



SUPPLY AND DELIVERY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement entered into by and between:

QUEZON CITY GOVERNMENT, a public corporation existing under the laws of the Philippines, represented herein by the Honorable **MA. JOSEFINA G. BELMONTE**, in her capacity as City Mayor, with office at Quezon City Hall Compound, Elliptical Road, Diliman, Quezon City, Metro Manila, and hereinafter referred to as the "**CITY**"

-and -

SMART COMMUNICATIONS, INC., a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office address at 26/F Smart Tower 6799 Ayala Avenue, Bel-Air, Makati City, herein represented by its Senior Vice President and Head of Enterprise Business, **MR. JUAN VICTOR I. HERNANDEZ**, hereinafter referred to as "**SUPPLIER**";

(**CITY** and **SUPPLIER** may be referred to individually as a "Party" and collectively, as "Parties.")

RECITAL

WHEREAS, on 30 September 2020, a public competitive bidding for the procurement of Internet Connectivity and LTE Pocket/Mobile Wi-Fi with PR No. GF-20-07-2C-QCU was conducted;

WHEREAS, the **SUPPLIER** participated in the competitive bidding and was declared to be the single bid as read;

WHEREAS, the **SUPPLIER** passed both the detailed evaluation and post qualification stages, and was determined to be the single calculated and responsive bid for the Project;

WHEREAS, on DEC 28 2020, the Notice of Award was issued and the **SUPPLIER** subsequently duly posted a performance security, subject to the terms and conditions hereafter set forth.

NOW THEREFORE, for and in consideration of the foregoing premises and of the mutual covenants and undertakings hereinafter provided, the parties hereto agree, as they have hereby agreed, as follows:

Section 1. Deliverables. Pursuant to and in accordance with the Contract Documents provided herein, the **SUPPLIER** undertakes to deliver to the **CITY** the deliverables required by the Project, the technical specifications of which are defined under Section VII. Technical Specifications of the Bidding Documents and the subsequent Supplemental Bid Bulletins. These include the delivery by the **SUPPLIER** of Internet Connectivity and LTE Pocket/Mobile Wi-Fi, particularly described as follows:



1. **Internet Connectivity for Faculty**
Web-based prepaid loading platform
8GB Open Access + 3 Gb per day Study Apps for 30 days (250 Faculty) for one semester
2. **Internet Connectivity for Students**
Web-based prepaid loading platform
4Gb Open Access + 1GB per day Study Apps for 30 days (9,500 students) for one semester.
3. **LTE Pocket Wi-Fi**
(For 250 Faculty and 9,500 students)
Minimum specifications of:
OS Compatibility: Windows 7/8/XP, Linux, MAC, Android
Speed: 256kbps with 80% reliability
Up to 42mbps LTE 700mHz ready for better indoor coverage in selected areas
Network: 4G/3G/2G/HSPA+/LTE+
Battery: 1500mAh
Can connect up to 10 devices

Section 2. Contract Documents. The following documents shall be read and deemed incorporated in this Agreement, viz.:

- (a) Invitation to Bid;
- (b) Instruction to Bidders;
- (c) Bid Data Sheet;
- (d) General Conditions of Contract;
- (e) Special Conditions of Contract;
- (f) Schedule of Requirements;
- (g) Technical Specifications;
- (h) Supplemental Bid Bulletins, if any;
- (i) Notice of Award;
- (j) Bid Form;
- (k) Schedule of Prices;
- (l) Certificate of Availability of Fund (CAF); and
- (m) Performance Security;

The documents mentioned above shall be collectively referred to as "Contract Documents".

Section 3. Delivery Schedule. The **SUPPLIER** shall deliver to the **CITY** the following:

DELIVERABLES	DELIVERY SCHEDULE
INTERNET CONNECTIVITY FOR FACULTY AND STUDENTS	Internet Connectivity Subscription coverage shall be for Six (6) months from the date of effectivity of the Notice to Proceed
LTE POCKET / MOBILE WI-FI	Within Thirty (30) calendar days from the date of effectivity of the Notice to Proceed



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Section 4. Term.

The **INTERNET CONNECTIVITY FOR FACULTY AND STUDENTS** shall be effective for the period commencing on DEC 29 2020 and ending on JUN 28 2021, subject to a regular performance rating by the **CITY**.

The **LTE POCKET / MOBILE WI-FI** shall be effective for the period commencing on DEC 29 2020 and ending on JAN 28 2021, subject to a regular performance rating by the **CITY**.

Section 5. Contract Price. In consideration of the complete and faithful delivery of the **Internet Connectivity and LTE Pocket/Mobile Wi-Fi** defined herein and the performance of any and all obligations of the **SUPPLIER** under this Agreement, the **SUPPLIER** shall be paid the total amount of **Twenty-Five Million Three Hundred Ten Thousand Three Hundred Fifty-Five Pesos and 00/100 (PHP 25,310,355.00)** inclusive of the 12% Value Added Tax (VAT) (the "**Contract Price**").

Section 6. Terms of Payment.

The payment of the **Contract Price** for **INTERNET CONNECTIVITY FOR FACULTY AND STUDENTS** shall be made monthly billings based on the actual number of users.

The payment of the **Contract Price** for **LTE POCKET / MOBILE WI-FI** shall be made upon complete delivery of the deliverables.

The processing of payments will entail the approval by the **CITY** of the **SUPPLIER's** complete documentation and deliverables before invoices may be processed for payment. The **CITY** likewise reserves the right to validate billing/invoice before payment of fees.

Section 7. Price Adjustment. The **Contract Price** shall be fixed and there shall be no price adjustment and escalation for the duration of the Agreement until and unless there exists an extraordinary circumstance as may be determined by the National Economic Development Authority that may warrant an increase of the **Contract Price** in accordance with Section 61 of the Implementing Rules and Regulations of RA 9184, otherwise known as the Government Procurement Reform Act.

Section 8. Penalties. The **SUPPLIER** shall be liable for penalty for any breach of contract under all applicable laws, issuances and regulations.

Section 9. Liquidated Damages. It is understood and agreed that time is of the essence of this Agreement. In the event the **SUPPLIER** refuses or fails to completely supply and deliver to the **CITY** the **Internet Connectivity and LTE Pocket/Mobile Wi-Fi** defined herein within the delivery schedule provided under Section 3 hereof at no fault of the **CITY**, the **SUPPLIER** shall be liable for liquidated damages in the amount equivalent to one tenth of one percent (1/10 of 1%) of the **Contract Price** for every day of delay until the Project is completely delivered: *Provided*, that, the total cumulative amount of liquidated damages shall not exceed ten percent (10%) of the **Contract Price**: *Provided*, further, that, once the cumulative amount of liquidated damages exceeds ten percent

MA. JOSEFINA G. BELMONTE
City Mayor

JUAN VICTOR I. HERNANDEZ
Senior Vice President



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(10%) as provided herein, the CITY, in accordance with Section 68 of the IRR of R.A. 9184, may rescind or terminate this Agreement without prejudice to other remedies and other courses of action available to the CITY under this Agreement and pursuant to any and all applicable laws.

Section 10. Authority to Deduct Liquidated Damages. For purposes of assessment and enforcement of the liquidated damages provided under Section 8 hereof, the CITY, upon written notice to the SUPPLIER, is hereby authorized to deduct any amount due as liquidated damages from any amount due or may become due and owing to the SUPPLIER or from any and all bonds or securities posted by the SUPPLIER in favor of the CITY, at the option of the latter. It is hereby agreed and understood that the assessment of liquidated damages are cumulative and not alternative remedies of the CITY under this Agreement.

Section 11. Representations and Warranties of the Supplier. The SUPPLIER hereby represents and warrants to the CITY as follows:

- a. The SUPPLIER is an entity duly organized, validly existing and in good standing under the laws of the Republic of the Philippines.
- b. The SUPPLIER has full legal right, power and authority to carry on its present business, to own its properties and assets, and to execute and deliver this Agreement and all other documents executed, or required or necessary to be executed pursuant thereto, and to perform and observe the terms and conditions thereof.
- c. All appropriate and necessary corporate and legal actions have been taken by it to authorize the execution and delivery of this Agreement, and all other documents executed, or required or necessary to be executed pursuant thereto and the performance of all provisions, conditions, covenants, and other terms hereof and thereof, as well as all the transactions contemplated herein.
- d. This Agreement and all other documents executed, or required or necessary to be executed pursuant thereto, constitute, or when executed and delivered pursuant thereto, will constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms.
- e. The execution and delivery of this Agreement and all other documents executed, or required or necessary to be executed pursuant thereto and the performance of its obligations hereunder will not:
 - i. conflict with its Articles of Incorporation, By-Laws or other constitutive documents, as may be applicable;
 - ii. conflict with, result in the breach of, or constitute an event which would either immediately or with the lapse of time or giving of notice or both, result in a default under, or accelerate the performance required by, the terms of any agreement, document, contract, instrument or commitment to which it is a party or by which it or any of its assets is bound;
 - iii. conflict with or require any written consent or approval under any judgment, order, writ, decree, permit or license to which it is a party or by which any of its assets is bound; or

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City Mayor

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Senior Vice President



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iv. require the written consent or approval of any other party to any agreement, document, contract, instrument or commitment to which it is a party or by which any of its assets is bound.

f. There are no actions, suits or proceedings existing, pending or, threatened against or directly affecting the **SUPPLIER** and/or any of its assets before any court, arbitrator or governmental or administrative body or agency that affect the validity or enforceability of this Agreement or that would affect the ability of the **SUPPLIER** to perform its obligations hereunder.

g. No event has occurred and is continuing which might materially and adversely affect the carrying out of its obligations under this Agreement.

h. It is in compliance with all applicable laws and regulations in connection with the delivery of the Project.

i. Each of the representations and warranties herein shall survive the execution of this Agreement and shall be deemed repeated during the effectivity of this Agreement.

Section 12. Indemnification. The **SUPPLIER** shall indemnify and save the **CITY** and all its officers, employees, personnel and persons acting as agents or representatives and render them free and harmless from any and all claims, actions, liabilities, losses and suits which may be brought or instituted against them arising out of or resulting from the **SUPPLIER's** supply, delivery and performance of its obligations under this Agreement.

Section 13. Events of Default of the Supplier. Any of the following shall constitute an Event of Default under this Agreement:

a. When the **SUPPLIER** becomes insolvent, or commits or suffers any act of bankruptcy, which term shall include: (i) the filing of a petition, by or against the **SUPPLIER**, in any bankruptcy, insolvency, administration, suspension of payment, reorganization, winding-up or liquidation proceeding, or any other proceeding analogous in purpose and effect; (ii) the making of an assignment by the **SUPPLIER** for the benefit of its creditors; (iii) the admission in writing by the **SUPPLIER** of its inability to pay its debts; (iv) the entry of any order of judgment of any competent court, tribunal or administrative agency or body confirming the bankruptcy or insolvency of the **SUPPLIER** or approving its reorganization, winding-up or liquidation, or (v) the lawful appointment of a receiver or trustee to take possession of the properties of the **SUPPLIER**;

b. When the **SUPPLIER** suspends or discontinues all or a substantial portion of its business operations, whether voluntarily or involuntarily, for a period of at least sixty (60) days;

c. Any material breach by the **SUPPLIER** of any of its warranty, representation or covenant made under this Agreement.

Section 14. Consequences of Default. Upon occurrence of any Events of Default under this Agreement, the **CITY** may declare the **SUPPLIER** in default and shall have the right to:



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- a. Terminate this Agreement;
- b. Call on the Performance Security to answer for any and all damages of whatever nature suffered by the **CITY** resulting or arising from the **SUPPLIER's** default; and
- c. Take such other steps or actions against the **SUPPLIER** for the full protection and enforcement of the **CITY's** rights and interests.

Section 15. Compliance with Laws, Ordinances and Regulations. The **SUPPLIER** shall comply with any and all laws, ordinances and regulations of the national and local government applicable to or binding upon the parties hereto. For this purpose, any and all pertinent provisions of RA 9184 and its IRR, and other applicable laws and regulations are deemed written and incorporated in this Agreement. In case of conflict between any of the provisions of this Agreement and those of the applicable laws and regulations, the latter shall prevail.

Section 16. Indemnities and Attorney's Fees. Should any of the parties resort to court action in order to enforce their respective rights under this Agreement, the prevailing party or its successors-in-interest shall be entitled to be indemnified by the other party by way of attorney's fees, a reasonable sum equivalent to the actual amount of fees paid or to be paid by the prevailing party.

Section 17. Notification. All notices and communications shall be done in writing and shall be directed as follows:

CITY	:	OFFICE OF THE CITY MAYOR c/o Bids and Awards Committee Secretariat 2nd Floor Finance Bldg, Quezon City Hall Complex, Elliptical Road, Diliman, Quezon City
SUPPLIER	:	SMART COMMUNICATIONS, INC. 26/F Smart Tower 6799 Ayala Avenue, Bel-Air, Makati City

Section 18. Effectivity. This Agreement shall be effective upon execution by the parties hereto.

Section 19. Miscellaneous Provisions.

a. This Agreement, including the documents and/or agreements specifically incorporated herein by reference, constitutes the entire agreement between the parties. This Agreement may be amended and supplemented in writing at any time as decided and agreed upon by mutual consent of the parties.

b. This Agreement and all documents related thereto shall be binding upon and inure to the benefit of the parties herein and/or their respective heirs, agents, representatives, successors-in-interest, and assigns. The **SUPPLIER** shall not assign its rights and obligations under this Agreement without the written consent of the **CITY**.

MA. JOSEFINA G. BELMONTE
City Mayor

JUAN VICTOR I. HERNANDEZ
Senior Vice President



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c. This Agreement embodies the entire arrangement or agreement of the parties and no undertaking, verbal or otherwise, in relation thereto, shall exist between the parties except as herein expressly set forth.

d. The parties hereby certify that they have read or caused to be read to them all the provisions of the foregoing Agreement, receipt of a signed copy of which is hereby expressly acknowledged by the parties and that they have fully understood the same.

e. The parties hereby represent and warrant that they have the necessary power and corporate authority to execute and deliver this Agreement and perform their obligations as incorporated herein and that such execution, delivery and performance do not and will not contravene any provision of their respective Articles of Incorporation, by-laws, any agreements or instruments to which they are a party or any laws or regulations of any governmental authority.

f. If any provision of this Agreement be declared by any court or other authorized agency of the government to be null and void, the nullity thereof shall not affect the validity of this transaction or any other provisions herein which shall then be considered as valid and binding between the parties.

g. Any and all disputes arising from the implementation of this Agreement shall be submitted to arbitration in the Philippines according to the provisions of RA 876, otherwise known as the "Arbitration Law" and RA 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004": Provided, that, by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.

IN WITNESS WHEREOF the parties have hereunto set their hands to this Agreement on ____ day of _____, at Quezon City, Philippines

By: QUEZON CITY GOVERNMENT


MA. JOSEFINA G. BELMONTE
City Mayor

By: SMART COMMUNICATIONS, INC


JUAN VICTOR I. HERNANDEZ
Senior Vice President

SIGNED IN THE PRESENCE OF:

RUBY G. MANANGU
City Accountant



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ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES }
_____ }s.s.

BEFORE ME, a Notary Public for and in _____, this DEC 29 2020, personally appeared:

Name

Competent Proof of Identity

HON. MA. JOSEFINA G. BELMONTE, in her capacity
as Mayor of the Local Government of Quezon City

CCM - 0081744

JUAN VICTOR I. HERNANDEZ, in his capacity as the
authorized representative of Smart Communications,
Inc.

PASSPORT - P6715403A
APRIL 10, 2018
APRIL 9, 2028
DFA MANILA

all known to me and to me known to be the same persons who executed this Agreement, and they
acknowledged to me that the same is their free and voluntary act and deed, and the free and
voluntary act and deed of the parties which they respectively represent.

I certify that the foregoing Supply and Delivery Agreement, signed by the parties and their
instrumental witnesses, consists of eight (8) pages, including this page on which the
acknowledgement is written.

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

Doc. No. 3;
Page No. 1;
Book No. 10;
Series of 2020



ATTY. MARK JOSEPH E. MARCELO
NOTARY PUBLIC
ROOM 405 PM BUILDING, MATALINO ST. Q.C.
ROLL NO. 69314 / NOTARIAL NO. 259
UNTIL DECEMBER 31, 2020
PTR NO. 7377353 / 1-08-10 / Q.C.
IBP NO. 016606 / MCLE NO. VI-0026095