

SERVICE CONTRACT
FOR THE PROVISION OF PREVENTIVE MAINTENANCE
AND REPAIR SERVICES OF PITNEY BOWES DIGITAL MAILING MACHINE
(DM 300C)

MAR 24 2015

This **CONTRACT** is made and entered on this ____ day of _____ 2015 by and between:

The **GOVERNMENT SERVICE INSURANCE SYSTEM**, a social insurance institution, created under Commonwealth Act No. 186, as amended, and operating under its present Charter, Republic Act No. 8291, otherwise known as the **GSIS** Act of 1997, with principal office address at the **GSIS** Headquarters Building, Financial Center Area, Pasay City, Philippines, represented herein by **EVANGELINA M. MANILA, Administrative Officer IV, Corporate Services Group-General Services Office, Records Management Department**, hereinafter referred to as the "**GSIS**",

-and-

The **MESSAGING SOLUTIONS PROVIDER, INC.**, a corporation duly existing under the laws of the Philippines, with principal office address at MSPI Place, 1294 Batangas Street, Makati City 1200, represented herein by **LUISITO G. SANTOS, Vice President, Technical Services Group** and duly authorized for this purpose, hereinafter referred to as the "**MSPI**".

RECITALS

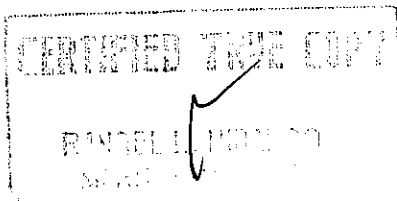
WHEREAS,

1. The **GSIS** needs to maintain the postage metered stamp machines installed at the **GSIS** Headquarters Building, Pasay City.
2. The **GSIS** entered into a Contract with the **MSPI** through Direct Contracting, as an alternative method of procurement inasmuch as the **MSPI** is the sole distributor/service provider of postage-metered machines in the Philippines.

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties have agreed as follows:

ARTICLE I
SCOPE OF SERVICE

- 1.1 **COVERAGE.** The **MSPI** shall maintain, clean, adjust and test the Pitney Bowes Digital Mailing Machine (DM 300C), hereinafter the "Goods", once every three (3) months furnishing all necessary lubricants, cleaning materials and tools required by the **GSIS** in accordance with this Contract and the Terms of Reference.
- 1.2 **UNDERTAKING.** The **GSIS** shall use parts, accessories and supplies that are supplied by **MSPI**. Parts to be replaced will be billed separately. Labor charges on major repairs and service calls involving minor repair and/or adjustments shall be free of charge but limited to normal business hours. Add-on rates will be provided for services beyond normal hours. If conditions should arise, which make it impossible, or impractical in judgment to continue the maintenance service on machines, the unserved portion will be refunded by **MSPI**.



**ARTICLE II
EFFECTIVITY AND TERMS OF PAYMENT**

2.1 **EFFECTIVITY OF THE CONTRACT.** This Contract shall cover the period from January 1, 2015 to December 31, 2015.

The term maybe extended for a similar period upon mutual agreement of the parties under such terms and conditions as may be stipulated after the expiration of the original period herein stated.

2.2 **CONTRACT PRICE.** For and in consideration of the full and satisfactory performance of the **Services** required under this Contract and the acceptance thereof by the **GSIS**, the **GSIS** shall pay the agreed Contract Price of **SEVENTEEN THOUSAND EIGHT HUNDRED PESOS (Php17,800.00)**. It is understood that all applicable taxes, including Documentary Stamp Tax (DST), if any, should be borne by the **MSPI**.

For this purpose, the **MSPI** acknowledges that the **GSIS** is not a withholding agent for DST and hereby undertakes and commits itself to make direct payments to the BIR of any DST that may be imposed in the execution and/or performance of this Contract.

2.3 **TERMS OF PAYMENT.** The **GSIS** shall pay the **MSPI** on a monthly basis subject to the submission of the billing statement. The billing statement shall be submitted by the **MSPI** to the **GSIS** on or before the 2nd working day of the month following the billing month and shall be payable on or before the 10th working day after the submission of the billing and supporting documents.

2.4 **AUDITING RULES.** All payments shall be subject to the usual accounting and auditing rules and regulations applicable to the **GSIS**.

**ARTICLE III
TERMINATION**

3.1 **TERMINATION FOR DEFAULT.** The **GSIS** shall have the right to pre-terminate this Contract in whole or in part for default of **MSPI** or breach or violation of the terms and conditions of this Contract and the Terms of Reference without need of judicial action or for just cause to be determined by the **GSIS**, which determination shall be final and binding to **MSPI**.

3.2 **TERMINATION FOR INSOLVENCY.** The **GSIS** shall have the right to terminate this Contract if **MSPI** is declared bankrupt or insolvent as determined by a court of competent jurisdiction.

3.3 **TERMINATION FOR UNLAWFUL ACTS.** The **GSIS** shall have the right to terminate this Contract, which termination shall take effect immediately upon receipt of the Notice of Termination, in case it is determined prima facie that **MSPI** has engaged, before or during the implementation of this Contract, in unlawful deeds and behavior relative to the acquisition and implementation thereof.

3.4 **TERMINATION FOR CONVENIENCE.** In any event, the **GSIS** shall have the right to terminate this Contract, in whole or in part, by serving a thirty-day written notice to **MSPI**. The termination under this Section shall be resorted to by the **GSIS** if it has determined the existence of conditions that make the performance of **MSPI** economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous events or changes in law and national government policies.

- 3.5 **COMPLETED SERVICES.** In the event of pre-termination or termination of this Contract by the **GSIS**, the **GSIS** shall pay **MSPI** for services rendered up to the date of pre-termination or termination, unless such pre-termination or termination was due to the acts or omissions of **MSPI** or a breach of this Contract by **MSPI**.
- 3.6 **REMEDIAL RIGHTS.** The pre-termination or termination of this Contract shall be without prejudice to any other rights or remedies the **GSIS** may be entitled to under this Contract and the Terms of Reference, or under any law. Neither shall it affect any accrual of rights of the **GSIS** nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue to be in force or after such termination.

**ARTICLE IV
INDEMNIFICATION**

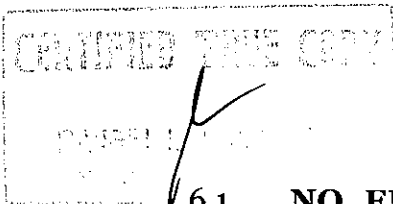
- 4.1 **INDEMNITY.** The **MSPI** agrees to defend, indemnify and hold harmless the **GSIS**, the members of its Board of Trustees, its officials, agents and employees, against all claims, losses, liabilities, and damages, and to pay all claims, judgments, awards, costs and expenses arising out of or in connection with the **MSPI**'s acts or omissions, unless such claims are due solely to the fault or negligence of the **GSIS**. Costs, inclusive of expert witness fees and other legal expenses shall be charged against the account of the **MSPI**.

**ARTICLE V
CONFLICT RESOLUTION**

- 5.1 **AMICABLE SETTLEMENT.** If a dispute of any kind should arise between the **GSIS** and the **CONSULTANT** in connection with or arising out of this Contract, the parties shall make every effort to amicably resolve such dispute.
- 5.2 **ARBITRATION.** If after ten (10) days, the parties have failed to resolve their dispute, the matter shall be submitted for arbitration, pursuant to R. A. No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004". *Provided, however,* that the parties may agree in writing to resort to other alternative modes of dispute resolution.
- 5.3 **OBLIGATIONS NOT SUSPENDED.** Notwithstanding any reference to the settlement of disputes or arbitration herein, the parties shall continue to perform their respective obligations under this Contract unless they otherwise agree in writing.

**ARTICLE VI
MISCELLANEOUS PROVISIONS**

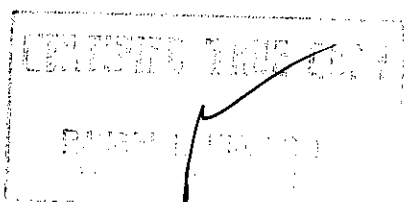
- 6.1 **NO EMPLOYER-EMPLOYEE RELATIONSHIP.** The **MSPI** is not an employee of the **GSIS** but an independent contractor. Neither shall the personnel or employees of **MSPI** be deemed employees of the **GSIS**. Hence, the **GSIS** shall not in any way be liable or responsible for any personal injuries or damages, including death, sustained or caused by any of the personnel or employees of **MSPI**.
- 6.2 **NON-DISCLOSURE.** The **MSPI** shall not use or disclose to any person, firm or corporation any information concerning the affairs of the **GSIS** which its personnel may have acquired in the course of or as an incident to this Contract for its own benefit, to the detriment of the **GSIS**.



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- 6.3 **PUBLICITY.** The **MSPI** shall consult and obtain the prior written consent of the **GSIS** before issuing or disclosing any news release, public announcement, advertisement or other form of publicity in respect to any of the terms of this Contract, or using it as a reference or part of any presentation.
- 6.4 **NON-ADVERSE WITNESS.** In no case shall the **MSPI** and its personnel assist any party in any action, suit or proceeding against the **GSIS**, the members of its Board of Trustees, or any of its officials, agents and employees in connection with the performance of its undertakings under this Contract and the TOR.
- 6.5 **NON-TRANSFERABILITY.** The **MSPI** shall not assign or transfer the contracted services covered by this Contract without the prior written consent of the **GSIS**. Any act in violation of this provision shall be sufficient ground for the termination of this Contract.
- 6.6 **COMPLIANCE WITH LAWS.** The **MSPI** shall comply with all laws, ordinances, rules and regulations of both national and local government that are applicable to and/or binding upon the parties and the works covered by this Contract. The **MSPI** shall be responsible for all damages to the **GSIS**, third parties, national and local governments for the non-observance of such laws, ordinances, rules and regulations.
- 6.7 **NON-WAIVER.** The failure of the **GSIS** to demand strict compliance with any and all the terms of this Contract shall not be construed as a waiver and/or estoppel on the part of the **GSIS** for the enforcement of any of its rights or to subsequently demand compliance therewith during the subsistence of this Contract.
- 6.8 **FURTHER ASSURANCES.** The **MSPI** shall execute and deliver such supply, materials as the terms of this Contract may prescribe and other further assurances as the **GSIS** may require as necessary or appropriate to effect the purpose of this Contract, or confirm the rights created or arising hereunder.
- 6.9 **NO PRESUMPTION.** In interpreting and applying the terms and provisions of this Contract, no presumption shall be made against the party that drafted such terms and provisions.
- 6.10 **WRITTEN NOTICES.** All notices, statements and requests hereunder shall be in writing and shall be personally delivered, or transmitted by registered mail, electronic mail or fax, to the other party at the address stated above, unless a party has informed the other in writing of its change of address, in which case said notices shall be sent to the new address.
- 6.11 **LIQUIDATED DAMAGES.** In the event that the **MSPI** fails to perform its obligations within the agreed period as specified in this Contract, the **GSIS** shall, without prejudice to its other remedies under this Contract and other applicable laws, deduct from the Contract Price, as liquidated damages, a sum equivalent to one-tenth of one percent (0.1%) of the cost of the unperformed portion of the Contract per day of delay but not to exceed ten percent (10%) of the total Contract Price. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the Contract Price, the **GSIS** may rescind the Contract, without prejudice to other courses of action and remedies available to the **GSIS**. It is understood that the damages herein provided are fixed and that the **GSIS** shall not be required to adduce proof thereof.




- 6.12 **OTHER COSTS.** Should the **GSIS** be constrained to file a case to obtain relief against the **MSPI**, the latter shall be liable to pay an amount equivalent to thirty percent (30%) of that amount claimed in the complaint as attorney's fees, aside from the costs of litigation and other expenses which the **GSIS** is entitled to recover from the **MSPI**; provided however, that in an action brought by the **MSPI** for whatever cause arising under this Contract, should it be adjudged not to be entitled to the relief sought, the **GSIS** as the prevailing party shall be entitled to such reasonable attorney's fees, costs of litigation and other costs it may have incurred by reason of such action.
- 6.13 **FULL AGREEMENT.** This Contract and the Terms of Reference contain all the agreements of the parties and replace and supersede any understanding, communications and representations whether verbal or written between the parties.
- 6.14 **INTERPRETATION.** The **MSPI** agrees and obligates itself to unconditionally abide by the decision of the **GSIS** on the interpretation or construction of any term, condition or stipulation contained in this Contract.
- 6.15 **FORCE MAJEURE.** No party shall be liable to the other party for any delay or non-performance of its obligations under this Contract arising from any cause or causes beyond its control including, but not limited to, any act of God, governmental acts under its police power, war, terrorist attack, fire, flood, explosion or civil commotion.
- 6.16 **AMENDMENTS.** No modifications of or amendments to the terms and conditions of this Contract shall be valid unless set out in writing and signed by the authorized representatives of each party.
- 6.17 **SEPARABILITY.** If any term, clause or provision of this Contract is at any time determined to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining provisions, which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 6.18 **SURVIVAL OF COVENANTS.** The covenants, agreements and obligations of the **MSPI** which by their nature should continue beyond the expiration and termination of this Contract shall survive the expiration or termination hereof.
- 6.19 **VENUE OF ACTION.** Any action arising from arbitration or other modes of dispute settlement as agreed upon by the parties pursuant to Section 5.2 of this Contract shall be brought by the aggrieved party exclusively before the proper Court in the City of Pasay.
- 6.20 **GOVERNING LAWS.** This Contract and the Terms of Reference shall be subject to the pertinent provisions of R.A. No. 9184, otherwise known as the Government Procurement Reform Act, its Revised Implementing Rules and Regulations (RIRR) and other related laws, rules and regulations.

IN WITNESS WHEREOF, the parties have hereunto set their hands in the City of Pasay, Philippines.

**GOVERNMENT SERVICE
INSURANCE SYSTEM**

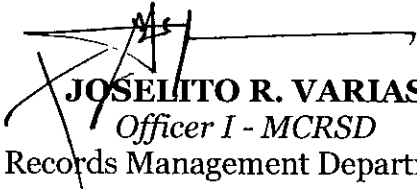

EVANGELINA M. MANILA
Administrative Officer IV
Records Management Department

**MESSAGING SOLUTIONS
PROVIDER, INC.**

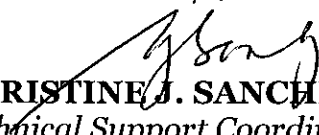

LUISITO G. SANTOS
Vice President
Technical Services Group

SIGNED IN THE PRESENCE OF:


**GOVERNMENT SERVICE
INSURANCE SYSTEM**


JOSELITO R. VARIAS
Officer I - MCRSD
Records Management Department


**MESSAGING SOLUTIONS
PROVIDER, INC.**

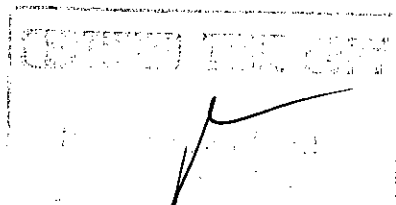

CRISTINE J. SANCHEZ
Technical Support Coordinator

**Certified Funds Available:
Php17,800.00**


WINFRED V. MANLULU
Staff Officer III
BASSAD

**Certified Included in the GSIS
2015 Annual Procurement Plan:**


ROMEO DE LUNA, JR.
Officer-in-Charge
GSIS GBAC Secretariat, GSIS



TERMS OF REFERENCE

Preventive Maintenance and Repair Services for Pitney Bowes Digital Mailing Machine (DM 300C) (Direct Contracting)

1.0 COVERAGE

The Procurement of Preventive Maintenance and Repair Services of Pitney Bowes Digital Mailing Machine (DM 300C) for GSIS Headquarters Building, Pasay City.

2.0 APPROVED BUDGET : P17,800.00

3.0 CONTRACT PERIOD : January 1 to December 31, 2015

4.0 SCOPE

- 4.1 The Messaging Solutions Provider, Inc. (MSPI) agrees to render spot repair service, being the exclusive distributor for the Pitney Bowes digital mailing machine (DM 300C) installed at Mails, Courier and Reproduction Services Division, RMD, Level 1, GSIS Headquarters Building, Pasay City.
- 4.2 The procurement shall cover the period January 1, 2015 to December 31, 2015 under direct contracting process.
- 4.3 The term maybe extended for a similar period upon mutual agreement of the parties under such terms and conditions as may be stipulated after the expiration of the original period herein stated.
- 4.4 MSPI agrees to clean, adjust, and test upon conduct of spot repair of the machine furnishing all necessary lubricants, cleaning materials and tools required for the services mentioned.
- 4.5 GSIS shall use parts, accessories and supplies that are supplied by MSPI.
- 4.6 Parts to be replaced and spot repair service charge will be billed jointly.
- 4.7 Labor charges on major repairs and service calls involving minor repair and/or adjustments shall be free of charge within three (3) months upon conduct of spot repair but limited to normal business hours. Add-on rates will be provided for services beyond normal hours.
- 4.8 If conditions should arise which make it impossible or impractical in judgment to continue the maintenance service on machines, the unserved portion will be refunded by MSPI.



5.0 TERMS AND CONDITIONS OF THE TOR:

5.1 Warranty

- 5.1.1 The Contractor warrants that it has the necessary permit or license to operate and obligates itself with all rules and regulations which are or may be issued by competent authorities. Failure to renew its license for whatever reason shall constitute as a ground for GSIS to terminate this TOR.
- 5.1.2 The Contractor guarantees to deliver effective and efficient service consistent with the objective and purpose of this TOR.
- 5.1.3 The Contractor warrants that it has not given or promised to give money or gift to any official or employee of the GSIS to secure this TOR. Any violation of this warranty or any provision contained herein shall be sufficient ground for the GSIS to revoke or cancel this TOR without the necessity of judicial intervention.

5.2 Contract Price

- 5.2.1 The contract price shall be based on the standard spot repair service charge plus the actual cost of parts to be replaced but not to exceed the approved annual budget of **SEVENTEEN THOUSAND EIGHT HUNDRED PESOS ONLY (P17,800.00)**.
- 5.2.2 The contract cost shall be valid from January 1, 2015 to December 31, 2015.

5.3 Terms of Payment

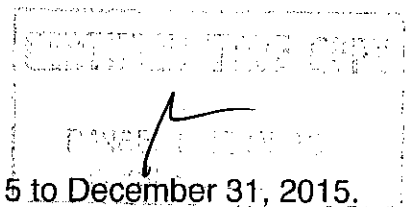
- 5.3.1 MSPI shall submit the billing and supporting documents to the GSIS on or before the 2nd day of the month following the billing month and shall be payable on or before the 10th working day after the submission of the billing and supporting documents.
- 5.3.2 All payments shall be subject to existing accounting and auditing rules applicable to the GSIS.
- 5.3.3 All applicable taxes shall be borne by MSPI.

5.4 Terms of the Contract

- 5.4.1 This TOR shall cover the period January 1, 2015 to December 31, 2015.
- 5.4.2 Notwithstanding any provisions to the contrary, the GSIS shall have the right, power and privilege to extend or terminate the services of the Contractor for any cause without need of judicial action by giving 30 calendar days prior written notice to the Contractor, which agrees to obey the decision of the GSIS.

5.5 Attorney's Fees and Liquidated Damages

- 5.5.1 If the Contractor will violate any of the terms and conditions of this TOR, and the GSIS will be compelled to file an action in court against the Contractor, the latter agrees to pay an amount equivalent to 30% of the total amount prayed for in the complaint and for attorney's fees, aside



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from the cost and expenses of litigation which the GSIS may be entitled to under the Rules of Court.

5.5.2 If the Contractor violates any of the undertakings of the contract, it agrees to pay the GSIS liquidated damages in the amount equivalent to 10% of the yearly contract cost. It is understood that the damages are fixed and the GSIS shall not be required to prove that it has incurred actual damages. When the GSIS becomes entitled to the liquidated damages, it is authorized to deduct the amount of such liquidated damages from any money due or which may become due the Contractor under this TOR.

5.6 Miscellaneous Provisions

5.6.1 The RMD-GSIS shall monitor the performance of the Contractor and decide on any question which may arise on the quality of the service rendered including its capability, competence and readiness to perform its duties.

5.6.2 All work shall be coordinated with the Mails, Courier and Reproduction Services Division, RMD-GSIS.

5.6.3 It is understood that failure or delay of the GSIS to demand strict compliance with any of the terms of the TOR shall not be considered as waiver of the enforcement of its rights.

5.6.4 The Contractor agrees to finally and unconditionally obey the decision of the GSIS on the interpretation of any term or condition in this TOR.

5.6.5 The Contractor agrees to hold the GSIS free and harmless from any action, suit, damage and claim which may be brought by any party by reason of this TOR or its implementation, the non-performance by the Contractor of its obligation under any rule, ordinance or law, or any of the conditions of this TOR.

5.6.6 The Contractor shall at all times comply with all the safety and security regulations of the GSIS.

5.6.7 The Contractor shall not, during the term of this TOR reveal to any third party any information as to the state of affairs or business of the GSIS which the Contractor has learned by reason of this TOR.

5.6.8 Any action between the GSIS and the Contractor in connection with the TOR shall be filed with the proper courts in Pasay City, Philippines.

