



CONTRACT
FOR THE VMWARE SOFTWARE MAINTENANCE

This Contract is made and executed on this ___ day of _____ 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, hereinafter referred to as the “**GSIS**”;

-and-

The **ADVANCE MICROSYSTEMS CORPORATION**, 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, 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** invited Bids for the *VMware Software Maintenance*.
2. The **SERVICE PROVIDER** submitted the Lowest Calculated Responsive Bid, representing that it has the resources and the capability to meet the requirements as defined under the Official Bid Documents, and the **GSIS** has accepted said Bid.

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

1. The following Official Bid Documents shall be deemed integral parts of this Contract:
 - 1.1 Bid Data Sheet;
 - 1.2 Terms of Reference;
 - 1.3 Scope of Work;
 - 1.4 Plans/Drawings and/or Technical Specifications;
 - 1.5 General Conditions of Contract;
 - 1.6 Special Conditions of Contract;
 - 1.7 Price Schedule submitted by the **SERVICE PROVIDER**;
 - 1.8 Schedule of Requirements;
 - 1.9 Supplemental Bid, if any; and
 - 1.10 Notice of Award.

The Official Bid Documents and this Contract contain all the agreements of the parties and replace and supersede any understanding, communications and representations, whether verbal or written, between the parties.

2. The words, terms and phrases stated in this Contract shall have the same meanings as are respectively assigned to them under the Official Bid Documents.

3. In consideration of the Contract Price to be paid by the **GSIS**, the **SERVICE PROVIDER** hereby covenants with the **GSIS** to provide the Services and to remedy the defects therein in conformity with the Official Bid Documents and this Contract.
4. The **GSIS** shall pay the Contract Price at the time and in the manner prescribed by the Official Bid Documents and this Contract. 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.
5. Any damage to 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 own account. If the **SERVICE PROVIDER** fails to carry out such repair, restoration or replacement within ten (10) days from the request of the **GSIS**, any expenses for such repair, restoration or replacement made by the **GSIS** shall be for the account of the **SERVICE PROVIDER** to be deducted from the Contract Price.
6. During the effectivity of this Contract, the **SERVICE PROVIDER** shall not assign or transfer the covered *Services* 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.
7. The parties are independent entities and no agency, partnership, joint venture, employment or formal business arrangement of any kind is created by this Contract. Neither shall the personnel or employees 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**.
8. In the event that the **SERVICE PROVIDER** fails to perform its contractual obligations within the agreed period as specified in this Contract, the **GSIS** shall deduct from the Contract Price, as liquidated damages, a sum equivalent to at least 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. 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 course of action and remedies available to it under the law and equity. The damages herein provided are fixed and the **GSIS** shall not be required to adduce proof thereof.
9. 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. The **SERVICE PROVIDER** shall 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 **SERVICE PROVIDER**'s acts or omissions, unless such claims are due solely to the negligence of the **GSIS**. Costs inclusive

of expert witness fees and other legal expenses shall be charged against the account of the **SERVICE PROVIDER.**

11. If any term, condition or any part of the provisions of the Official Bid Documents and this Contract is determined to be invalid, void 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.
12. Any action arising from arbitration or other modes of dispute settlement under the Official Bid Documents and this Contract shall be brought by the aggrieved party exclusively before the proper court in the City of Pasay.
13. This Contract and the Official Bid Documents 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
CORPORATION**

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

CERTIFIED FUNDS AVAILABLE:
Php 361,835.62 (Sept 29 to Dec 31, 2017)
Fund Center 903100002
GL 51020320000

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

MANUEL P. ANG
Vice President, FISMOASO

ROMEO G. DE LUNA JR.
GBAC Secretariat Head
2017-GSIS-PB-054

CERTIFIED FUNDS AVAILABLE:
Php 1,405,000.00 (Jan 1 to Dec 31, 2018)
Fund Center 903100002
GL 51020320000

CERTIFIED FUNDS AVAILABLE:
Php 1,043,164.38 (Jan 1 to Sept 28, 2019)
Fund Center 903100002
GL 51020320000

MANUEL P. ANG
Vice President, FISMOASO

MANUEL P. ANG
Vice President, FISMOASO

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
PASAY CITY OF MAKATI) S.S.

BEFORE ME, a Notary Public for and in the City of MAKATI, on the 10th day of AUGUST, 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
	<u>SSS ID#</u>	
MARIFE N. JALBUENA	33-2962818-6	

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 Corporation as a juridical person, who executed the foregoing **Contract** consisting of four (4) pages including the page on which this Acknowledgment is written, signed by the parties and their witnesses on each and every page thereof, and acknowledge 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.

Doc. No. 318
Page No. 64
Book No. LXXIV
Series of 77

ATTY. JOSE M. LAPUZ
Notary Public for Makati City
Appointment No. M-2/1 until 12/31/2017
PTR No. 5909513, Jan. 3, 2017, Makati
Roll No. 45790, IBP Lifetime Roll No. 64397
MCLE No. V-0019692/4 - 15 - 2016
G/F Fedman Suites, 199 Salcedo Street
Legaspi Village, Makati City