

MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT is made and entered into this MAR 25 2019 day of _____ 2019 by and between:

The **TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY (TESDA)** a national government agency created and existing under and by virtue of Republic Act No. 7796, with principal address at TESDA Complex, East Service Road, South Luzon Expressway, Fort Bonifacio, Taguig City, Metro Manila, Philippines, represented herein by its **Director General, SEC. ISIDRO S. LAPEÑA, PhD., CSEE**, and hereinafter referred to as the "**FIRST PARTY**";

- and -

ADVANCE SOLUTIONS, INC., a private business entity, registered under the laws of the Republic of the Philippines with business address at 3rd Floor PPL Building, United Nation Avenue corner San Marcelino Street, Paco, Manila, herein represented by its President, **MR. WILSON C. LIM**, and hereinafter referred to as the "**SECOND PARTY**".

- WITNESSETH -

WHEREAS, the **FIRST PARTY** through its Bids and Awards Committee (BAC) issued and posted an Invitation to Bid (ITB) in the websites of the Philippine Government Electronic Procurement System (PhilGEPS) and TESDA on 26 November 2018 in compliance with Section 21 of the Revised Implementing Rules and Regulations (RIRR) of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, for the Supply, Delivery, Configuration and Installation of Servers and Application Delivery Controller with an Approved Budget for the Contract (ABC) of Ten Million One Hundred Sixty-Three Thousand One Hundred Pesos and 63/100 (Php10,163,100.63);

WHEREAS, during the bid opening, the **SECOND PARTY** was one of the four (4) bidders which was declared to be eligible to bid since it was able to comply with the eligibility requirements as prescribed by Sections 23 and 25 of the Revised Implementing Rules and Regulations of Republic Act No. 9184;

WHEREAS, upon careful examination, validation and verification of all the technical and financial proposals submitted by the **SECOND PARTY**, the bid of the **SECOND PARTY** amounting to **Five Million One Thousand Two Hundred Thirty-Seven Pesos and 02/100 (Php5,001,237.02)** has satisfactorily passed the legal, financial and technical requirements set forth by Republic Act No. 9184 and the bidding documents;

WHEREAS, after post-qualification prescribed by Section 34 of the Revised Implementing Rules and Regulations of Republic Act No. 9184, the bid offered by the **SECOND PARTY** had been found to be the Lowest Calculated Responsive Bid;

WHEREAS, pursuant to Section 34.4 of the Revised Implementing Rules and Regulations of Republic Act No. 9184, the recommendation to award the contract in favor of the **SECOND PARTY** through BAC Resolution No. 03-2019 issued on 04 February 2019 had been approved by the Director General;



NOW, THEREFORE, for and in consideration of the foregoing, this Agreement is entered into by and between the **FIRST PARTY** and the **SECOND PARTY** with the following covenants, to wit:

GENERAL PROVISIONS:

1. The **SECOND PARTY** shall supply and deliver the goods prescribed in the bidding documents within sixty (60) calendar days from receipt by the **SECOND PARTY** of the Notice to Proceed. The **SECOND PARTY** hereby binds and obligates itself in the supply, delivery, installation and configuration of the servers and application delivery controller for the TESDA Central Office as prescribed in the Bidding Documents;
2. The **FIRST PARTY** shall pay the amount of **Five Million One Thousand Two Hundred Thirty-Seven Pesos and 02/100 (Php5,001,237.02)** after delivery of all the items prescribed in the bidding documents and acceptance by the **FIRST PARTY**. A certificate of acceptance as to the completeness of the delivery and compliance with the requirements prescribed by the **FIRST PARTY** shall be issued by the Inspection and Acceptance team and must be duly approved by the Director General concerned of TESDA before any payment is made in favor of the **SECOND PARTY**. At any rate, payment shall be made in accordance with the government accounting and auditing rules and regulations;
3. The following documents shall be deemed to form and be read and construed as part of this Agreement:
 - (a) Bidding Documents of the **SECOND PARTY**;
 - (b) BAC Resolution No. 03-2019 dated 04 February 2019;
 - (c) Notice of Award;
 - (d) Performance Security; and
 - (e) Notice to Proceed.
4. To guarantee the faithful performance by the **SECOND PARTY** of its obligations, a performance security should have been posted prior to the signing of the contract pursuant to Section 39 of the Revised Implementing Rules and Regulations of Republic Act No. 9184. The performance security shall remain valid until the issuance by the **FIRST PARTY** of the Certificate of Acceptance. The performance security should be posted in favor of the **FIRST PARTY** and shall be forfeited in the event it is established that the **SECOND PARTY** is in default in any of its obligations under the contract.
5. The goods subject of the delivery shall be covered by the provisions of Section 62 of the Revised Implementing Rules and Regulations of Republic Act No. 9184 on warranty. The **SECOND PARTY** hereby warrants that the goods subject of this Agreement are free from material defects or faulty workmanship under normal use and operation for a period covered by the law. Warranty shall be for one (1) year after acceptance by the procuring entity of the non-expendable goods. In case of expendable goods, the warranty shall be valid for three (3) months after acceptance by the procuring entity of the expendable goods.

The obligation for the warranty shall be covered by either retention money or a special bank guarantee equivalent to at least one percent (1%) of the total contract price.



Any goods found to be defective which is not due to the normal wear and tear or improper use of the **FIRST PARTY** during the warranty period shall be repaired or replaced immediately for free by the **SECOND PARTY**.

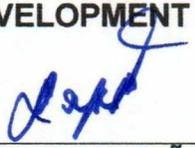
6. Any delay in the delivery of goods shall be governed by Section 68 (Liquidated Damages) of the Revised Implementing Rules and Regulations of Republic Act No. 9184. For the procurement of goods, the amount of the liquidated damages shall be at least equal to one-tenth of one percent (0.001) of the cost of the unperformed portion of every day of delay. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of contract, the Procuring Entity may rescind or terminate the contract, without prejudice to other courses of action and remedies available under the circumstances.
7. Cost of applicable taxes, deployment and insurance of goods shall be shouldered by the **SECOND PARTY**.
8. The obligations and rights arising from this Agreement shall not be assigned and transferred by the **SECOND PARTY** to any third party without the written consent of the **FIRST PARTY**.
9. The **SECOND PARTY** shall comply with the provisions of the law on working conditions and labor standards.
10. If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with the implementation of this contract, the Parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

Any and all disputes arising from the implementation of this contract shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law" and Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004". Any cost arising from the arbitration shall be charged against the **SECOND PARTY**.

IN WITNESS whereof, the Parties hereto have caused this Agreement to be executed in accordance with the laws of the Republic of the Philippines on the day and year indicated above.

**TECHNICAL EDUCATION AND
SKILLS DEVELOPMENT AUTHORITY**

ADVANCE SOLUTIONS, INC.



SEC. ISIDRO S. LAPEÑA, PhD., CSEE
Director General



WILSON C. LIM
President

SIGNED IN THE PRESENCE OF:



DIR. MARISSA G. LEGASPI
Executive Director
Planning Office



JUDITH L. MAPE
Account Executive

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
_____) S.S.

CITY OF MANILA

CITY OF MANILA

BEFORE ME, a Notary Public for and in the Province/City of _____
this _____ 2019 personally came and appeared:

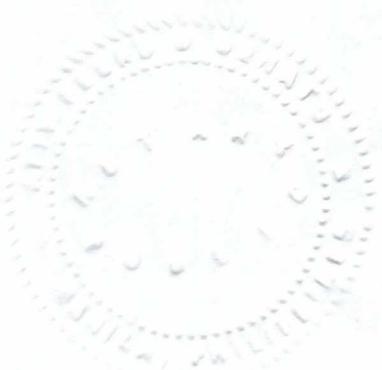
NAME	VALID ID NO.	ISSUED BY
ISIDRO S. LAPEÑA		
WILSON C. LIM		

Known to me and to known to be the same persons who executed the foregoing instrument which they acknowledge before me as their free and voluntary act and deed.

WITNESS MY HAND AND SEAL this _____ day of **APR 03 2019**
_____ **CITY OF MANILA** 2019 at

Doc. No. 199
Page No. 40
Book No. 22
Series of 2019

ATTY. PEDRO D. GENATO
Notary Public Until Dec. 31, 2019
Notarial Commission 2018-011 Mla.
1150 Gen. Luna St., Ermita Mla.
IBP# 012432 Pasig 7-27-17 until 2019
PTR# Mla 8008954 - 1-3-2019
Roll# 12088., TIN# 132-436-687
MULE Compl. No. V-0005232 until 4-14-19



Handwritten signature

Handwritten number 7

Handwritten signature