

**PURCHASE AND SERVICE AGREEMENT FOR CORPORATE ANTI-
VIRUS ENDPOINT SECURITY SOLUTION**

KNOW ALL MEN BY THESE PRESENTS:

This Purchase and Service Agreement for Corporate Anti-Virus Endpoint Security Solution (hereinafter, the **AGREEMENT**) entered into in Pasay City, Philippines; this 2012-09-25, 2012 by and between the:

The **DEPARTMENT OF FOREIGN AFFAIRS** (hereinafter, the **CLIENT**), with principal office address at 2330 Roxas Blvd., Pasay City, Metro Manila, represented by the Honorable Rafael E. Seguis, Undersecretary of Foreign Affairs,

and

NEXT INNOVATION, INC. (hereinafter, the "**CONTRACTOR**"), a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at **Disposphil Building, Escriva Drive St., Jose Marie Ortigas, Pasig City**, represented by Ms. Lorna V. Zacate, Business Development Manager, who is duly authorized to enter into this Agreement pursuant to Board Resolution/Secretary's Certificate dated _____ and attached hereto as ANNEX A, and made an integral part of this Agreement.

WHEREAS, the **CONTRACTOR** has been selected by the **CLIENT** to provide a Corporate Anti-Virus Endpoint Security Solution for a duration of one (1) year since its offer was determined to be the most advantageous to the Government, as provided for under Bids and Awards Committee Resolution No. 130-12 dated 04 July 2012, attached hereto as ANNEX B, and Notice of Award dated 04 July 2012, attached hereto as ANNEX C;

NOW THEREFORE, for and in consideration of the foregoing premises, the Parties hereby agree as follows:

I. GENERAL TERMS OF THE AGREEMENT

- A. The **CONTRACTOR** shall provide the **CLIENT** One Thousand (1,000) Anti-Virus Licenses, bundled with a server hardware and the required operating systems.
- B. The licenses should have a validity of one (1) year, effective upon the **CLIENT's** issuance of a certificate of acceptance.
- C. Each corporate license must come with a home edition license that can be installed to another terminal or unit outside the **CLIENT's** premises. Technical support for the home edition need not be covered by the **CONTRACTOR**.
- D. The **CONTRACTOR** shall transfer to the **CLIENT** ownership of the server hardware upon expiry of this agreement, subject to the latter's acceptance.

[Signature]

[Signature]

[Signature]

[Signature]

E. The **CLIENT** shall pay the **CONTRACTOR** the full amount of **Seven Hundred Sixty Eight Thousand Pesos (Php 768,000.00)**, inclusive of Value Added Tax (VAT) and other lawful charges, within thirty (30) calendar days after the **CLIENT's** issuance of a certificate of acceptance and the **CONTRACTOR's** submission of the sales invoice, and upon completion of the **CONTRACTOR's** comprehensive technical training for four (4) CMISD personnel.

II. TECHNICAL SPECIFICATIONS

A. Anti-Virus Client Software

1. The software must be able to manage protection for all platforms (Windows, Mac OS X, Linux, Unix, Windows Mobile, Android, and others) in a centralized management console and using only a single license for all platforms.
2. The software must provide a wide range of scanning options for the entire network, specifically on-access, on-demand, scheduled, and web scanning. It must also allow for the exclusion of particular file types identified to be non-threatening.
3. The software must have heuristic scanning capabilities, allowing for the recognition of versions or variations of known viruses and effectively blocking them upon detection.
4. The software must be capable of archived and compressed file scanning.
5. Aside from defending against common malwares (virus, worms, Trojans, bots, boot record infector, adware, spyware, stealware, browser hijacking software), the software must be able to detect and remove hidden malware, particularly rootkits.
6. The software must have Behavior Analysis, Behavior-blockers, Host Intrusion Prevention System (HIPS) or Advanced Heuristic Analysis and Detection (AheAD) capabilities.
7. The software must have Data Loss Prevention (DLP) capabilities that can identify and protect confidential information; monitor data transfer to removable storage devices or internet-enabled applications (i.e. email, web browsing and instant messaging); prevent data breaches and leakages; and reduce risks from insider threats.
8. The software must be capable of manual, automatic and on-demand updating of program and malware definition.
9. The software must be able to automatically trigger a Live Anti-Virus lookup, warn the administrator, block the process and perform automatic clean-up immediately upon detection of the threat.
10. The software must be able to quarantine infected files.
11. The software must be capable of history and alerts logging and reporting.

[Signature]

[Signature]

[Signature]

12. The software must come with an integrated firewall, the configuration of which could be centrally managed.
13. The software must have anti-Phishing and anti-Spamming capabilities.

B. Anti-Virus Administration Software

1. The server operating system must be at least an MS Windows Server 2003.
2. The administration software must be capable of single-point administration for all anti-virus clients running MS Windows and Linux operating systems.
3. The administration software must be able to define and enforce anti-virus policies consistently across the network.
4. The administration software must be capable of providing a notification facility to monitor incidents like status of clients, malware infection or warnings.
5. The administration software must be able to e-mail notification of incidents to Administrators.
6. The administration software must be capable of remote management and administration of the anti-virus application.
7. The administration software must be capable of remote installation of anti-virus solutions to clients even in a VLAN or workgroup setup.
8. The administration software must allow manual updates of program and malware definition on the server.

C. Bundled Hardware (Server)

The server hardware must be of a reputable brand and have the following minimum features:

1. Form Factor (fully configured) 1U;
2. Intel Xeon processor 2.13 GHz 8MB L3 cache;
3. 8GB DDR3 memory;
4. 1TB 3.5in HS 7.2K SAS HDD;
5. Dual Gigabit Ethernet ports;
6. MS Windows Server 2008 R2 STD 5CAL OS.

III. INSTALLATION, MAINTENANCE AND TRAINING SERVICES

A. Installation

1. The **CONTRACTOR** will set-up the server and will install the software on-site.
2. Certified Engineers of the **CONTRACTOR** must assist CMISD in the deployment of the Corporate Anti-Virus software.

B. Maintenance Support Services

1. The **CONTRACTOR** must provide 8/5 phone call and email system support.
2. The **CONTRACTOR** must provide automatic software downloads for virus definition and other major and minor updates.
3. The **CONTRACTOR** must provide unlimited Help Desk access.
4. The **CONTRACTOR** must provide access to support knowledge base.
5. The **CONTRACTOR** must provide next-business-day on-site support.
6. The **CONTRACTOR** must conduct quarterly Health Checks/Visits to monitor the status of the Endpoint Security Solution.

C. Training

1. The **CONTRACTOR** must provide a comprehensive technical training to at least four (4) personnel of the **CLIENT**.
2. The **CONTRACTOR** must conduct a user awareness seminar after deployment and implementation of the endpoint security solution and quarterly sessions thereafter.

IV. PERFORMANCE SECURITY

To guarantee faithful performance, the **CONTRACTOR** shall post a performance security as provided in Section 39.2 of the Implementing Rules and Regulations of R.A. 9184 and shown as follows:

1. Cash, certified check, cashier's check, manager's check, bank draft or irrevocable letter of credit – five percent (5%) of the total contract price.
2. Bank Guarantee – ten percent (10%) of the total contract price.
3. Surety bond callable on demand issued by any reputable surety or insurance company – thirty percent (30%) of the total contract price.

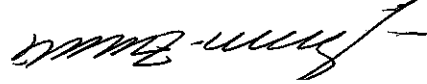
V. REPRESENTATIONS AND WARRANTIES

The **CONTRACTOR** hereby represents and warrants that:

1. The **CONTRACTOR** is certified by the product manufacturer that it is an authorized Philippine Exclusive Distributor or Reseller of the product.
2. The **CONTRACTOR** has at least one (1) Certified Engineer who is qualified to support the anti-virus endpoint security solution.

VI. TERMINATION

1. This Agreement may be terminated by a Party's written notice to the other Party 90-days prior to the proposed termination date:



- a. When a Party commits material breach of this Agreement and fails to rectify such breach within seven (7) days written notice or commits 10 material breaches in any three-month period;
 - b. When the anti-virus solution, the server hardware, or associated spare parts and services cease to be manufactured, distributed, supplied or supported by the manufacturer, distributor or any reseller or other person from which the **CONTRACTOR** received such goods or services including replacement parts and technical assistance. It is understood that the **CONTRACTOR** should notify the **CLIENT** for any end-of-life announcement by the manufacturer;
 - c. When the **CONTRACTOR** ceases to sell, distribute or support the anti-virus solution and bundled hardware server (or any part) due to termination of any reseller agreement for relevant products or spare parts; and
 - d. The **CLIENT** shall also have the right to terminate in case of breach of this Agreement or in case of unsatisfactory performance by the **CONTRACTOR**.
2. The **CLIENT** shall claim the pro-rated amount equivalent to the contracted amount in proportion to the remaining duration of the Agreement, if the **CONTRACTOR** is the defaulting party;
 3. The **CONTRACTOR** shall keep the full contracted amount, if the **CLIENT** is the defaulting party.

VII. FORCE MAJEURE

The **CLIENT** and the **CONTRACTOR** shall not be liable in any way whatsoever for delays or failure in performance resulting from acts beyond their reasonable control, which may not be overcome by due diligence. Such acts shall include but not be limited to acts of God, strikes, lock outs, labor disputes, material shortages, riots, acts of war, governmental regulation imposed after the fact, flood, fire, earthquake, power supply disturbances, blackouts or other such natural disasters. The obligations of the **CLIENTS** and the **CONTRACTORS** in so far as they are affected by such occurrence, shall be suspended during the continuance of any inability so caused, and such inability shall not be a breach of this Agreement.

VIII. LIABILITY

1. The **CONTRACTOR** shall not be liable for any direct or indirect loss or damage sustained or incurred by or any third party (including without limitation and loss of use of Software and Hardware or loss of or corruption of **CLIENT's** programs or data) resulting from any breakdown of a fault in the Hardware and Software unless such breakdown or fault is caused by the gross negligence or willful misconduct of the **CONTRACTOR**, its employees, agents, or sub-contractors.
2. Notwithstanding any provision contained in this Agreement to the contrary, the **CONTRACTOR** shall not be liable to the **CLIENT** for loss of profits or contracts or other indirect, special or consequential losses except when due to the willful misconduct or gross negligence of the **CONTRACTOR**, its employees, agents, or sub-contractors.

3. The **CONTRACTOR** shall hold the **CLIENT** free and harmless from any and all claims of, or liabilities to, the **CONTRACTOR's** personnel assigned to perform its obligations under this Agreement for salaries, wages, compensation or remuneration, benefits, or death, injury or sickness, of any other claim arising from or in connection with the performance by the **CONTRACTOR** of its obligation under this Agreement.
4. The **CLIENT** shall indemnify **CONTRACTOR** against all losses and liabilities which it may sustain and all reasonable costs and expenses which it may incur as a result of any breach by the **CLIENT** of its obligations under this Agreement or of **CONTRACTOR** complying with any instructions which **CLIENT** is entitled or obliged to give under this Agreement except for losses, liabilities, costs, and expenses which arise out of the fraud or negligence of, or breach of this Agreement by the **CONTRACTOR** or any third parties not controlled by **CLIENT**.
5. Any liability of the **CONTRACTOR** shall be limited to the amount stipulated under this Agreement.

IX. CONFIDENTIALITY

Except as required by law or pursuant to prior written consent, each Party agrees to keep confidential and not disclose any information or document of the other Party or which the other Party designated as confidential. Each Party shall take all reasonable steps to ensure its employees, contractors, agents and advisers comply with this clause. This clause shall survive the termination of this Agreement.

X. ASSIGNMENT

Either Party may assign any benefit, obligation or liability under this Agreement with the prior written consent of the other Party.

XI. WAIVER AND SEVERANCE

Any indulgence granted by a Party to the other Party and any failure by any of the Parties to insist upon strict performance of these terms and conditions shall not be deemed a waiver of any of such Party's rights or remedies nor be deemed a waiver of any subsequent default by the defaulting Party.

If any term or condition of this Agreement is declared invalid or contrary to law, the other terms or conditions that are not covered by such declaration shall remain valid and binding. The Parties shall amend or modify the term or condition declared invalid or contrary to law, to conform to the subject and objective thereof.

XII. CONSTRUCTION OF CONTRACT AND GOVERNING LAW

The validity and interpretation of the terms and conditions of this agreement shall be governed by and construed in accordance with the laws of the Philippines.

XIII. ENTIRE AGREEMENT

These terms and conditions constitute the entire Agreement between the **CONTRACTOR** and the **CLIENT** and supersede and take precedence over all prior

agreements, understandings and negotiations relating to this Agreement. The terms and conditions may not be changed or modified in any way, except by written instrument signed by the Parties. Neither Party shall assign its rights and obligations to another person or entity without the prior written consent of the other Party.

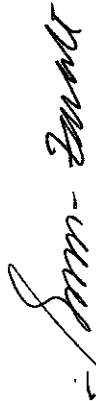
XIV. VENUE OF ACTION

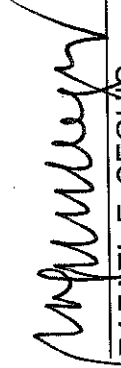
In case of any action brought by one Party against the other for the enforcement or interpretation of any provision hereof, the same shall be brought before the proper court of Pasay City, Philippines only.

IN WITNESS WHEREOF, the Parties have caused their respective representatives to execute this Agreement on the date and the place indicated in the first page hereof.


NEXT INNOVATION, INC.

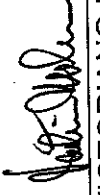
DEPARTMENT OF FOREIGN AFFAIRS



LORNA V. ZACATE
Business Development Manager


RAFAEL E. SEGUIS
Undersecretary

SIGNED IN THE PRESENCE OF:


ALVAR E. ROSALES
Chief Accountant, DFA


VICTORIANO M. LECAROS
Director, CMISD- DFA


JANETH B. DEL CARMEN
Next Innovation, Inc.

ACKNOWLEDGEMENT

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

BEFORE ME, a NOTARY PUBLIC for and in the City of Pasay, Philippines, on this 17 day of SEP 2011 personally appeared Honorable RAFAEL E. SEGUIS, Undersecretary of Foreign Affairs and Ms. LORNA V. ZACATE, Business Development Manager, NEXT INNOVATION, INC. known to me to be the same persons who executed the foregoing Purchase and Service Agreement for Corporate Anti-Virus Endpoint Security Solution, consisting of 12 pages including the Annexes attached thereto and the page on which this Acknowledgement is written, all pages of which have been signed at the left hand margin by the Parties and their witnesses, and who acknowledged to me that the same is their free and voluntary act and deed.

The Philippine Passport/ Community Tax Certificate of the Parties were exhibited to me, the same bearing:

NAME	ID No.	PLACE OF ISSUE	DATE OF ISSUE
RAFAEL E. SEGUIS	Passport #00065751	Manila	5/11/2010
LORNA V. ZACATE	Passport #EB3968155	Manila	10/28/2011

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day, year and place above written.

Doc. No. 57
Page No. 13
Book No. 641 v
Series of 2012.

NOTARY PUBLIC
ATTY. DANILO B. BANAKES
NOTARY PUBLIC
UNTIL DEC. 31, 2013
TIN 132-811-889
BP LIFE ROLL # 413 / 01-04-85
PTR NO. 0314186 M.L.A. 1-2-12

[Handwritten signatures and marks]

AUTHORITY OF SIGNATORY

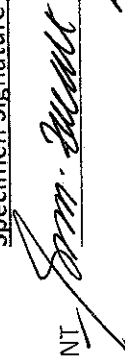
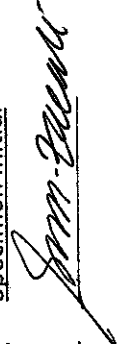
SECRETARY'S CERTIFICATE

I, **JASON Y. LIM**, a duly elected and qualified Corporate Secretary of **NEXT INNOVATION INC.**, a corporation duly organized and existing under and by virtue of the law of the PHILIPPINES. DO HEREBY CERTIFY that:

I am familiar with the facts herein certified and duly authorized to certify the same:

At the regular meeting of the Board of Directors of the said Corporation duly convened and held on August 28, 2012 at which meeting a quorum was present and acting throughout the following resolutions were approved and the same have not been annulled, revoked and amended in any way whatever and are in full force and effect on the date hereof:

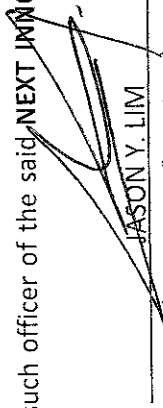
RESOLVED, that **JASON Y. LIM** be as it hereby is, hereby appoint **LORNA V. ZACATE**, acting as duly authorized and designated representative of **NEXT INNOVATION INC.**, is granted full power and authority to do execute and perform any and all acts necessary and/or to represent **NEXT INNOVATION INC.**, in the bidding as fully and effectively as the **BUSINESS DEVELOPMENT MANAGER** might do if personally present with full power of substitution and revocation and hereby satisfying and confirming all that may said representative shall lawfully do or cause to be done by virtue hereof:

<u>Name</u>	<u>Designation</u>	<u>Specimen Signature</u>	<u>Specimen Initial</u>
LORNA V. ZACATE	BUSINESS DEVELOPMENT MANAGER		

RESOLVED FURTHER THAT, **NEXT INNOVATION INC.** hereby authorizes its President to:

- (1) Execute a waiver of jurisdiction whereby **NEXT INNOVATION INC.** hereby submits itself to the jurisdiction of the Philippine Government and hereby waives its right to question the jurisdiction of the Philippine courts:
- (2) Execute a waiver that **NEXT INNOVATION INC.** shall not seek and obtain writ of injunctions or prohibition or restraining order against the DEPARTMENT OF FOREIGN AFFAIRS or any other agency in connection with this project to prevent and restrain the bidding procedures related thereto, the negotiating of and award of a contract to a successful bidder, and the carrying out of the awarded contract.

WITNESS the signature of the undersigned as such officer of the said **NEXT INNOVATION INC.** this August 29, 2012.


JASON Y. LIM
(Corporate Secretary)

REPUBLIC OF THE PHILIPPINES)
CITY OF **PASIG CITY**) S.S

ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN to before me this 30 day of AUG 30 2012 affiant exhibited to me her **Passport No. EB3968155** issued on **October 28, 2011** at **Manila**, Philippines.

Notary Public

GAUDENCIO A. DARBOZA, JR.

PT. NOTARY PUBLIC

UNTIL **DECEMBER 31, 2012**

PT. NO. **2012042832/1-03-11 MKT.**

ISP NO. **042139/1-03-11 RSM**

ROLL NO. **41969**

Doc. No. 370
Page No. 74
Book No. 87
Series of 2012



BAC Resolution No. 130-12

RESOLUTION RECOMMENDING THE AWARD OF CONTRACT FOR THE
DEPARTMENT'S CORPORATE ANTI-VIRUS ENDPOINT
SECURITY SOLUTION PROJECT

WHEREAS, the Office of the Secretary-Communications (CORATEL) and Management Information System Division (CMISD) intends to procure through competitive public bidding, a Corporate Anti-Virus Endpoint Security Solution software which is necessary to address the Department's cyber-security needs for CY 2012;

WHEREAS, the Office of Fiscal Management (OFM) issued a *Certificate of Availability of Funds* for the Corporate Anti-Virus Endpoint Security Solution Software in the amount of *Eight Hundred Thousand Pesos Only (Php800,000.00)* chargeable against CMISD MOOE Funds;

WHEREAS, on 30 May 2012, in compliance with Section 20.1 of the Revised Implementing Rules and Regulations (RIRR) of the Government Procurement Reform Act (R.A. 9184), the BAC with the representatives from OSEC-CMISD conducted a *Pre-Procurement Conference* to discuss the bidding documents, including the Terms of Reference (TOR), scope and contract duration, as well as the schedule of bidding activities for the project;

WHEREAS, in compliance with Section 21.2 of the RIRR of R.A. 9184, the Department of Foreign Affairs (DFA) advertised in Manila Times and posted, for seven (7) consecutive days an *Invitation to Bid* for the Procurement of the Corporate Anti-Virus Endpoint Security Solution in the DFA Website, PhilGeeps and in conspicuous places within the premises of the DFA;

WHEREAS, in response to said advertisements, four companies, namely, *Next Innovation, Inc. (Next Innovation)*, *ePLDT, Inc. (ePLDT)*, *Inter-Island Information System, Inc. (Inter-Island)*, and *CT Link Systems, Inc. (CT Link)*, purchased *Bid Documents* in the amount of *Five Thousand Pesos Only (Php5,000.00)*;

WHEREAS, on 15 June 2012, in compliance with Section 22 of the RIRR of R.A. 9184, the DFA-Bids and Awards Committee (DFA-BAC), in the presence of the observers from the Internal Audit Services (IAS), Commission on Audit (COA), Coalition Against Graft and Corruption-Bishops-Businessmen's Conference (CAC-BBC) and representatives from the OSEC-CMISD, held a *Pre-Bid Conference* with the prospective bidders to discuss the eligibility requirements and the technical and financial components of the contract to be bid and to allow the bidders to raise or submit written queries or clarifications;

WHEREAS, on 27 June 2012 during the *Opening of Bids*, consistent with Section 23 of the RIRR of R.A. 9184, *Next Innovation, Inter-Island and CT Link* submitted their respective sealed *Eligibility and Technical Requirements, and Financial Proposal* envelopes. Both *Next Innovation and CT link* were declared "ELIGIBLE TO BID", as well as "TECHNICALLY COMPLYING";

WHEREAS, the financial bid of the bidders were as follows:

Bidders	Financial Bid
Approved Budget for the Contract	Php 800,000.00 (Eight Hundred Thousand Pesos Only)
Next Innovation, Inc.	Php 768,000.00 (Seven Hundred Sixty-Eight Thousand Pesos)
CT Link Systems, Inc.	Php 771,242.00 (Seven Hundred Seventy-One Thousand, Two Hundred Forty-Two Pesos)

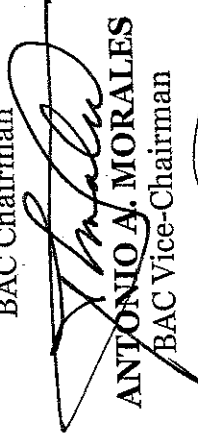
WHEREAS, in compliance with Section 34 of the RIRR of R.A. 9184, *Next Innovation, Inc.* after being declared as the company with the ***Lowest Calculated Bid*** underwent ***Post-Qualification*** conducted on 3 July 2012 by the DFA-BAC and representatives of OSEC-CMISD, as the end-user office and was determined to have passed all the criteria for ***Post-Qualification*** and is therefore the company with the ***Lowest Calculated Responsive Bid***;

WHEREFORE, premises considered, the Committee unanimously resolves to recommend to the Head of the Procuring Entity of the Department Foreign Affairs:

- 1.) to award the contract of the Corporate Anti-Virus Endpoint Security Solution for the Department of Foreign Affairs to ***Next Innovation, Inc.*** for having submitted the ***Lowest Calculated Responsive Bid*** in the amount of ***Php768,000.00***; and
- 2.) to commence ***Contract Negotiation*** with ***Next Innovation, Inc.*** upon the issuance of the ***Notice of Award***.

ADOPTED this 4th day of July 2012, Pasay City.

JOSEPH GERARD B. ANGELES
BAC Chairman



ANTONIO A. MORALES
BAC Vice-Chairman



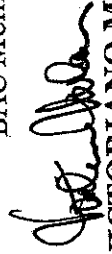
LAMBERTO V. MONSANTO
BAC Member



KRISTINE LEILANI R. SALLE
BAC Member

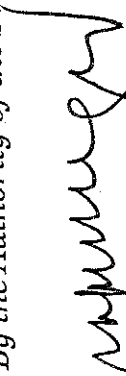


JAN KENNETH E. BOLANTE
BAC Member

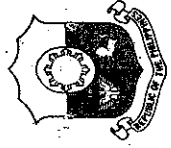


VICTORIANO M. LECAROS
BAC Provisional Member
Representative of the End-User

Approved:
By the Authority of the Secretary of Foreign Affairs:



RAFAEL E. SEGUIS
Undersecretary for Administration
and Head of the Procuring Entity



OFFICE OF THE UNDERSECRETARY FOR ADMINISTRATION

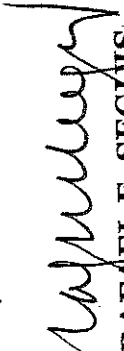
NOTICE OF AWARD

4 July 2012

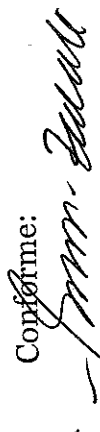
Madamme:

Please be informed that, upon the recommendation of the Bids and Awards Committee (BAC) of the Department as contained in its Resolution No. 130-12, the Department of Foreign Affairs is awarding the Contract for the Department's Corporate Anti-Virus Endpoint Security Solution to your firm, **Next Innovation, Inc.**, in the amount of Seven Hundred Sixty-Eight Thousand Pesos only (**Php768,000.00**), inclusive of all taxes and other lawful charges, subject to the successful negotiation and signing of the contract.

Very truly yours,


RAFAEL E. SEGOIS
Undersecretary for Administration
and Head of Procuring Entity

Conferme:



MS. LORNA V. ZACATE
Business Development Manager
NEXT INNOVATION, INC.

Date: _____

