

CONTRACT
FOR THE SUPPLY AND DELIVERY OF POWERBANK

This Contract is made and executed on this _____ day of _____, 2015 at Pasay City, Philippines, by and between:

The **GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS)**, 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**, herein represented by **MARGIE A. JORILLO**, Vice President, Corporate Communications Office, hereinafter referred to as the "**GSIS**",

-and-

NJR GENERAL MERCHANDISING, INC., a corporation existing under the laws of the Republic of the Philippines, with principal office address at Unit 140 G/F Mile Long Building Amorsolo St., corner V.A. Rufino, Legaspi Village, Makati City represented herein by its authorized representative, **HERMINIA R. REYES**, hereinafter referred to as the "**SUPPLIER**".

RECITALS

WHEREAS,

1. The **GSIS** invited Bids for the Supply and Delivery of Lot 3 - Powerbank, hereinafter referred to as the "**Goods**".
2. The **SUPPLIER** participated in the public bidding held on 29 April 2015 and submitted the Lowest Calculated Responsive Bid.
3. The **GSIS** President and General Manager (PGM) and concurrently Head of the Procuring Entity (HOPE) approved the **GSIS** Bids and Awards Committee (GBAC) Resolution No. 2015-077 dated July 02, 2015 awarding the Contract to the "**SUPPLIER**" which represented that it has the resources and the capabilities to meet the requirements as defined under this Contract and the Official Bid Documents.

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

ARTICLE I
CONTRACT DOCUMENTS

- 1.1 **OFFICIAL BID DOCUMENTS.** The following Official Bid Documents are incorporated and made integral parts of this Contract:
 - 1.1.1 The Bid Form and the Price Schedule;
 - 1.1.2 Instruction to Bidders;
 - 1.1.3 Bid Data Sheet;
 - 1.1.4 General Conditions of Contract;
 - 1.1.5 Special Conditions of Contract;
 - 1.1.6 Schedule of Requirements/Terms of Reference;

M
R
SH

- 1.1.7 Technical Specifications/Scope of Work;
- 1.1.8 Supplemental Bid Bulletins, if any; and
- 1.1.9 Notification of Award.

- 1.2 **COMPLEMENTARY NATURE.** This Contract and the Official Bid Documents shall be complementary with each other, and what one prescribes shall be considered as if prescribed by all. In case of discrepancy between this Contract and the Official Bid Documents, the Official Bid Documents shall prevail.
- 1.3 **INCIDENTAL ITEMS.** This Contract shall include all such items, although not specifically mentioned, that can be reasonably inferred as being required for its completion as if such items were expressly mentioned herein.

**ARTICLE II
SCOPE OF SERVICES**

- 2.1 **COMPONENTS OF THE SERVICE.** The **SUPPLIER** shall supply and deliver the **Goods** to the **GSIS** in accordance with the Schedule of Requirements. Furthermore, the **SUPPLIER** undertakes to provide the following:
 - 2.1.1 Submit two (2) samples of the **Goods** for approval of the **GSIS** within fifteen (15) working days from receipt of the Notice of Award.
 - 2.1.2 Deliver the **Goods** within forty-five (45) working days from the approval of the sample.
- 2.2 **TECHNICAL SPECIFICATIONS.** The **Goods** shall conform to the specifications provided in the Technical Specifications.
- 2.3 **FAILURE TO COMPLY.** If the **SUPPLIER** fails to accomplish and complete its obligations under this Contract and the Official Bid Documents, the **GSIS** shall have the right to engage the services of a third party to accomplish the delivery of the **Goods**; provided, however, that all expenses incurred by the **GSIS** shall be charged to the account of the **SUPPLIER** and any additional cost incurred in acquiring the services of a third party in excess of the Contract Price shall be at the expense of the **SUPPLIER**. The right of the **GSIS** to engage the services of a third party shall be without prejudice to other rights of the **GSIS** under this Contract to proceed against **SUPPLIER** or to which the **GSIS** may be entitled to under the law and equity.

**ARTICLE III
EFFECTIVITY AND TERMS OF PAYMENT**

- 3.1 **EFFECTIVITY DATE.** This Contract shall take effect upon receipt by the **SUPPLIER** of the Notice to Proceed or the effectivity date indicated therein whichever comes later. Performance of all obligations under this Contract and the Official Bid Documents shall be reckoned from the effectivity date.
- 3.2 **CONTRACT PRICE.** For and in consideration of the full and satisfactory delivery of the **Goods** by the **SUPPLIER** in accordance with this Contract and Official Bid Documents, the **GSIS** shall pay the Contract Price of One Million Thirty Three Thousand Two Hundred Pesos (**Php 1,033,200.00**). It

is understood that all applicable taxes, including Documentary Stamp Tax (DST), if any, shall be borne by the SUPPLIER.

For this purpose, the SUPPLIER 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 on the execution and/or performance of this Contract.

- 3.3 **AUDITING RULES.** All payments made to the SUPPLIER shall be subject to existing accounting and auditing rules and regulations applicable to the GSIS.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

- 4.1 **PERFORMANCE WARRANTY.** The SUPPLIER warrants that the Goods to be delivered shall be with the highest level of workmanship in accordance with the terms and conditions of this Contract and the Official Bid Documents. Any defects in the Goods delivered and found to be unsatisfactorily finished shall be replaced by the SUPPLIER within fifteen (15) calendar days from receipt of the defective Goods at no extra cost to the GSIS.
- 4.2 **ANTI-GRAFT WARRANTY.** The SUPPLIER warrants that it has not given or promised to give money or gift, directly or indirectly, to any official or employee of the GSIS to secure this Contract. Any violation of this warranty shall be sufficient ground for the GSIS to revoke or cancel this Contract without the necessity of judicial intervention, by giving written notice to that effect to the SUPPLIER.
- 4.3 **COMPLIANCE WITH LAWS.** The SUPPLIER shall at all times be directly responsible and liable for the enforcement of and compliance with all existing laws, rules and regulations particularly in respect of any and all claims brought by its personnel for the enforcement of the provisions of the Labor Code of the Philippines and other pertinent labor and social legislations. Pursuant thereto, the SUPPLIER, holds the GSIS, the members of its Board of Trustees, its officers, employees and agents, free and harmless from all such claims and liabilities.

ARTICLE V PERFORMANCE SECURITY

- 5.1 **AMOUNT AND FORM.** The SUPPLIER shall post a performance security as a condition precedent to the signing of this Contract, to guarantee and secure the timely and complete performance of its commitment under this Contract and the Official Bid Documents. The performance security shall be equivalent to a percentage of the Contract Price, in accordance with the following forms and schedules:
- a. Cash, or cashier's/manager's check, issued by a Universal or Commercial Bank: Five Percent (5%); or
 - b. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank: Five Percent (5%); or

- c. Surety Bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security: Thirty Percent (30%); or
 - d. Any combination of the foregoing: Proportionate to share of form with respect to total amount of security.
- 5.2 **RELEASE OF PERFORMANCE SECURITY.** The performance security shall be released to the **SUPPLIER** within thirty (30) days after the issuance of the Certificate of Completion and Final Acceptance by the **GSIS**; provided, however, that no claim has been filed against the performance security as a result of the delay or default in the performance of the obligations of the **SUPPLIER** or for damages to any property of the **GSIS** due to the acts of negligence of the personnel of the **SUPPLIER**.
- 5.3 **FORFEITURE OF PERFORMANCE SECURITY.** Failure of the **SUPPLIER** to comply with any of the requirements under this Contract and the Official Bid Documents shall constitute sufficient grounds for declaring it as non-performing, leading to the termination of this Contract and the forfeiture of its performance security.

ARTICLE VI TERMINATION

- 6.1 **TERMINATION FOR DEFAULT.** The **GSIS** shall have the right to pre-terminate this Contract, in whole or in part, for default of the **SUPPLIER** or breach or violation of the terms and conditions of this Contract without need of judicial action or for just cause to be determined by the **GSIS**, which determination shall be final and binding to the **SUPPLIER**.
- 6.2 **TERMINATION FOR INSOLVENCY.** The **GSIS** shall have the right to terminate this Contract if the **SUPPLIER** is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction.
- 6.3 **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 the **SUPPLIER** has engaged, before or during the implementation of this Contract, in unlawful deeds and behavior relative to the acquisition and implementation thereof.
- 6.4 **TERMINATION FOR CONVENIENCE.** In any event, the **GSIS** shall have the right to terminate this Contract, in whole or in part, by serving a five-day written notice to the **SUPPLIER**. The termination under this paragraph may be resorted to by the **GSIS** if it has determined the existence of conditions that make the supply of the **Goods** economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous events or changes in law and national government policies.
- 6.5 **COMPLETED DELIVERY OF GOODS.** In the event of the pre-termination or termination of this Contract, the **GSIS** shall pay the **SUPPLIER** for the **Goods** delivered up to the date of pre-termination or termination, unless such pre-termination or termination was due to the acts or omissions of the **SUPPLIER** or a breach of this Contract by the **SUPPLIER**.

- 6.6 **REMEDIAL RIGHTS.** The pre-termination or termination of this Contract shall be without prejudice to any other rights or remedies a party may be entitled to under this Contract and the Official Bid Documents, or under any law, and shall neither affect any accrual of rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such pre-termination or termination.

ARTICLE VII INDEMNIFICATION

- 7.1 **INDEMNIFICATION.** The **SUPPLIER** agrees to defend, indemnify and hold harmless the **GSIS**, the members of its Board of Trustees, **GSIS** officials, agents and employees, against all claims, liabilities, and damages, and to pay all claims, judgments, awards, costs and expenses arising out of or in connection with the **SUPPLIER's** acts or omissions, unless such claims are due solely to the fault or negligence of the **GSIS** or its officials or employees. Costs, inclusive of expert witness fees and other legal expenses shall be charged against the account of the **SUPPLIER**.
- 7.2 **REPARATION.** Any damage to any of the systems, facilities and equipment of the **GSIS**, due to the negligence, theft or pilferage, directly or indirectly caused by the **SUPPLIER's** personnel shall be immediately repaired, restored or replaced by the **SUPPLIER** for its account. If the **SUPPLIER** fails to carry out such repair, restoration or replacement within ten (10) days from the request of the **GSIS**, expenses for any repair, restoration or replacement made by the **GSIS** for the purpose shall be for the account of the **SUPPLIER** and shall be deducted from any amount payable to the **SUPPLIER**.
- 7.3 **FURTHER LIABILITY.** The **SUPPLIER** shall bear all losses or damages arising out of or in connection with any accident which may happen to any person in the performance of its obligations covered by this Contract and the Official Bid Documents.

ARTICLE VIII CONFLICT RESOLUTION

- 8.1 **AMICABLE SETTLEMENT.** If any dispute whatsoever should arise between the **GSIS** and the **SUPPLIER** in connection with or arising out of this Contract and the Official Bid Documents, the parties shall make every effort to resolve amicably such dispute.
- 8.2 **ARBITRATION.** If after ten (10) days, the parties have failed to resolve the 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.
- 8.3 **NON-SUSPENSION OF OBLIGATIONS.** Notwithstanding any reference to the settlement of disputes or arbitration herein, the parties shall continue to perform their respective obligations under this Contract and the Official Bid Documents unless they otherwise agree in writing.

**ARTICLE IX
MISCELLANEOUS PROVISIONS**

- 9.1 **NO EMPLOYER-EMPLOYEE RELATIONSHIP.** The **SUPPLIER** is not an employee of the **GSIS** but an independent contractor. Neither shall the personnel or workers of the **SUPPLIER** be deemed employees of the **GSIS**. Hence, the **GSIS** shall not be in any way liable or responsible for any personal injuries or damages, including death, sustained or caused by any employees of the **SUPPLIER** and/or its subcontractors.
- 9.2 **NON-DISCLOSURE.** The **SUPPLIER** shall not use or disclose to any person, firm or corporation any information concerning the affairs of the **GSIS** which it may have acquired in the course of or as an incident to this Contract.
- 9.3 **PUBLICITY.** The **SUPPLIER** 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 and Official Bid Documents, or using it as a reference or part of any presentation. This provision, however, is without prejudice to the right of the **SUPPLIER** to include the name of the **GSIS** and its logo to the **SUPPLIER**'s list of clients.
- 9.4 **NON-ADVERSE WITNESS.** In no case shall the **SUPPLIER** 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 and employees sued or prosecuted in connection with the performance of its undertakings under this Contract and the Official Bid Documents.
- 9.5 **NON-TRANSFERABILITY.** The **SUPPLIER** 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.
- 9.6 **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 reasonable control including, but not limited to, any act of God, government acts under its police power, war, terrorist attack, fire, flood, explosion or civil commotion.
- 9.7 **NON-WAIVER.** Failure of the **GSIS** to demand strict compliance with any term and or condition of this Contract shall not be construed as a waiver and/or estoppel on the part of the **GSIS** to enforce any of its rights or to subsequently demand compliance therewith during the subsistence of this Contract.
- 9.8 **FURTHER ASSURANCES.** The **SUPPLIER** shall supply and deliver the **Goods** 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.
- 9.9 **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.
- 9.10 **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.


- 9.11 **LIQUIDATED DAMAGES.** In the event that the **SUPPLIER** fails to perform its obligations within 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 contract price. The damages herein are fixed and the **GSIS** shall not be required to adduce proof thereof. 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 it under the law and equity.
- 9.12 **OTHER COSTS.** Should the **GSIS** be constrained to file a case to obtain relief against the **SUPPLIER**, the latter shall be liable to pay an amount equivalent to 20% of the 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 **SUPPLIER**; provided, however, that in an action brought by the **SUPPLIER** 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.
- 9.13 **FULL AGREEMENT.** This Contract and the Official Bid Documents contain all the agreements of the parties and replace and supersede any understanding, communication and representation whether verbal or written between the parties.
- 9.14 **INTERPRETATION.** The **SUPPLIER** 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.
- 9.15 **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.
- 9.16 **SEPARABILITY.** If any term, clause or provision of this Contract and the Official Bid Documents is, at any time, determined to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall be severed from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 9.17 **SURVIVAL OF WARRANTIES AND COVENANTS.** The Representations and Warranties under Article IV, Indemnification under Article VII, and all the covenants, agreements and obligations of the **SUPPLIER** which by their nature should continue beyond the expiration and termination of this Contract shall survive the expiration or termination hereof.
- 9.18 **VENUE OF ACTION.** Any action arising from arbitration or other modes of dispute settlement as agreed upon by the parties pursuant to Section 8.2 of this Contract shall be brought by the aggrieved party exclusively before the proper court in the City of Pasay.

9.19 **GOVERNING LAWS.** This Contract 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, 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**

SUPPLIER

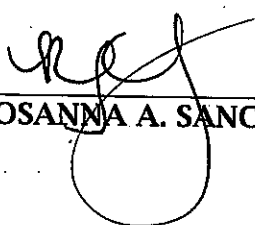


MARGIE A. JORILLO
Vice President - CCO



HERMINIA R. REYES
Authorized Representative

Signed in the presence of:




MA ROSANNA A. SANCHEZ



GLORIA MENDOZA

Certified Funds Available: 1,033,200.00
GL - 5102104000
FC - 1102100002


MANUEL P. ANG
Vice President, FISMOASO
min tm P

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
Pasay City) S.S.

BEFORE ME, a Notary Public for and in the City of **PASAY CITY**, this
day of JUL 15 2015 2015 personally appeared:

Name	Valid IDs	Date/Place Issued
MARGIE A. JORILLO (For the.GSIS)	GSIS ID 8901	GSIS Main Office Pasay City
HERMINIA R. REYES (For the Supplier)	D09-96-058356 Driver License	05-29-2014/Las Piñas City

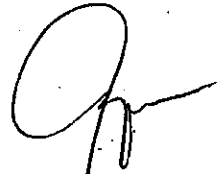
known to me and to me known to be the same persons, **MARGIE A. JORILLO**, in representation of the **GSIS** as a juridical person, and **HERMINIA R. REYES**, in representation of the, "**SUPPLIER**" as a juridical person, who executed the

foregoing instrument and acknowledged that the same is their free and voluntary act and deed. This instrument refers to a Contract for the Supply and Delivery of Powerbank consisting of nine (9) pages including the page on which this Acknowledgment is contained, signed by the parties and their instrumental witnesses on each and every page thereof sealed with my notarial seal.

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

Doc. No. 109
Page No. 23
Book No. 18
Series of 2015

Notary Public



ATTY. GIOVANNAE LYN M. QUICOY-MARIN
GIS, Financial Center, Pasay City
NOTARY PUBLIC until December 31, 2015
Commission No. 14-15; 1/20/14; Pasay City
I.B.P. Lifetime No. 06482; O.R. No. 710621; 2-28-0
P.T.R. No. PC 4203512; 1/7/15; Pasay City
Roll of Attorneys No. 50500