

SUPPLY AGREEMENT
THREE YEARS SERVICE PROVIDER OF THE TEXT-SSS SERVICE FACILITY &
DEVELOPMENT OF SSS MOBILE APPLICATION
Sealed Canvass/Request for Quotation 2020-0091

KNOW ALL MEN BY THESE PRESENTS:

This Agreement is made and executed by and between:

SOCIAL SECURITY SYSTEM (SSS), a government-owned and controlled corporation created pursuant to Republic Act (RA) No. 11199, with principal office address at SSS Building, East Avenue, Diliman, Quezon City, represented herein by Vice President, Member Relations and Support Division and Concurrent Acting Head, Member Services and Support Group, NORMITA M. DOCTOR and its Approving Authority and Department Manager III, Statistics and Data Analysis Department, ALLAN MARTIN M. GAYONDATO, duly authorized pursuant to Office Order No. 2017-047 dated 5 September 2017 (Annex A),

- a n d -

EXAKT IT SERVICES, INC. (EXAKT), a corporation duly created and existing pursuant to the laws of the Republic of the Philippines, with principal office address at 2510 Prestige Tower F, Ortigas Avenue, Ortigas Center, Pasig City, represented herein by its President, RODRIGO C. PEREZ, duly authorized per Secretary's Certificate dated 16 July 2020 (Annex B).

SSS and EXAKT shall each be referred to as a Party and shall collectively be referred to as the Parties.

- ANTECEDENTS -

The SSS has invited Bids through Sealed Canvass for the PROJECT: Three Years Service Provider of the Text-SSS Service Facility and Development of SSS Mobile Application, and has accepted the Bid of EXAKT for the PROJECT at no cost to SSS, or *ZERO PESOS for three years*, and not subject to escalation ("the Contract Price"), in accordance with Republic Act (RA) 9184 (Government Procurement Reform Act) and its 2016 Revised Implementing Rules and Regulations (RIRR).

Upon careful examination, validation, and verification of all the eligibility, technical, and financial requirements submitted by EXAKT, the Single Calculated and Responsive Quotation, SSS accepted the Quotation of EXAKT through Negotiated Procurement - Small Value Procurement.

The SSS BAC II in its Memorandum dated 29 July 2020 has recommended the award of the PROJECT to EXAKT per its Resolution No. 2020-099-3.4 dated 29 July 2020 (Annex C) which was approved on 11 August 2020 by the Approving Authority, Department Manager III Allan Martin M. Gayondato, pursuant to Administrative Order No. 2019-108 dated 28 November 2019 (Annex D).

A Notice of Award is not applicable pursuant to Annex "H" of the 2016 RIRR.

EXAKT represented and warranted itself to be competent, capable, qualified, duly licensed and with sufficient personnel and resources to provide the PROJECT to SSS;

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NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in this Agreement.
2. The following documents shall be deemed incorporated in, and shall read, form and construed as integral part of this Agreement:

| ANNEX | DESCRIPTION OF DOCUMENT | NO. OF PAGES |
|-------|--|----------------|
| A | Office Order No. 2017-047 dated 5 September 2017 | 1 |
| B | Secretary's Certificate dated 16 July 2020 stating that in a meeting of the Board of Directors dated 14 July 2020 the above-named officer was authorized to execute, sign and deliver this Agreement for and in behalf of EXAKT | 2 |
| C | SSS BAC II Memorandum dated 29 July 2020 recommending the award of the PROJECT to EXAKT per its Resolution No. 2020-099-3 with approval of the Approving Authority on 11 August 2020 | 8 |
| D | Administrative Order No. 2019-108 dated 28 November 2019 (Authority to Approve Recommendation for Award) | 2 |
| E | Summary of Sealed Canvass/Request for Quotation 2020-0091 | 6 |
| F | EXAKT's Bid, including the Technical, and Sealed Canvass/Quotation, and all other documents/statements submitted (e.g. bidder's response to clarifications on the bid), including corrections, if any, to the bid resulting from SSS' bid evaluation | 22 |
| G | Performance Security | Not Applicable |

3. EXAKT hereby covenants with the SSS to provide the PROJECT in accordance with the Scope of the Project and Requirements as provided in the Sealed Canvass (Annex E) and to ensure compliance with the periods specified during the three year term of the PROJECT upon the receipt of Notice to Proceed, and to remedy defects therein in conformity in all respects with the provisions of this Agreement.
4. To guarantee the faithful and timely compliance of EXAKT with its obligations under this Agreement, EXAKT shall secure and post a Performance Security in accordance with the following schedule:
 - 4.1. Five percent (5%) of the total Contract Price if in the form of cash, certified check, cashier's check, manager's check, bank draft or irrevocable letter of credit;
 - 4.2. Five percent (5%) of the total Contract Price if in the form of bank guarantee; or

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4.3. Thirty percent (30%) of the total Contract Price if in the form of a surety bond.

5. The provision of the goods and services and correction of defects therein by EXAKT shall be at no cost to SSS. Any enhancement of existing service and/or future/additional services shall, likewise, be at no cost to SSS.

However, EXAKT may accept advertisements in the Mobile App subject to the approval of the SSS to ensure that the advertisement follows SSS' standard and policies on such.

6. This Agreement shall be effective upon signing of both Parties to the Agreement and receipt of the Notice to Proceed by EXAKT.

7. EXAKT warrants and represents performance of its obligations in accordance with Section 62 (Warranty) of the 2016 RIRR.

8. Miscellaneous Provisions

8.1. Confidentiality – Neither party shall, without the prior written consent of the other, disclose or make available to any person, make public, or use directly or indirectly, except for the performance and implementation of the works, any confidential information acquired from an information holder in connection with the performance of this Agreement, unless: (i) the information is known to the disclosing party, as evidenced by its written records, prior to obtaining the same from the information holder and is not otherwise subject to disclosure restrictions on the disclosing party, (ii) the information is disclosed to the disclosing party by a third party who did not receive the same, directly or indirectly, from an information holder, and who has no obligation of secrecy with respect thereto, or (iii) required to be disclosed by law.

The obligation of confidentiality by both parties, as provided herein, shall survive the termination of the contract.

8.2. Merger and Consolidation. In case of merger, consolidation or change of ownership of EXAKT with another company, it is the responsibility of the surviving company/consolidated company/acquiring entity to inform SSS of the change in corporate structure/ownership. Failure to do so shall translate in such company assuming all liabilities of the acquired/merged company under this Agreement.

8.3. Force Majeure. EXAKT shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that EXAKT's delay in performance or other failure to perform its obligations under this Agreement is the result of a force majeure.

For purposes of this Agreement the terms "force majeure" and "fortuitous event" may be used interchangeably. In this regard, a fortuitous event or force majeure shall be interpreted to mean an event which EXAKT could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by EXAKT. Such events may include, but not limited to, acts of

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SSS in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

If a force majeure situation arises, EXAKT shall promptly notify SSS in writing of such condition and the cause thereof. Unless otherwise directed by SSS in writing, EXAKT shall continue to perform its obligations under this Agreement as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the force majeure.

- 8.4. **Non-Assignment.** EXAKT shall not assign its rights or obligations under this Agreement, in whole or in part, except with SSS's prior written consent.

EXAKT shall not subcontract in whole or in part the PROJECT and deliverables subject of this Agreement without the written consent of SSS.

- 8.5. **Waiver.** Failure by either party to insist upon the other the strict performance of any of the terms and conditions hereof shall not be deemed a relinquishment or waiver of any subsequent breach or default of the terms and conditions hereof, which can only be deemed made if expressed in writing and signed by its duly authorized representative. No such waiver shall be construed as modification of any of the provisions of this Agreement or as a waiver of any past or future default or breach hereof, except as expressly stated in such waiver.

- 8.6. **Cumulative Remedies.** Any and all remedies granted to the parties under the applicable laws and this Agreement shall be deemed cumulative and may, therefore, at the sole option and discretion, be availed of by the aggrieved party simultaneously, successively, or independently.

- 8.7. **No Employer-Employee Relationship.** It is expressly and manifestly understood and agreed upon that the employees of EXAKT assigned to perform the PROJECT are not employees of SSS. Neither is there an employer-employee relationship between SSS and EXAKT.

This Agreement does not create an employer-employee relationship between SSS and EXAKT including its personnel; that the PROJECT rendered by the personnel assigned by EXAKT to SSS in the performance of its obligation under this Agreement do not represent government service and will not be credited as such; that its personnel assigned to SSS are not entitled to benefits enjoyed by SSS' officials and employees such as Personal Economic Relief Allowance (PERA), Representation and Transportation Allowance (RATA), ACA, etc.; that these personnel are not related within the third degree of consanguinity or affinity to the contracting officer and appointing authority of SSS; that they have not been previously dismissed from the government service by reason of an administrative case; that they have not reached the compulsory retirement age of sixty-five (65); and that they possess the education, experience and skills required to perform the job. EXAKT hereby acknowledges that no authority has been given by SSS to hire any person as an employee of the latter. Any instruction given by SSS or any of its personnel to EXAKT's employees are to be construed merely as a measure taken by the former to ensure and enhance the quality of PROJECT performed hereunder. EXAKT shall, at all times, exercise supervision and control over its employees in the performance of its obligations under this Agreement.

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- 8.8. Partnership. Nothing in this Agreement shall constitute a partnership between the parties. No party or its agents or employees shall be deemed to be the agent, employee or representative of any other party.
- 8.9. Compliance with SS Law. EXAKT shall report all its employees to SSS for coverage and their contributions, as well as, all amortizations for salary/education/calamity and other SSS loans shall be updated. Should EXAKT fail to comply with its obligation under the provisions of the SS Law and Employees' Compensation Act, SSS shall have the authority to deduct any unpaid SS and EC contributions, salary, educational, emergency and/or calamity loan amortizations, employer's liability for damages, including interests and penalties from EXAKT' receivables under this Agreement.

Further, prescription does not run against SSS for its failure to demand SS contributions or payments from EXAKT. Moreover, EXAKT shall forever hold in trust SS contributions or payments of its employees until the same is fully remitted to SSS.

- 8.10. Compliance with Labor Laws. EXAKT, as employer of the personnel assigned to undertake the PROJECT, shall comply with all its obligations under existing laws and their implementing rules and regulations on the payment of minimum wage, overtime pay, and other labor-related benefits as well as remittances or payment of the appropriate amount or contributions/payment (SSS, EC, Pag-IBIG, PhilHealth and taxes) with concerned government agencies/offices.
- 8.11. Compliance with Tax Laws. EXAKT shall, in compliance with tax laws, pay the applicable taxes in full and on time and shall regularly present to the SSS within the duration of this Agreement, tax clearance from the Bureau of Internal Revenue (BIR) as well as copy of its income and business tax returns duly stamped by the BIR and duly validated with the tax payments made thereon. Failure by EXAKT to comply with the foregoing shall entitle the SSS to suspend payment of the Contract Price.

As required under Executive Order (EO) 398, s. 2005, EXAKT shall submit income and business tax returns duly stamped and received by the BIR, before entering and during the duration of this Agreement. EXAKT, through its responsible officer, shall also certify under oath that it is free and clear of all tax liabilities to the government. EXAKT shall pay taxes in full and on time and that failure to do so will entitle SSS to suspend or terminate this Agreement.

- 8.12. Liquidated Damages. If EXAKT fails to satisfactorily deliver any or all of the Goods and/or to perform the Services within the period(s) specified in the Sealed Canvass/Request for Quotation inclusive of duly granted time extensions if any, SSS shall, without prejudice to its other remedies under this Agreement and under the applicable law, deduct from the Contract Price, as liquidated damages, the applicable rate of one tenth (1/10) of one (1) percent of the cost of the unperformed portion for every day of delay until actual delivery or performance. Once the amount of liquidated damages reaches ten percent (10%), SSS may rescind or terminate this Agreement pursuant to the 2016 RIRR, without prejudice to other courses of action and remedies open to it.
- 8.13. Hold Free and Harmless. EXAKT agrees to defend, indemnify, and hold SSS free and harmless from any and all claims, damages, expenses, fines,

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penalties and/or liabilities of whatever nature and kind, whether in law or equity, that may arise by reason of the implementation of the Agreement. In addition, EXAKT agrees to indemnify SSS for any damage as a result of said implementation.

- 8.14. **Settlement of Disputes.** If any dispute or difference of any kind whatsoever shall arise between SSS and EXAKT in connection with or arising out of this Agreement, the Parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

If after thirty (30) days, the Parties have failed to resolve their dispute or difference by such mutual consultation, either SSS or EXAKT may give notice to the other Party of its intention to commence arbitration, in accordance with RA No. 876, otherwise known as the "Arbitration Law" and RA 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004" in order to settle their disputes. No arbitration in respect of this matter may be commenced unless such notice is given.

Notwithstanding any reference to arbitration herein, the Parties shall continue to perform their respective obligations under the Agreement unless they otherwise agree.

- 8.15. **Venue of Actions.** In the event court action is necessary in order to promote Arbitration, such shall be filed only before the proper courts of Quezon City, to the exclusion of all other venues.
- 8.16. **Governing Law.** This Agreement shall be governed by and interpreted according to the laws of the Republic of the Philippines.
- 8.17. **Amendments.** The Agreement may be amended only in writing and executed by the parties or their duly authorized representatives.
- 8.18. **Termination.** This Agreement may be terminated in accordance with pertinent provisions of the 2016 RIRR and General Conditions of Contract, Clauses 23 to 27 of the Philippine Bidding Documents, if applicable
- 8.19. **Separability.** If any one or more of the provisions contained in this Agreement or any document executed in connection herewith shall be invalid, illegal or unenforceable in any respect under any applicable law, then: (i) the validity, legality and enforceability of the remaining provisions contained herein or therein shall not in any way be affected or impaired and shall remain in full force and effect; and (ii) the invalid, illegal or unenforceable provision shall be replaced by the parties immediately with a term or provision that is valid, legal and enforceable and that comes closest to expressing the intention of such invalid, illegal or unenforceable term or provision.
- 8.20. **Binding Effect.** This Agreement shall be binding upon the Parties hereto, their assignee/s and successor/s-in-interest.

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IN WITNESS WHEREOF, the duly authorized representatives of the Parties have hereunto set their hands below on the date and place indicated in their respective Acknowledgements.

SOCIAL SECURITY SYSTEM
(SSS)

By:

NORMITA M. DOCTOR

Vice President, Member Relations and Support Division
and Concurrent Acting Head, Member Services and Support Group

ALLAN MARTIN M. GAYONDATO

Department Manager III, Statistics and Data Analysis Department

EXAKT, INC.
(EXAKT)

By:

RODRIGO C. PEREZ
President

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SIGNED IN THE PRESENCE OF:

[Signature]
ROWENA CALLANTA

[Signature]
ANGELICA ONG

SECOND ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
PASIG CITY) S.S.

BEFORE ME, a Notary Public for and in PASIG CITY, this OCT 30 2020 day of _____ personally appeared:

| Name | Competent Evidence of Identity | Date/Place of Issue |
|------------------|---------------------------------|--|
| RODRIGO C. PEREZ | DRIVER LICENSE NIG-69-037131 | VALID UNTIL: 2023/01/31 DATE ISSUED: 2018/01/04 LTO EAST AVE, QC |

known to me to be the same person who executed the foregoing instrument and who acknowledged to me that the same is his/her free and voluntary act and deed as well as the free and voluntary act and deed of the entity he/she represents in this instance.

This instrument refers to Agreement, consisting of nine (9) pages including this page on which this Acknowledgment is written but excluding the Annexes, signed by the Parties and their two (2) instrumental witnesses on each and every page hereof.

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

Doc. No. 266
Page No. 54
Book No. 1
Series of 2020.

[Signature]
ATTY. ANTONIO LUIS G. PAREDES
 NOTARY PUBLIC
 UNTIL DECEMBER 31, 2020
 IBP NO. 108533/01-09-20/ RIZAL
 PTR NO. 9353230/ 01-10-20/ Q.C.
 APPOINTMENT NO. 244 (2019-2020)
 ROLL NO. 50979
 MCLE COMPLIANCE NO. VI-0018852/ 03-13-19
 1109 PRESTIGE TOWER EMERALD AVE.
 ORTIGAS CENTER, PASIG CITY

[Signature]

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