

**CONTRACT FOR THE UPGRADE OF THE AUTOMATIC
TRANSFER SWITCH (ATS) INCLUDING NECESSARY ELECTRICAL
WORKS TO COMPLETE THE SYSTEM AT THE INDUSTRY &
INVESTMENTS (I&I) BUILDING**

KNOW ALL MEN BY THESE PRESENTS:

This Contract for the Upgrade of the Automatic Transfer Switch (ATS), including necessary Electrical Works to complete the system at the Industry & Investments (I&I) Building is made and entered into at Makati City, Philippines, this ____ day of _____ 2022, by and between:

NATIONAL DEVELOPMENT COMPANY, a government-owned and controlled corporation, duly organized and existing pursuant to P. D. 1648, as amended, with principal office at the NDC Building, 116 Tordesillas Street, Salcedo Village, Makati City, represented by its General Manager, ANTONILO DC. MAURICIO, whose authority is evidenced by the attached Secretary's Certificate (Annex "A") and made an integral part of this document, hereinafter referred to as "**NDC**";

- and -

ENERGYLINK COMMERCIAL, a business entity registered with the Department of Trade and Industry (DTI), with principal office at No. 1269 Metrica Street, Sampaloc, Manila, represented by its Authorized Representative, GINA L. VALENCIA whose authority is shown by the attached Special Power of Attorney (Annex "B"), and made an integral part of this document, hereinafter referred to as "**ENERGYLINK COMMERCIAL**" or the "**SERVICE PROVIDER**";

NDC and SERVICE PROVIDER are hereinafter collectively referred to as the "**PARTIES**".

ANTECEDENTS:

NDC needs a service provider for the upgrade of the Automatic Transfer Switch (ATS) and other necessary Electrical Works at the Industry & Investments (I&I) Building;

On September 27, 2022, the Board of Investments (BOI) called the attention of NDC regarding the rising temperature of the cables at the ATS. In response, NDC deployed JT Max Power Equipment Corporation (JT Max), a service provider, to immediately address the incident;

Based on the service report provided by JT Max, the immediate replacement/upgrade of the ATS is necessary to avoid the overheating of the cables;

On October 17, 2022, Energylink Commercial, the Service Provider which conducted an Electrical System Audit (ESA), submitted its technical evaluation and recommended the upgrade of the ATS and rewiring of the feeder line to comply with the Electrical Code;



Based on the result of the ESA, NDC's Asset Management Group (AMG) recommended the emergency procurement for the upgrade of the ATS, including the necessary electrical works (rewiring of feeder lines) to complete the system, to:

- a. Prevent further damage to properties and/or to life, or of any case of fire due to faulty electrical system; and
- b. To address immediately the tenant's concerns on its operation, safety, health, and wellness;

RA 9184 or the Government Procurement Reform Act - IRR - Annex H 2(a)(iii) states that "Negotiated Procurement under Emergency Cases may be resorted to where immediate action is necessary to prevent damage to or loss of life or property or to restore vital public services, infrastructure facilities, and other public utilities";

On October 12, 2022, Energylink Commercial submitted its quotation amounting to **Five Million One Hundred Five Thousand Four Hundred Eighty-Five Pesos and 93/100 (P5,105,485.93)**;

On October 18, 2022, AMG negotiated with Energylink Commercial regarding the price and terms and conditions for the subject project;

Energylink Commercial agreed to the NDC's proposed terms and conditions and submitted an offer amounting to **Four Million Eight Hundred Eighty-Four Thousand Four Hundred Thirty-Four Pesos and 79/100 (P4,884,434.79)**;

After due evaluation of the proposal submitted by the bidder, ENERGYLINK COMMERCIAL was declared as a single and responsive supplier;

After due evaluation of the proposal and the documentary requirements, the SERVICE PROVIDER was found to be compliant. Thus, the NDC Bids and Awards Committee (BAC) issued BAC Resolution No. 2022-10-261 recommending the award of contract to the SERVICE PROVIDER of **FOUR MILLION EIGHT HUNDRED EIGHTY-FOUR THOUSAND FOUR HUNDRED THIRTY-FOUR PESOS AND 79/100 (P4,884,434.79)**, inclusive of VAT and other applicable taxes, which was duly approved by NDC;

The following documents are attached and made an integral part of this Contract:

- a) BAC Resolution No. 2022-10-261 (Annex "C");
- b) Bid Proposal submitted by the Bidder (Annex "D");
- c) Valid and current Mayor's Permit (Annex "E")
- d) 2021 Income Tax Return or Latest Business Tax Return (Annex "F");
- e) Notarized Omnibus Sworn Statement (Annex "G");
- f) Term of Reference (Annex "H"); and
- g) Notice of Award with conforme of the Bidder (Annex "I")

The SERVICE PROVIDER agrees that additional contracts, documents, or information prescribed by the GPPB that are subsequently required for execution or submission after the contract execution, such as the Notice to Proceed, Variation Orders, and Warranty Security, shall likewise form part of this Contract;

ACCORDINGLY, for and in consideration of the foregoing premises and the provisions of the abovementioned documents, Annexes "C" to "I" hereof, the parties hereby agree as follows:



ARTICLE I

Consideration

1. NDC shall pay the SERVICE PROVIDER the gross total amount of **FOUR MILLION EIGHT HUNDRED EIGHTY-FOUR THOUSAND FOUR HUNDRED THIRTY-FOUR PESOS AND 79/100 (P4,884,434.79)**, inclusive of VAT and all applicable taxes. Payment shall be made on a one (1) time basis upon submission of a service invoice or statement of account and due acceptance by NDC of the work performed by the Service Provider.
2. The SERVICE PROVIDER hereby covenants to perform and provide the services mentioned in Article III hereof, considering the payments to be made by NDC.

ARTICLE II

Term of Contract

1. This CONTRACT shall be effective for **twenty (20) working days** commencing on the date of receipt by the SERVICE PROVIDER of the Notice to Proceed, unless sooner terminated following the provisions herein stipulated or other causes provided for by applicable laws.
2. The Service Provider shall issue a one (1) year warranty against defects and poor workmanship on all materials and services performed.

ARTICLE III

Scope of Work

1. The Services to be provided shall be as stated in the Scope of Works of the Terms of Reference as specified in Annex "H".

ARTICLE IV

Termination

NDC may terminate this CONTRACT at any time before its expiration as provided for in Article II, under any or all of the following circumstances:

- a) Violation by the SERVICE PROVIDER of any of the provisions of this CONTRACT;
- b) Fraud, falsification, or misrepresentation in any of the documents submitted by the SERVICE PROVIDER for the eligibility check and evaluation;
- c) Fraud, falsification, or misrepresentation in the Billings/Statements of Account which the SERVICE PROVIDER submits to NDC.

ARTICLE V

Special Provisions

1. No employer-employee relationship shall exist between NDC and the SERVICE PROVIDER personnel. The NDC shall be free from any claims by the SERVICE PROVIDER's personnel as regards their employment, the same being the responsibility of the SERVICE PROVIDER as an employer. In case of a suit where NDC is impleaded as an indirect employer, the SERVICE PROVIDER shall defend and protect NDC's interest. Any legal fees and expenses that may

be incurred by NDC as a consequence of such claims shall be for the account of the SERVICE PROVIDER.

2. No adjustment in the contract price shall be allowed during the term of this CONTRACT except in cases where the cost of the awarded CONTRACT is affected by the applicable new law, ordinance, regulation or other act of Government promulgated after the bidding. In which case, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis to the SERVICE PROVIDER under Sec. 61 of the Implementing Rules and Regulations of RA 9184.
3. The parties shall promptly discuss and strive for an amicable resolution of any issue or dispute that may arise between them from the Contract.

All actions and controversies that may arise from this Contract including but not limited to demands for specific performance of the obligations as specified herein and/or in the interpretation of any provisions or clauses contained herein, shall, in the first instance, be settled within thirty (30) calendar days through amicable means, such as but not limited to the mutual discussion. Should the dispute remain unresolved by the end of the aforementioned period, the dispute shall be settled following the applicable provisions of Republic Act No. 9285, otherwise known as the Alternative Dispute Resolution Act of 2004.

When it is necessary to seek judicial relief, NDC and the SERVICE PROVIDER hereby agree that any legal action, suit, or proceeding arising out of or relating to the Contract shall be instituted in any competent court in Makati City, to the exclusion of other courts of equal jurisdiction.

If NDC is compelled to commence an arbitration or seek judicial relief to enforce the provisions of this Contract, it shall be entitled to attorney's fees and liquidated damages equivalent to ten percent (10%) and fifteen percent (15%), respectively, of the Contract price or the amount claimed in the arbitration or judicial action, whichever is higher, aside from the costs of arbitration or litigation, whichever is applicable, and other expenses incidental thereto.

4. The SERVICE PROVIDER shall be liable for the following:

- a. All damages, losses, liabilities, obligations, and claims, monetary or otherwise, that may result, arise, and accrue from the performance of the Contracted Services or any violation by the SERVICE PROVIDER of its warranties, guarantees, and undertakings and the terms and condition of this CONTRACT;
- b. All damages, losses, liabilities, obligations, and claims, monetary or otherwise, for any accident or loss of life or injury to third persons or their property arising from, on the occasion of, or in connection with the performance by the SERVICE PROVIDER of any of its obligation under this Contract due to the act, omission, fault or negligence of the SERVICE PROVIDER or any of its personnel.

The SERVICE PROVIDER shall hold NDC free and harmless from any liability for the foregoing damages, losses, obligation, and claims by third persons; provided, that if NDC shall be sued and be held liable therefor, the SERVICE PROVIDER shall defend NDC before any agency, office, tribunal or court, and shall assume such liability principally and directly for the benefit of NDC. If for



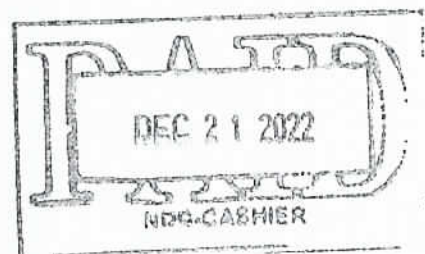
any reason, NDC is made to pay such damages, losses, obligations, and claims by third parties, the SERVICE PROVIDER shall reimburse NDC for any payments that it may make, as well as expenses and costs, including but not limited to litigation expenses and legal fees that may be incurred by NDC in connection therewith. NDC may, at its sole option, and without prejudice to other remedies, deduct all such payments from any amount that may be due to the SERVICE PROVIDER.

5. Should any of the terms and conditions or any part or clause of this CONTRACT be declared void or unenforceable by a competent authority, the same shall not invalidate the other terms and conditions, parts, or clauses of this CONTRACT, which shall continue to be in full force effect.
6. As required under Executive Order (EO) 398, the SERVICE PROVIDER shall submit income and business tax returns duly stamped and received by the Bureau of Internal (BIR), before entering and during the duration of this CONTRACT. Through its responsible officer, the SERVICE PROVIDER shall also certify under oath that it is free and clear of all tax liabilities to the government. The SERVICE PROVIDER shall pay taxes in full and on time and that failure to do so will entitle NDC to suspend or terminate this Contract.
7. The PARTIES herein shall abide by the restrictions and requirements of R.A. No. 10173 or the Data Privacy Act of 2012 and any other applicable laws, rules, or regulations on acquiring and/or processing any information that may be required in the course of, or as a result of, this contract.

If a Party encounters a breach of personal or sensitive personal information which the other acquired due to this contract, said Party shall immediately notify the other Party of the same. The Parties reserve their rights to apply security measures to minimize the impact of the breach and report the same to the National Privacy Commission (NPC) for appropriate action.

ARTICLE VII **Non-Waiver of Rights**

The failure of NDC to insist upon the strict compliance by the SERVICE PROVIDER with any of the terms, conditions, and covenants of this CONTRACT shall not be deemed a relinquishment or waiver of any rights or remedy that NDC may exercise, nor shall it be construed as a waiver of any subsequent breach or default of the terms, conditions, and covenants hereof which shall continue to remain in full force and effect. No waiver by NDC of any of its rights hereunder shall be deemed to have been made unless expressed in writing and signed by NDC through its duly authorized representatives.




IN WITNESS WHEREOF, the PARTIES have hereunto affixed their signature
this _____ day of _____ at Makati City.

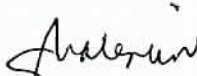
NATIONAL DEVELOPMENT COMPANY

ENERGYLINK COMMERCIAL

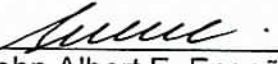
By:

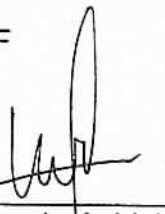
By:


ANTONIOLO DC. MAURICIO
General Manager

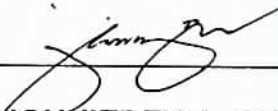

GINA L. VALENCIA
Authorized Representative

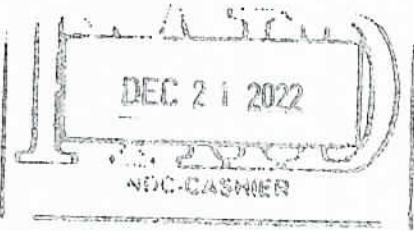
SIGNED IN THE PRESENCE OF


Engr. John Albert E. Engaño
Witness


Edgardo A. Valencia
Witness

FUNDS AVAILABLE


JOHNIEREY A. CUETO
Budget Officer V



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

DEC 8 7 2022

ANTONIOLO DC. MAURICIO

GOVERNMENT ID & DATE OF EXPIRATION

Passport No. P832386A valid until August 12, 2028

GINA L. VALENCIA

Passport No. P8575301A valid until September 2, 2028

This foregoing instrument is a Contract for the Upgrade of the Automatic Transfer Switch (ATS), including necessary Electrical Works to complete the system at the Industry & Investments (I&I) Building, consisting of seven (7) pages including this page on which this acknowledgment is written, signed by the parties and their instrumental witnesses on every page hereof.

DEC 07 2022

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Page No. 100
Book No. 100
Series of 2022.

ATTY. GEORGE DAVID D. SITON
ATTY GENERAL FOR MAKATI CITY
APR 10 2023 - UNTIL DEC. 31, 2023
ROLL NO. 68062 / POST CODE LARGE NO. VH-0910136/2-15-2022
IBP O.R. MALABED LUPITING MEMBER MAY 5, 2017
PTR No. 0000000000 JAN 05, 2012-MAKATI CITY
EXECUTIVE BLDG. CENTER MAKATI AVE., COR. JUPITER ST., MAKATI CITY

