electronic Transmission Service)
- Annex "E" - List of Goods (Component 3: Overall Project Management)

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(b) The provision of Services specified in the Bidding Documents, with Systems Integration and Project Management; Electoral Advocacy; Training and Information Campaign Materials; Pre-Election Testing and Rollout Support; Site Preparation; Ballot Box Design; Deployment, Installation, Pullout and Warehousing; Election Day Support; Post-Election Support; Supplies and Others as listed in the Financial Proposal hereunder appended and made integral parts of this Contract, as follows:

- Annex "F" - List of Services (Component 1: Paper-Based Automated Election System (AES))
- Annex "G" - Services for Ballots
- Annex "H" - List of Services (Component 2: Electronic Transmission Service)
- Annex "I" - List of Services (Component 3: Overall Project Management)

(c) Such goods, services, and improvements to the above as may be necessary for the proper and timely execution and implementation of the Project, subject to the mutual agreement of the parties.

3.2 The PROVIDER shall provide the Goods and perform the Services under this Contract and the Contract Documents. It shall provide competent project management, technical manpower and efficient services. It shall ensure the proper, satisfactory and timely execution and completion of the Project.

3.3 The PROVIDER shall be liable for all its obligations under this Project, and the performance of portions thereof by other persons or entities not parties to this Contract shall not relieve the PROVIDER of said obligations and concomitant liabilities.

SMARTMATIC, as the joint venture partner with the greater track record in automated elections, shall be in charge of the technical aspects of the counting and canvassing software and hardware,

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including transmission configuration and system integration. SMARTMATIC shall also be primarily responsible for preventing and troubleshooting technical problems that may arise during the election.

The PROVIDER must provide to SMARTMATIC at all times the support required to perform the above responsibilities.

**ARTICLE 4
CONTRACT FEE AND PAYMENT**

4.1 CONTRACT AMOUNT

COMELEC shall pay the PROVIDER the aggregate contract amount of Seven Billion One Hundred Ninety One Million Four Hundred Eighty Four Thousand Seven Hundred Thirty Nine Pesos and Forty-Eight Centavos (**Php7,191,484,739.48**), exclusive of value-added tax, if any, for the lease of Goods and purchase of Services under this Contract.

4.1.1 The Contract Amount shall be paid as the Goods and Services are delivered and/or progress is made in accordance with the following Schedule of Payments which takes into account the agreed critical milestones based on the Revised Timeline (Annex "J") and the Technical Proposal (Annex "K"):

Project Initialization, Set up Project Management Team (PMT) and Project Systems including all SW licenses & firmware	10%
Delivery of Development Set (20 units)	5%
Report on Transmission and Logistics	5%
Delivery of Functional System and Software Agreement	5%
Delivery of EMS and CCS (HW, SW and Website)	5%
Complete System Including Customization and Voter Education Materials/Website	5%
Field Testing, Mock Election, TEC Systems Certification, Training of Trainors	5%
Delivery of PCOS Machines (Nov - 12K; Dec - 30K)	17.5%
Second Delivery of PCOS Machines (Jan - 30K; Feb - 10.2K)	17.5%
Commencement of Ballot Production	2.5%
Delivery of Ballots	7.5%
Configuration of Machines, Final Checking of systems, including transmission and Sealing	5%
Subtotal	90%

Election Day Services & Completion Report and Final Acceptance in lieu of Retention of Warranty Security, within thirty (30) days from receipt of Final Report	10%
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**Performance Security - 5% (based on final acceptance of completion report as provided In Article 8.1, paragraph 2)*

4.1.2 No payment, partial or final, shall be made except upon a certification by COMELEC Chairman or Project Management Office concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with this Contract and have been duly inspected and accepted.

Ferdinand Reforan

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4.1.3 Upon delivery or performance of portions of this Contract, progress payment shall be made within five (5) working days upon complete submission of the following documents:

- a. Invoice of Billing or Statement of Account by the PROVIDER, together with Progress Reports on the works, Goods and Services completed to date; and
- b. Certificate of Acceptance issued by the Project Director within five (5) days from receipt of the Invoice.

The parties, recognizing the tight and complex nature of this Project and the agreed timelines, shall endeavour to avoid any delays in the deliveries, billings and payment processes.

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4.2 MODE OF PAYMENT

COMELEC shall pay the entire Contract Amount via Irrevocable Letter of Credit issued by the Land Bank of the Philippines in favor of the PROVIDER before the end of the month of July 2009. The said Letter of Credit shall be payable at sight and valid for a period of five hundred sixty (560) days from date of opening thereof, under such terms and conditions as may be agreed upon by the parties and in accordance with Article 4.1 above.

Said Irrevocable Letter of Credit shall allow for partial drawings according to the percentages set forth in Article 4.1. Payment shall be made by the Land Bank upon proof by the PROVIDER that the respective condition precedent/s set forth in Article 4.1 has been met.

4.3 OPTION TO PURCHASE

In the event COMELEC exercises its option to purchase the Goods as listed in Annex "L", COMELEC shall pay the PROVIDER an additional amount of Two Billion One Hundred Thirty Million Six Hundred Thirty Five Thousand Forty Eight Pesos and Fifteen Centavos (Php2,130,635,048.15) as contained in the Financial Proposal of the joint venture partners - SMARTMATIC and TIM.

In case COMELEC should exercise its option to purchase, a warranty shall be required in order to assure that: (a) manufacturing defects shall be corrected; and/or (b) replacements shall be made by the PROVIDER, for a minimum period of three (3) months, in the case of supplies, and one (1) year, in the case of equipment, after performance of this Contract. The obligation for the warranty shall be covered by retention money of ten percent (10%) of every option to purchase payment made.

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The retention money will be returned within five (5) working days after the expiration of the above warranty, provided, however, that the goods supplied are in good operating condition free from patent and latent defects, all the conditions imposed under the purchase contract have been fully met, and any defective machines, except to those attributable to COMELEC, have been either repaired at no additional charge or replaced or deducted from the price under the Option to Purchase.

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**ARTICLE 5
RESPONSIBILITIES OF THE PROVIDER**

5.1 The PROVIDER hereby agrees to supply, lease (with option to purchase) and provide to COMELEC, the Goods and Services as described in item 3.1, Article 3 (Scope of the Project) of this Contract.

5.2 The PROVIDER shall maintain and operate the Project on a full-time basis for its entire duration.

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5.3 The PROVIDER shall customize all proposed systems for Election Management System (EMS), Voting and Counting, Electronic Transmission, Canvassing and Web application for voters education and information dissemination in accordance with the Technical Proposal.

5.4 The PROVIDER shall accept COMELEC's requests for modification of all the above systems until the deadline for systems customization and development as provided in Annex "M"; provided that such requested modification would not delay the over-all Project.

5.5 Every PCOS unit and canvassing/consolidation unit shall have a secure alternative power source such as batteries, inverters or power generators, which will enable it to fully operate for at least twelve (12) hours in case of electric power failure or brown out and as primary power source in areas where there is no electricity.

5.6 The Goods shall be delivered to warehouses designated by the PROVIDER and approved by COMELEC. Delivery of the Equipment may be in partial shipments, and the first and full deliveries shall be done in accordance with Annex "M".

5.7 The PROVIDER shall consign and install the Goods at COMELEC-designated Sites. They shall also install and integrate the various components of the Goods and validate the correct installation and integration of such Goods in accordance with the acceptance criteria.

Installation of the Goods shall be made in accordance with the Revised Timeline. The PROVIDER shall see to it that the Goods and the concomitant Services shall be ready to accept connection and interfacing.

5.8 The PROVIDER shall provide technical support and all required goods and supplies for use in COMELEC field testing and during the conduct of the public demonstration and mock election, as laid out in the Technical Proposal and which dates are set out in Annex "M".

5.9 SMARTMATIC shall make sure that the EMS, counting, and consolidation/canvassing systems (CCS) shall be customizable for use by COMELEC for different types of Philippine elections, as required in the RFP. For this reason, subject to the mutual

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agreement of COMELEC and SMARTMATIC, COMELEC may require reasonable system modifications of the CCS without additional charge. Beyond the May 10, 2010 Elections, COMELEC may request a maximum of 150 man-hours of modifications without additional charge.

5.10 After the completion of the electoral process in a particular area, the PROVIDER may withdraw the equipment and its accompanying systems for central storage and safekeeping. However, should there be a need to keep a particular equipment due to election protests, audit requirement or other reasons beyond May 20, 2010, COMELEC may opt to assume responsibility for the custody of the equipment and systems that have to be retained.

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Transportation expenses and related expenses for moving the machines between May 20, 2010 and December 31, 2010 in connection with an election protest shall be borne by COMELEC unless it shall turn out that the election protest was due to any defect in the machines or the system or that the audit will show the same.

5.11 All Goods or Equipment in the possession of COMELEC because of any election contest or audit requirement after December 31, 2010 shall be considered sold to COMELEC pursuant to its purchase option under this Contract, and COMELEC shall pay the corresponding price within the first five (5) business days of January 2011. In case the election protest was due to any defect in the machines or the system or that the audit will show the same, COMELEC shall return the machines to the PROVIDER for full refund.

5.12 The PROVIDER shall establish a procedure to be able to identify every machine and accompanying software and data that will be used in specific areas.

5.13 The PROVIDER shall formulate, in coordination with COMELEC, a list of contingency measures, called a "Continuity Plan", and policies for activation thereof that are put in place to ensure continuous operation of the AES. It shall provide for the development, provisioning, and operationalization of said Continuity Plan to cover risks to the AES at all points in the process such that a failure of elections, whether at voting, counting or consolidation, may be avoided.

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5.14 The AES shall be so designed to include such continuity plan in case of a systems breakdown or any such eventuality which shall result in the delay, obstruction or non-performance of the electoral process. Activation of such continuity and contingency measures shall be undertaken in the presence of representatives of political parties and citizens' arm of COMELEC who shall be notified by the COMELEC Election Officer of such activation.

All political parties and party-lists shall be furnished by COMELEC with copies of the Continuity Plan at their official addresses as submitted to COMELEC. The list shall be published by COMELEC in at least two (2) newspapers of national circulation and shall be

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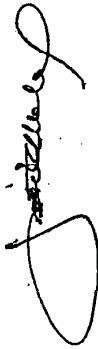
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posted at the website of COMELEC at least fifteen (15) days prior to Election Day.

5.15 The PROVIDER shall create its own Project Team called the Project Management Team (PMT) as required in Component 3.

**ARTICLE 6
COMELEC'S RESPONSIBILITIES**

6.1 COMELEC agrees to pay the PROVIDER the Contract Amount in accordance with the mode and terms of payment set forth in Article 4 of this Contract.



6.2 In case the Project is cancelled or stopped for any cause not attributable to the PROVIDER, COMELEC shall reimburse or pay the PROVIDER all actual, documented and legitimate expenses and liabilities incurred in carrying out the provisions of this Contract. The parties agree that this Article 6.2 shall at all times be subject to the provisions of Article 23 below.

6.3 In addition to its obligations under the RFP, as amended by the Bid Bulletins issued by the SBAC, the Special Conditions of Contract (SCC) and General Conditions of Contract (GCC), COMELEC shall be responsible for:

6.3.1 Notifying the PROVIDER of the polling precincts and canvassing centers, including the specific spaces thereat as may be mutually determined where the hardware and Equipment shall be installed by the PROVIDER's Project Team;

6.3.2 Closely coordinating with the PROVIDER in the preparation of the Sites and set-up of the hardware, network installation, software installation, user testing and training. For the duration of the Project, COMELEC shall provide continuing assistance to the PROVIDER on the needs of the Project;

6.3.3 Supplying the PROVIDER with detailed functional information on the Philippine Electoral System;

6.3.4 Ensuring full cooperation of COMELEC officials and personnel;

6.3.5 Making available the policies, procedures, reports, data, source documents and other information as may be needed by the PROVIDER's Project Team;

6.3.6 Creating its own Project Team called the Project Management Office (PMO) for the purpose, among others, of overseeing the Project's execution and implementation. It shall allow the PROVIDER access to concerned or responsible COMELEC officials;



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6.3.7 Performing acceptance procedures and tests on the Goods and Services and accepting the Goods and Services based on the acceptance criteria of COMELEC PMO following the general guidelines of RA 9369, the Bidding Documents and the COA rules; and

6.3.8 Where the personnel of the PROVIDER will be deployed by COMELEC in declared election hot spots in the country, they shall be included in the usual security arrangements of COMELEC with the Armed Forces of the Philippines and the Philippine National Police.

6.4 In case the delivery dates of the deliverables of COMELEC are substantially changed, the PROVIDER will still work, on a best efforts basis, for the successful implementation of the Project, in which case the provisions of Article 22.2 below may apply.

6.5 COMELEC shall pay the PROVIDER the option purchase price for any Equipment which may be lost, destroyed or damaged while in the custody and possession of COMELEC or any of its personnel or agents. For purposes of this Article 6.5, custody and possession of the Equipment will be with COMELEC from delivery of the same at the precinct level until pull-out by the PROVIDER, without diminishing the over-all responsibility of the PROVIDER over the entire Project.

6.6 COMELEC shall notify the PROVIDER on or before 31 December 2010 of its option to purchase the Goods as listed in Annex "L".

6.7 Subject to the provisions of the General Instructions to be issued by the Commission En Banc, the entire processes of voting, counting, transmission, consolidation and canvassing of votes shall be conducted by COMELEC's personnel and officials, and their performance, completion and final results according to specifications and within the specified periods shall be the shared responsibility of COMELEC and the PROVIDER.

**ARTICLE 7
DELIVERY AND ACCEPTANCE**

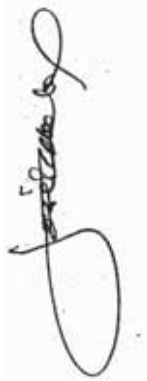
7.1 Delivery schedules for the Goods and Services leased/purchased under this Contract and progress accomplishments are set forth in detail in Annex "M" and Article 4.1.1 of this Contract. These schedules and milestones shall be treated as strict guidelines, binding on both parties, but may be modified by mutual agreement in accordance with the demands of the Project for the purpose of ensuring its timely and successful implementation.

7.2 The AES as specified in the Bidding Documents and affirmed in the Technical Proposal is subject to inspection and acceptance by COMELEC after certification and testing by the Technical Evaluation Committee created by R.A. 9369. The system software, hardware, and source code, including documentation will be open

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for inspection at any time in a controlled environment under guidelines formulated and agreed by both parties.

7.3 The inspection, tests and acceptance shall ensure that the AES must at least have the following functional capabilities pursuant to the provisions of RA 9369 amending RA 8436:



- (a) Adequate security against unauthorized access;
- (b) Accuracy in recording and reading of votes as well as in the tabulation, consolidation/ canvassing, electronic transmission, and storage of results;
- (c) Error recovery in case of non-catastrophic failure of device;
- (d) System integrity which ensures physical stability and functioning of the vote recording and counting process;
- (e) Provision for voter verified paper audit trail;
- (f) System auditability which provides supporting documentation for verifying the correctness of reported election results;
- (g) An election management system for preparing ballots and programs for use in the casting and counting of votes and to consolidate, report and display election results in the shortest time possible;
- (h) Accessibility to illiterates and disabled voters;
- (i) Vote tabulating program for election, referendum or plebiscite;
- (j) Accurate ballot counters;
- (k) Data retention provision;
- (l) Provide for the safekeeping, storing and archiving of physical or paper resource used in the election process;
- (m) Utilize or generate official ballots as herein defined
- (n) Provide the voter a system of verification to find out whether or not the machine has registered his choice; and
- (o) Configure access control for sensitive system data and functions.

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7.4 Upon delivery of the Goods, in whole or in part, to the warehouses as approved by COMELEC, the Equipment shall be under the custody, responsibility and control of the PROVIDER.



**ARTICLE 8
PERFORMANCE SECURITY AND WARRANTY**

8.1 Within three (3) days from receipt by the PROVIDER of the formal Notice of Award from COMELEC, the PROVIDER shall furnish COMELEC with a Performance Security in an amount equivalent to five percent (5%) of the Contract Amount; which Performance Security as of this date has been duly received by COMELEC.

Within seven (7) days from delivery by the PROVIDER to COMELEC of the Over-all Project Management Report after successful conduct of the May 10, 2010 elections, COMELEC shall release to the



Frederick Refran



PROVIDER the above-mentioned Performance Security without need of demand.

8.2 The PROVIDER warrants that all the Goods comply with COMELEC's specifications as contained in the Bidding Documents and as required in the Functional System and Software Agreement.

8.3 All equipment and software for all components shall be covered by warranty. The PROVIDER further guarantees the provision of all software/firmware upgrades or replacement of any defective components, entire units, or systems.

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8.4 The PROVIDER shall, at its sole expense, repair or replace any Equipment found to contain manufacturing defects and it shall be returned to the PROVIDER's premises at its sole expense. All costs of handling, transportation and labor relative to the return of the repaired or replaced Equipment to COMELEC's designated Sites shall also be at the PROVIDER's expense.

8.5 Limitations of Warranties. The warranty obligation of the PROVIDER shall not extend to:

- (a) Equipment the serial number, model number or any other identification, marking, and security seal of which has been removed or rendered illegible by COMELEC personnel, without any authority from the PROVIDER or its technical personnel;
- (b) Equipment that has been damaged by malicious misuse, accident or *force majeure*;
- (c) Equipment the selected component of which has been opened without the PROVIDER's prior written approval; or
- (d) Equipment wherein COMELEC or its agents have made changes to its physical, mechanical, electrical, software or interconnection components without written authorization of the PROVIDER.

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8.6 All parts provided under the lease and its warranties shall remain at all times the property of the PROVIDER until they are purchased by COMELEC. The PROVIDER shall maintain sufficient parts and test equipment at such Sites and other strategic locations as deemed appropriate to satisfy expected requirements and to locate and diagnose electronic failures effectively.

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8.7 The PROVIDER agrees to provide updates to COMELEC without charge, and the license referred to above shall apply to such updates. The PROVIDER shall provide software fixes, as necessary, during the warranty period and shall resolve any problem that affects the operation of the Election Management System, PCOS System and Consolidation/ Canvassing System. It shall immediately implement said updates and software fixes.

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8.8 If COMELEC opts to purchase the PCOS and Consolidation and Canvassing System (CCS), the following warranty provisions indicated in the RFP shall form part of the purchase contract:

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Fabian Defina

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1) For PCOS, SMARTMATIC shall warrant the availability of parts, labor and technical support and maintenance to COMELEC for ten (10) years, if purchased (Item 18, Part V of the RFP), beginning May 10, 2010. Any purchase of parts, labor and technical support and maintenance not covered under Article 4.3 above shall be subject to the prevailing market prices at that time and at such terms and conditions as may be agreed upon.

2) For the CCS, all hardware, printer and UPS shall have 3 years warranty for parts and service, if purchased (Part IV, 1-C [3.2.1, 3.3.11 and 3.4.3], RFP), beginning May 10, 2010.

8.9 The PROVIDER shall correct the manufacturing defects in such Goods, and provide all software/firmware updates within the warranty period provided in Article 4.3 above.

8.10 The PROVIDER shall notify COMELEC when upgrades to licensed software are available and the charges, if any, for implementing such upgrades into COMELEC's existing licensed software.

8.11 The PROVIDER, including but not limited to its employees, representatives, agents and subcontractors, shall not make any direct or indirect contact with any political party, candidate, partisan organization or group at any given time for the duration of this Contract, except as provided by law or as authorized by COMELEC.

8.12 The PROVIDER shall disclose to COMELEC all its major subcontractors with complete information as to their owners and contact details.

**ARTICLE 9
SOFTWARE AND LICENSE SUPPORT**

9.1 The PROVIDER shall furnish all systems and software provided in Components 1, 2 and 3, and their accompanying licenses and grant to COMELEC a one-time non-transferable right or license to use the software, system and other goods at the voting centers, canvassing/ consolidation centers, central servers, backup/ redundancy servers, and in such other locations as COMELEC may choose.

9.2 Should COMELEC exercise its option to purchase, it shall have perpetual, but non-exclusive, license to use said systems and software and may have them modified at COMELEC's expense or customized by the licensor for all future elections as hereby warranted by the PROVIDER, as per the license agreement. Accordingly, the PROVIDER shall furnish COMELEC the software in such format as will allow COMELEC to pursue the same.

9.3 COMELEC agrees that it shall not:

- (a) transfer the software and related materials to any third party;
- (b) reverse engineer, disassemble, decompile, modify or transmit the software in any form or by any means for any purpose other than for this Project, unless COMELEC has purchased it for Philippine elections; or
- (c) use any software acquired hereunder for any purpose other than the operation of voting, counting and canvassing/consolidation of votes.

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9.4 COMELEC may transport or transmit a copy of the systems from the original voting, counting or canvassing Site to another location by reason of a computer system malfunction.

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9.5 The PROVIDER shall deposit in escrow with the Bangko Sentral ng Pilipinas, a copy of the master disk together with the software listing, object code, source code and all other information and documentation and operations manuals.

The PROVIDER and COMELEC shall promptly make the source code of the Project available and open to any interested political party or groups which may conduct their own review thereof pursuant to Sec. 12 of RA 9369 in accordance with the provisions of Article 7.2 above.

After purchase, COMELEC shall be authorized to use the software system and make such alterations or modifications on the source code that are necessary or desirable for the proper use of the software system as provided in Article 9.2 above. COMELEC shall not sell, lease, transfer or otherwise convey the software to any other individual, company or entity. The PROVIDER undertakes and guarantees to keep such information and documentation up-to-date. Escrow charges or expenses shall be for the account of the PROVIDER.

9.6 The PROVIDER warrants that the software system can perform the functions specified in the RFP. SMARTMATIC further warrants that it has the right to license the perpetual use of the software system in accordance with the provisions of Article 9.

**ARTICLE 10
INTELLECTUAL PROPERTY**

10.1 The PROVIDER warrants that all intellectual property rights in or related to the Goods and/or Services, including but not limited to patents and other know-how and copyright, both registered and unregistered, owned and/or otherwise used by the PROVIDER, and all goodwill related thereto are, and shall remain at all times, the exclusive property of SMARTMATIC; and COMELEC acknowledges the same, and shall not exploit, reproduce or use the same except as expressly provided in this Contract.

10.2 SMARTMATIC may at any time affix to the Equipment in any manner its trade name, service marks or trademarks. Except as

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expressly permitted in this Contract, COMELEC shall not have any right, title or interest to use any trademarks, either alone or in conjunction with other words or names or in the goodwill thereof without SMARTMATIC's express written consent in each instance.

10.3 The PROVIDER shall, at its sole cost and expense, indemnify, defend, and hold COMELEC harmless from and against any claim brought by a third party to the extent that such claims arise out of infringements by the Goods of any patent, trade secret, copyright, trademark, proprietary information or other intellectual property rights.

COMELEC shall give prompt and timely notice of such claims to SMARTMATIC.

10.4 The PROVIDER shall protect COMELEC's proprietary information from disclosure with the same degree of care afforded by the PROVIDER to its own confidential information. All obligations and undertakings of the PROVIDER specified herein with respect to COMELEC's proprietary information shall survive the termination of this Contract for whatever reason.

**ARTICLE 11
PENALTIES AND CHARGES**

11.1 In the event of any default or any violation materially affecting the implementation of the Project, by the PROVIDER, COMELEC shall:

11.1.1 In the event of any default, deduct for every day of delay in delivery after the stipulated period, liquidated damages in the amount of one-tenth of one per centum (1/10 of 0.01) of the total value of this Contract, or in the event of partial fulfilment of this Contract, of the total value of the unfulfilled portion thereof.

Such amount shall be deducted from any money due or which may become due to the PROVIDER, or collected from any securities or warranties posted by the PROVIDER, the Performance Security provided for in Article 8.1 above included, whichever is convenient to COMELEC. In no case shall the total amount of the liquidated damages under this Contract exceed 10% of the Contract Amount. Once the cumulative amount of liquidated damages reaches said 10%, COMELEC may rescind this Contract;

11.1.2 In case the violation constitutes an administrative or penal offense and in addition to Article 11.1.1 above, impose such other penalties or sanctions as may be prescribed under Republic Act No. 9184 (Government Procurement Reform Act) and other applicable laws.

11.2 The penalties for non-performance or incomplete service are provided for in the Service Level Agreement, attached hereto as Annex "N".

**ARTICLE 12
TAXES AND DUTIES**

12.1 To achieve the purpose of Republic Act 9369, COMELEC is authorized to procure, in accordance with existing laws, by purchase, lease, rent or other forms of acquisition, supplies, equipment, materials, software, facilities and other services, from local or foreign sources free from taxes and import duties.



12.2 These Goods shall include those to be brought in for replacement and/or repair of defective parts covering the entire Term of this Contract, including the warranty period.

12.3 Hence, there will be no retention of any corresponding amounts for said taxes by COMELEC.

12.4 For these tax and duty exemptions, COMELEC shall seek a certification from the Department of Finance, Bureau of Customs, and Bureau of Internal Revenue.

12.5 Except as hereinabove provided, the PROVIDER shall be entirely responsible for all the necessary taxes, stamp duties, license fees, and other such levies imposed for the implementation of this Project.

**ARTICLE 13
COMELEC EXEMPTION FROM LABOR CLAIMS**

The PROVIDER shall hold COMELEC free from any labor claims and mandatory benefits of all employees hired by the PROVIDER in implementation of the Project, and the PROVIDER shall comply with all existing labor laws and standards.

**ARTICLE 14
WORKING LANGUAGE**

All requests, reports, recommendations, and general correspondence between the PROVIDER on one hand and COMELEC on the other hand shall be in the English language. All notices and other communications required or permitted under this Contract shall be in writing and shall be sent either by facsimile, personally, by registered mail or electronic mail at the numbers or addresses indicated below:

Ferdinand Refor



Execution Copy

To COMELEC:

HON. JOSE A. R. MELO
Chairman, COMELEC
Telephone Number: 5272998
Facsimile Number: 5273925
Email Address: chairman@comelec.gov.ph

To SMARTMATIC TIM:



ALBERTO CASTRO
14th Floor, Times Plaza Building
Taft corner United Nations Avenues
Manila

With a copy to:

JUAN C. VILLA, JR. / LAMBERTO F.L. LORENZO
Ground Floor, King's Court Building 2
2129 Dela Rosa St.,
Don Chino Roces Avenue, Makati City
Telephone Number: 8318796
Facsimile Number: 8333116

To TIM:

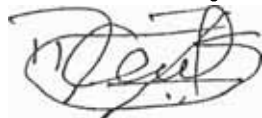
SALVADOR P. AQUE.
Ground Floor, King's Court Building 2
2129 Dela Rosa St.,
Don Chino Roces Avenue, Makati City
Telephone Number: 8318796
Facsimile Number: 8333116
Email Address: salvador.aque@timcorp.net

To SMARTMATIC:

CAROLINA CARUSO
No. 4 Stafford House
Garrison Savannah
St. Michael, Barbados
WI. BB 14038
Tel. No: 001-2462280756 Extension 8117
Mobile No. 0012462561180
Facsimile Number: 001-2464392778
Email Add: Carolina.caruso@smartmatic.com

**ARTICLE 15
NOTICE OF DELAY**

The PROVIDER shall promptly notify COMELEC, in writing, of any delay in providing inputs or equipment necessary for the satisfactory execution and implementation of the Project. The PROVIDER may request for an extension of time for the provision



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of the Project's deliverables, but said extension shall not encroach into the period of thirty (30) days before Election Day or be beyond thirty (30) days of due date thereof.

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**ARTICLE 16
DISPUTES AND ARBITRATION**

16.1 In case of dispute between COMELEC and the PROVIDER, the dispute shall be resolved in accordance with the laws of the Republic of the Philippines. All suits, actions and proceedings, which may arise between the parties under this Contract, may be brought before the court of competent jurisdiction only in the City of Manila.

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16.2 By mutual agreement, the parties may submit any and all disputes arising from the implementation of this contract to arbitration or other alternative modes of dispute resolution in the City of Manila according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law" as amended by Republic Act No. 9285.

16.3 Decisions reached by arbitration may be enforced in any court of competent jurisdiction in the City of Manila by either of the parties to this Contract.

16.4 Notwithstanding arbitration, the PROVIDER shall proceed with the performance of the Services prescribed in this Contract. Further, neither the PROVIDER nor COMELEC shall have the right to suspend prosecution of the Project. Arbitration shall not be an event or cause for Delay of the completion period. Neither shall it affect the running of the completion period, nor shall it affect the conditions of any bond and warranty.

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**ARTICLE 18
FORCE MAJEURE**

18.1 In the event of a *Force Majeure*, the Schedule of Delivery shall be extended accordingly by agreement of the parties.

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18.2 The Party affected by *Force Majeure* shall promptly notify the other Party in writing of the occurrence of any such event, the date of its commencement, expected duration, date of cessation, and of the proposed necessary extension.

18.3 The Party affected by *Force Majeure* shall do its best to avoid or remove causes of delay, resume delivery and performance of obligations as soon as possible, and exert every reasonable effort to reduce the effect of *Force Majeure* to a minimum.

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18.4 In all such cases of *Force Majeure* and other unforeseen events beyond the control of COMELEC and the PROVIDER that prevent the completion of the Project on May 13, 2010, the PROVIDER shall provide contingency plans and render all necessary services and support until actual completion of the

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Project in the affected areas (Bid Bulletin No. 19 and Special Conditions of Contract), in which case the provisions of Article 22.2 below may apply.

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18.5 Force Majeure shall have legal effect only in the area where it occurs provided that should the Force Majeure occur in the relevant areas of manufacturing, production, delivery or shipment of the Goods and Services, the same provisions of this Article 18 shall apply.

**ARTICLE 19
AMENDMENTS**

This Contract and its Annexes may be amended by mutual agreement of the parties. All such amendments shall be in writing and signed by the duly authorized representatives of both parties.

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**ARTICLE 20
SEVERABILITY**

If any provision of this Contract is declared illegal, unenforceable or void, the parties shall negotiate in good faith to agree upon a substitute provision that is legal and enforceable and consistent with the intentions of the Project. The rest of this Contract that is not materially affected by such declaration shall remain valid, binding and enforceable.

**ARTICLE 21
CONTRACT DOCUMENTS**

21.1 "Contract Documents" refers to the following documents, and they are hereby incorporated and made integral parts of this Contract:

- Annex "A" - List of Goods (Components 1-A and 1-B: Election Management System and Precinct Count Optical Scan);
- Annex "B" - List of Goods (Component 1-C: Consolidation/Canvassing System)
- Annex "C" - List of Goods for Ballots
- Annex "D" - List of Goods (Component 2: Electronic Transmission Service)
- Annex "E" - List of Goods (Component 3: Overall Project Management)
- Annex "F" - List of Services (Component 1: Paper-Based AES)
- Annex "G" - Services for Ballots
- Annex "H" - List of Services (Component 2: Electronic Transmission Service)
- Annex "I" - List of Services (Component 3: Overall Project Management)
- Annex "J" - Revised Timelines of the Project (Revised Implementation Calendar)
- Annex "K" - Technical Proposal of TIM and SMARTMATIC
- Annex "L" - List of Goods Subject of Option to Purchase

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- Annex "M" - Revised Delivery Schedule
- Annex "N" - Service Level Agreement
- Annex "O" - Request for Proposal/Terms of Reference
- Annex "P", "P1" to "P24" - Bid Bulletins 1 to 25
- Annex "Q" - Financial Proposal of TIM and SMARTMATIC
- Annex "R" - General Conditions of Contract
- Annex "S" - Special Conditions of Contract
- Annex "T" - Notice of Award

21.2 Each of the Contract Documents shall be mutually complementary or explanatory of each other such that what appears in one although not shown in the others shall be binding, unless one item is a correction or modification of the other.

21.3 The intent of the parties is the proper, satisfactory and timely execution and completion of the Automated Elections Project for the May 10, 2010 elections. Consequently, all items necessary for the proper and timely execution and completion of the Project shall be deemed to be included or intended in this Contract.

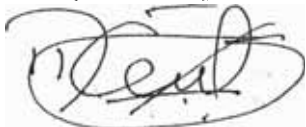


21.4 This Contract, together with the Contract Documents, constitutes the entire agreement between the parties. However, the PROVIDER hereby adopts, ratifies and makes an express acknowledgment and acceptance of the prior obligations and commitments and verbal and written manifestations made by TIM and SMARTMATIC, through their duly authorized representatives during the opening and evaluation of bids and thereafter, as well as representations in their bid documents. COMELEC hereby gives its consent to the said adoption and ratification made by the PROVIDER and the other parties insofar as they are not in conflict with this Contract.

**ARTICLE 22
REPEAT AND VARIATION ORDERS**

22.1 Repeat Order. Pursuant to Section 51 Republic Act No. 9184, COMELEC reserves the right to purchase Goods on repeat order basis whenever there arises a need to add other items procured under this Contract up to twenty five percent (25%) of each item at the same unit price.

22.2 Variation Order. COMELEC reserves the right to issue variation orders to cover any increase in quantities, including the introduction of new work items that are not included in this Contract or reclassification of work items due to mutually agreed change of plans or designs to suit actual field conditions; *Provided*, that, any addition of works is within the general scope of the Project and upon terms and conditions **agreed upon by the parties.**



Frederick Reforan



**ARTICLE 23
CONTINUING REVIEW**

23.1 In order to ensure the successful implementation of the Project, there shall be a continuing review of the original schedules, revised timelines, and procedures by the parties.

23.2 The parties are aware that every situation cannot be provided for in this Contract, and upon the occurrence of such situation for which there is no specific provision in this Contract or there is no agreement in the application thereof, the parties shall forthwith meet and attempt to resolve the matter immediately, amicably and in good faith with the successful implementation of the Project in mind.

23.3 The parties shall at all times exercise good faith in the performance of their obligations and the exercise of their rights under this Contract and no termination hereof shall be availed except in case of a serious and material breach, so that no party may be unduly deprived of its rights under this Contract.

**ARTICLE 24
JOINT AND SEVERAL LIABILITY**

24.1 TIM and SMARTMATIC bind themselves jointly and severally for all the obligations and all liabilities that might arise out of this Contract, and so the PROVIDER, TIM and SMARTMATIC commit to be solidarily liable individually or in combination for the entire obligation.

The stockholders of the PROVIDER shall not, for the duration of the Project and until December 31, 2010, transfer their shares of stock in the PROVIDER to any third party without the express written consent of COMELEC, which consent shall not be unreasonably withheld.

TIM and SMARTMATIC guarantee to COMELEC that they shall not, for the duration of the Project and until December 31, 2010, transfer or issue shares or interests in their respective companies to any political party or candidate in the Philippines. Any transfer referred to in this paragraph shall be immediately disclosed to COMELEC.

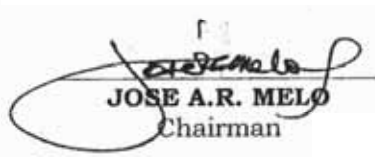
IN WITNESS HEREOF, the parties, acting through their duly authorized representatives hereby sign this Contract this 10th day of July 2009 in the City of Manila, Philippines.

- Signature page follows -

Execution Copy

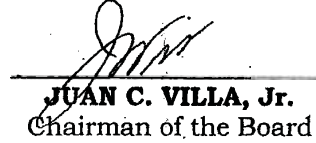
COMMISSION ON ELECTIONS

By:


JOSE A.R. MELO
Chairman

SMARTMATIC TIM CORPORATION

By:

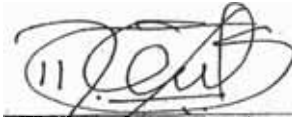

JUAN C. VILLA, Jr.
Chairman of the Board

With our approval and conformity


With our approval and conformity

SMARTMATIC INTERNATIONAL CORPORATION

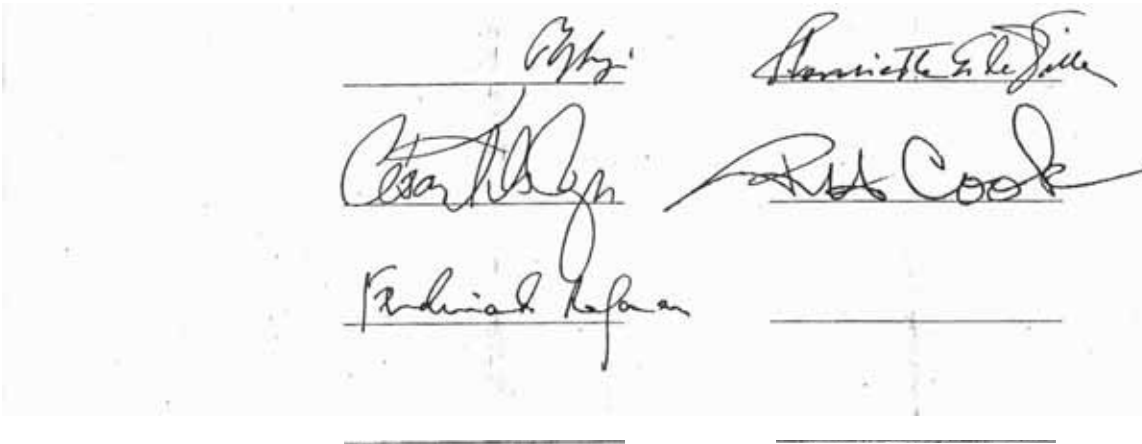
BY:


ARMANDO R. YANES
Chief Financial Officer

BY:


SALVADOR P. AQUE
Senior Vice President

SIGNED IN THE PRESENCE OF:


Witness signatures: *Armando R. Yanes*, *Salvador P. Aque*, *Richard Kaplan*, *Robert Cook*

Execution Copy

ACKNOWLEDGEMENT

Republic of the Philippines)
City of Manila) S.S.

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BEFORE ME, a Notary Public for and in the City of Manila, this 10th day of July, 2009, personally appeared:

Name	Passport No.	Date/Place of Issuance
JOSE A.R. MELO	XX2585056	Issued on 25 Nov 2008 valid until 24 Nov 2013
ARMANDO R. YANES	8-272-836	Issued on 6 Feb 2007 valid until 6 Feb 2012
SALVADOR P. AQUE	CTC 12535051	Issued on 14 Jan 2009 at Pasay City
JUAN C. VILLA, JR.	XX2877524	Issued on 26 Jan 2009 valid until 25 Jan 2014

all known to me and to me known to be the same persons who executed the foregoing instrument and acknowledged to me that the same is of their own free volition and voluntary act and deed, as well as of the entities they represent.

This Contract for the Provision of an Automated Election System for the May 10, 2010 Synchronized National and Local Elections, consists of 25 pages, including the page upon which this acknowledgement is written (but excluding the Annexes), has been signed by the parties and their instrumental witnesses on each and every page hereof of the main Contract, except for the title page and the Annexes.

WITNESS MY HAND AND SEAL on the date and place above written.

Doc. No. 390;
Page No. 47;
Book No. I;
Series of 2009.

Notarial Referee

ATTY. KEVIN NARCE B. VIVERO
 NOTARY PUBLIC
 PTR NO. 6257227; 01-04-08, Manila
 IBP NO. 753969; 01-04-08; Quezon City
 Roll of Attorneys No. 34201
 Until December 31, 2009
 Suite 106-B, ECJ Condo, Real St.,
 cor. Arzobispo St., Intramuros, 1002 Manila

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