

**CONTRACT**  
**FOR THE LOAD BALANCE BROCADE MAINTENANCE**  
**FEB 23 2017**

This Contract is made and executed on this \_\_\_ day of \_\_\_\_\_ 2017 at Pasay City, Philippines, 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, represented herein by **MARLON EUSEBIO L. MENDOZA**, Vice President, IT Infrastructure Office, Information Technology Services Group (ITSG), hereinafter referred to as the "**GSIS**";

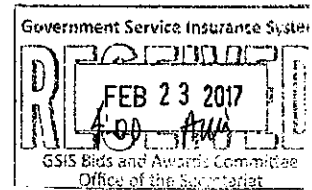
-and-

The **ADVANCE MICROSYSTEMS CORP.**, a corporation duly organized and operating under the laws of the Philippines, with its principal place of business at 1104-E 11th Floor, East Tower, Philippine Stock Exchange Centre Road, 1605 Ortigas Centre, Pasig City, represented herein by **MARIFE N. JALBUENA**, Sales Manager, duly authorized for this purpose, hereinafter referred to as the "**SERVICE PROVIDER**".

**RECITALS**

**WHEREAS**

1. The **GSIS** requires the Load Balance Brocade Maintenance.
2. The **SERVICE PROVIDER** represented that it has the resources and the capability to meet the requirements as defined under this Contract and the Terms of Reference.
3. The **GSIS** entered into Contract with the **SERVICE PROVIDER** through Negotiated Procurement under Emergency Cases as an alternative method of procurement.



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

**Article I DEFINITION OF TERMS**

- 1.1 **Words and Phrases.** The following terms shall have the following meaning for purposes of this Contract:
  - 1.1.1 **Contract** means this agreement entered into between the **GSIS** and the **SERVICE PROVIDER**, signed by the parties, including all attachments and appendices hereof and all documents incorporated by reference herein.
  - 1.1.2 **Contract Price** means the price payable to the **SERVICE PROVIDER** under this Contract for the full and proper performance of its contractual obligations.
  - 1.1.3 **Notice to Proceed** is a written notice issued by the **GSIS** to the **SERVICE PROVIDER** requiring the latter to commence work not later than the specified date.

## Article II CONTRACT DOCUMENTS

- 2.1 **Official Contract Documents.** The **SERVICE PROVIDER** shall perform its contractual obligations in accordance with this Contract and the Terms of Reference.
- 2.2 **Complementary Nature.** This Contract and the Terms of Reference shall be complementary with each other, and what one prescribes shall be prescribed by all. In case of discrepancy between this Contract and the Terms of Reference, the Terms of Reference shall prevail.
- 2.3 **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 III SCOPE OF SERVICES

- 3.1 **Components of the Services.** The **SERVICE PROVIDER** undertakes to deliver the **Services** in accordance with this Contract and the Terms of Reference.
- 3.2 **Failure to Comply.** If the **SERVICE PROVIDER** fails to accomplish and complete its obligations under this Contract and the Terms of Reference within the period provided in Article IV hereof, the **GSIS** shall have the right to engage the services of a third party to accomplish the delivery of the **Services**; provided, however, that all expenses incurred by the **GSIS** shall be charged to the account of the **SERVICE PROVIDER** 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 **SERVICE PROVIDER**. 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 the **SERVICE PROVIDER** or to which the **GSIS** may be entitled to under the law and equity.

## Article IV EFFECTIVITY AND TERMS OF SERVICE

- 4.1 **Effectivity Date.** This Contract shall take effect upon receipt by the **SERVICE PROVIDER** of the Notice to Proceed or the effectivity date stated therein whichever comes later. Performance of all obligations and undertakings under this Contract and the Terms of Reference shall be reckoned from the effectivity date of this Contract.
- 4.2 **Delivery Date.** The **SERVICE PROVIDER** shall deliver and complete the **Services** within four (4) months from the effectivity date. The delivery shall be implemented and completed in accordance with the Terms of Reference.
- 4.3 **Contract Price.** For and in consideration of the full and satisfactory delivery of the **Services** by the **SERVICE PROVIDER** in accordance with this Contract and the Terms of Reference, and the acceptance thereof by the **GSIS**, the **GSIS** shall pay the agreed Contract Price of Six Hundred Thirty Thousand Pesos (PHP 630,000.00) in Philippine currency. It is understood that all applicable taxes, including Documentary Stamp Tax (DST), if any, shall be borne by the **SERVICE PROVIDER**.

For this purpose, the **SERVICE PROVIDER** 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.

- 4.4 **Schedule and Requirements of Payment.** The **GSIS** shall pay for the **Services** in accordance with the Payment Schedule indicated in the Terms of Reference and upon

submission of the invoice by the **SERVICE PROVIDER** and the issuance of the Certificate of Acceptance by the **GSIS**.

- 4.5 **Auditing Rules.** All payments made to the **SERVICE PROVIDER** shall be subject to existing accounting and auditing rules and regulations applicable to the **GSIS**.

#### Article V SUPERVISION OF WORK

- 5.1 **Access to GSIS Premises.** The **GSIS** shall grant the **SERVICE PROVIDER** access to the **GSIS** premises as may be reasonably necessary for the **SERVICE PROVIDER** to deliver the **Services** under this Contract and the Terms of Reference.

- 5.2 **Supervision.** The **SERVICE PROVIDER**, as the employer, shall maintain administrative control and supervision over technicians and other personnel assigned to the **GSIS** for the delivery of the **Services**; provided, however, that the **SERVICE PROVIDER** shall authorize the **GSIS** to give them technical as well as administrative instructions during their assignment to the **GSIS**.

- 5.3 **Replacement.** The **GSIS** reserves the right to demand the immediate replacement of any technician or personnel of the **SERVICE PROVIDER** who may be found wanting in competence, integrity, or whose continued assignment with the **GSIS** may be deemed prejudicial to its interest.

- 5.4 **Inspection and Acceptance.** Upon receipt of a written notice from the **SERVICE PROVIDER** that the **Services** are ready for inspection and acceptance which should not be later than the delivery date prescribed herein, the **GSIS** shall send duly authorized representative/s from its Information Technology Services Group (ITSG) and Materials Management Department (MMD) to promptly make such inspection. When the **GSIS** determines that the **Services** are acceptable under the terms and provisions of this Contract and the Terms of Reference, and the same have been fully accomplished, the **GSIS** shall issue a Certificate of Completion and Final Acceptance duly signed with the statement that the **Services** covered by this Contract have been delivered satisfactorily.

#### Article VI REPRESENTATIONS AND WARRANTIES

- 6.1 **Technical Support.** The **SERVICE PROVIDER** guarantees the provision of the support services strictly in accordance with the Terms of Reference.

- 6.2 **Anti-Graft Practices.** The **SERVICE PROVIDER** 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 or that such Contract is not disadvantageous to the Government. 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 **SERVICE PROVIDER**.

- 6.3 **Compliance with Laws and Ordinances.** The **SERVICE PROVIDER** shall comply with all laws, ordinances, rules and regulations of both national and local governments that are applicable to and/or binding upon the parties, the works covered by this Contract, or the persons engaged in the performance of its obligations. The **SERVICE PROVIDER** 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.

- 6.4 **Qualifications of Personnel.** The **SERVICE PROVIDER** warrants that its employees and personnel deployed for the **Services** possess the necessary qualifications and training prescribed by law and by the **GSIS** pursuant to this Contract.

- 6.5 **Control and Supervision over Personnel.** The **SERVICE PROVIDER** warrants that it shall at all times be directly responsible for the acts or conduct of its employees and personnel under its employ, for their salaries, wages or compensation and other benefits provided for under existing and applicable laws; provided, however, that the **SERVICE PROVIDER's** non-compliance with the Minimum Wage Law shall be a ground for pre-termination of this Contract.

#### Article VII TERMINATION OF CONTRACT

- 7.1 **Termination for Default.** The **GSIS** shall have the right to pre-terminate this Contract in whole or in part for default of the **SERVICE PROVIDER** 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 **SERVICE PROVIDER**.
- 7.2 **Termination for Insolvency.** The **GSIS** shall have the right to terminate this Contract if the **SERVICE PROVIDER** is declared bankrupt or insolvent as determined by a court of competent jurisdiction.
- 7.3 **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 **SERVICE PROVIDER** has engaged, before or during the implementation of this Contract, in unlawful deeds and behavior relative to the acquisition and implementation thereof.
- 7.4 **Termination for Convenience.** In any event, the **GSIS** shall have the right to terminate this Contract by serving a thirty-day written notice to the **SERVICE PROVIDER**. The termination under this Section may be resorted to by the **GSIS** if it has determined the existence of conditions that make the performance of the **SERVICE PROVIDER** economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous events or changes in law and national government policies.
- 7.5 **Completed Services.** In the event of pre-termination or termination of this Contract, the **GSIS** shall pay the **SERVICE PROVIDER** the percentage of completion of the **Services** 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 **SERVICE PROVIDER** or a breach of this Contract by the **SERVICE PROVIDER**.
- 7.6 **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 Terms of Reference, 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 VIII INDEMNIFICATION

- 8.1 **Indemnity.** The **SERVICE PROVIDER** agrees to defend, indemnify and hold harmless the **GSIS**, the members of its Board of Trustees, **GSIS** 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 **SERVICE PROVIDER'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 **SERVICE PROVIDER**.

- 8.2 **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 **SERVICE PROVIDER's** personnel shall be immediately repaired, restored or replaced by the **SERVICE PROVIDER** for its account. If the **SERVICE PROVIDER** fails to carry out such repair, restoration or replacement within ten (10) days from the request of **GSIS**, expenses for any repair, restoration or replacement made by the **GSIS** for the purpose shall be for the account of the **SERVICE PROVIDER** and shall be deducted from any amount payable to the **SERVICE PROVIDER**.
- 8.3 **Further Liability.** The **SERVICE PROVIDER** shall bear all losses or damages arising out of or in connection with any accident which may happen to any person or persons in the performance of its obligations covered by this Contract and the Terms of Reference.

#### Article IX CONFLICT RESOLUTION

- 9.1 **Amicable Settlement.** If any dispute of any kind whatsoever should arise between the **GSIS** and the **SERVICE PROVIDER** in connection with or arising out of this Contract, the parties shall make every effort to resolve such dispute amicably.
- 9.2 **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.
- 9.3 **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 and the Terms of Reference unless they otherwise agree in writing.

#### Article X MISCELLANEOUS PROVISIONS

- 10.1 **No Employer-Employee Relationship.** The **SERVICE PROVIDER** is not an employee of the **GSIS** but an independent contractor. Neither shall the personnel or workers of the **SERVICE PROVIDER** 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 employees of the **SERVICE PROVIDER** and/or its sub-contractors.
- 10.2 **Non-Disclosure.** The **SERVICE PROVIDER** shall not use or disclose to any person, firm or corporation any confidential information concerning the affairs of the **GSIS** which its personnel may have acquired in the course of or as an incident to this Contract.
- 10.3 **Publicity.** The **SERVICE PROVIDER** 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 the Terms of Reference, or using it as reference or part of any presentation. This provision, however, is without prejudice to the right of the **SERVICE PROVIDER** to include the name of the **GSIS** and its logo in the **SERVICE PROVIDER's** list of clients.
- 10.4 **Non-Adverse Witness.** In no case shall the **SERVICE PROVIDER** 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 scope of work and undertakings under this Contract and the Terms of Reference.
- 10.5 **Non-Transferability.** The **SERVICE PROVIDER** shall not assign or transfer its obligations 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.

- 10.6 **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, governmental acts under its police power, war, terrorist attack, fire, flood, explosion or civil commotion.
- 10.7 **Non- Waiver.** The failure of the **GSIS** to demand strict compliance with any or all the terms and conditions of this Contract and the Terms of Reference shall not be construed as a waiver 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.
- 10.8 **Further Assurances.** The **SERVICE PROVIDER** shall execute and deliver such supply, materials 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.
- 10.9 **No Presumption.** In interpreting and applying the terms and provisions of this Contract and the Terms of Reference, no presumption shall be made against the party that drafted the same.
- 10.10 **Written Notices.** All notices, statements and requests hereunder shall be in writing and shall be delivered by personal service or registered mail, postage pre-paid or by telefax or telegram, charges pre-paid, addressed to a party at the address first above written or at such address as one party may give notice of to the other party.
- 10.11 **Liquidated Damages.** In the event that the **SERVICE PROVIDER** 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. 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 open to it.
- 10.12 **Other Costs.** Should the **GSIS** be constrained to file a case to obtain relief against the **SERVICE PROVIDER**, the latter shall be liable to pay an amount equivalent to twenty percent (20%) 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 **SERVICE PROVIDER**; provided, however, that in an action brought by the **SERVICE PROVIDER** 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.
- 10.13 **Full Agreement.** This Contract and the Terms of Reference contain all agreement of the parties and replace and supersede any understanding, communications and representations whether verbal or written between the parties.
- 10.14 **Interpretation.** The **SERVICE PROVIDER** 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.
- 10.15 **Amendments.** No modifications of or amendment to the terms and conditions of this Contract shall be valid unless set out in writing and signed by the duly authorized representative of each party.

- 10.16 Separability.** In the event that any term, condition or any part of the provisions contained in this Contract and the Terms of Reference is 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.
- 10.17 Survival of Warranties and Covenants.** The provision on Indemnification under Article VIII, and all the covenants, agreements and obligations of the **SERVICE PROVIDER** under this Contract and the Terms of Reference which by their nature should continue beyond the expiration or termination of this Contract shall survive the expiration or termination hereof.
- 10.18 Venue of Action.** Any and all actions arising from arbitration or other modes of dispute settlement as agreed upon by the parties pursuant to Section 9.2 of this Contract shall be brought by the aggrieved party exclusively before the proper court in the City of Pasay.
- 10.19 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, and other related laws, rules and regulations.

**IN WITNESS WHEREOF**, the parties have duly executed this Contract on the date and place first above written.

**GOVERNMENT SERVICE  
INSURANCE SYSTEM**

**ADVANCE MICROSYSTEMS CORP.**

By:

By:

\_\_\_\_\_  
**MARLON EUSEBIO L. MENDOZA**  
*Vice President, IT Infrastructure Office*

\_\_\_\_\_  
**MARIFE N. JALBUENA**  
*Sales Manager*

SIGNED IN THE PRESENCE OF:

\_\_\_\_\_  
**MILTON RYAN B. DIZON**  
*Acting Manager, DAD and SAD*

**CERTIFIED FUNDS AVAILABLE:**  
**Php 630,000.00**  
 Fund Center 903100002  
 GL 5102032000

**Certified Included in the 2017 GSIS  
Annual Procurement Plan**

**MANUEL P. ANGE**  
*Vice President, FISMOASO*

**ROMEO G. DE LUNA JR.**  
*GBAC Secretariat Head*

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES )  
PASAY CITY ) S.S.  
MANDALUYONG CITY,

FEB 22 2017


BEFORE ME, a Notary Public for and in the City of MANDALUYONG CITY, this \_\_\_ day of \_\_\_\_\_ 2017, personally appeared:

<u>Name</u>	<u>Passport No.</u>	<u>Date/Place of Issue</u>
MARLON EUSEBIO L. MENDOZA	EC4374408	June 10, 2015/Manila
MARIFE N. JALBUENA	25239612	January 12, 2015/QC

known to me and to me known to be the same persons, Marlon Eusebio L. Mendoza, in representation of the GSIS as a juridical person, and Marife N. Jalbuena, in representation of Advance Microsystems Corp. as a juridical person, who executed the foregoing **Contract for the Load Balance Brocade Maintenance** consisting of eight (8) pages including the page on which this Acknowledgment is written, signed by the parties and their witnesses on each and every page thereof, and acknowledged to me that the same is their free and voluntary act and deed, and of the entities they represent.

WITNESS MY HAND AND NOTARIAL SEAL on the date and the place stated above.

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Series of 2017

  
**J. B. DUJAN**  
 NOTARY PUBLIC  
 OF THE CITY OF MANDALUYONG  
 - December 31, 2017  
 REGISTRATION NO. 475-16  
 LICENSE NO. 005508  
 REG. OFFICE - JAWA, 1-3 17 Cainta Rizal  
 REG. NO. 20104  
 REG. COMM. NO. V-0024571  
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