

**SERVICE CONTRACT FOR THE DEPLOYMENT OF ELECTION
EQUIPMENT, PERIPHERALS, FORMS SUPPLIES AND PARAPHERNALIA
USED IN THE 2019 AND PREVIOUS YEARS FROM PHILIPPINE
CONSULATE GENERAL, NEW YORK TO THE PHILIPPINES**

KNOW ALL MEN BY THESE PRESENTS:

This Contract is made and entered into this 24th day of February 2022 in New York, USA, by and between:

The Philippine Consulate General, New York, (hereinafter referred to as “[Post]”)

--- and ---

Air Sea Land Shipping & Moving Inc., (hereinafter referred to as “PROVIDER”),

The [Post] and the Service Provider shall hereinafter be individually referred to as a “Party” and collectively as the “Parties”.

WHEREAS, [Post] wishes to obtain the Services of Service Provider;

WHEREAS, Service Provider has the skills, qualifications, and expertise required to provide the Services to the [Post];

WHEREAS, Service Provider wishes to render such Services to [Post].

NOW, therefore, in consideration of the promises and covenants contained herein, as well as other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties do hereby agree as follows:

Article 1 - DEFINITIONS:

As used in this Agreement:

- 1.1. “COMELEC” refers to the Commission on Elections.
- 1.2. “Contract Price” refers to the price payable to the Service Provider under this Contract for the full and proper performance of its contractual obligations.

- 1.3. "Contract" refers to this agreement by and between the [Post] and Service Provider, together with all its Annexes for this Project.
- 1.4. "Commencement Date" shall be used to refer to the date the Service Provider begins work on the Services for the [Post]. The Commencement Date shall be the date of service requested by the [Post] and accepted by Service Provider.
- 1.5. "Completion Date" shall be used to refer to the date that the Service Provider will complete or cease the provision of Services to the [Post]. The Completion Date is currently unknown, and for the purposes of this Agreement, will mean the date in the future that the Service Provider has completed the rendering of all services to the [Post].
- 1.6. "Day" refers to calendar day.
- 1.7. "Delay" refers to the time difference or interval between the date when the goods and/or services are supposed to be delivered as specified under the contract and the date when the same are actually delivered for any reason whatsoever even without demand on the part of the [Post].
- 1.8. "Effectivity Date" of the Contract will be the date of receipt by the Service Provider of the Notice to Proceed or the date provided in the Notice to Proceed. Performance of all obligations shall reckon from the Effectivity Date of this Contract.
- 1.9. "Services" refer to those general support services such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, and other obligations of the Service Provider covered under the Contract.
- 1.10. "Technical Requirements" refer to the technical bid submitted by the Service Provider during the bidding process for the Project to prove its eligibility.

Article 2 - EFFECTIVITY:

2.1 This Contract shall take effect upon the fulfillment of all of the following conditions:

- a) Signing of this Contract in five (5) copies by the parties; and

b) Receipt by the Service Provider of the Notice to Proceed.

2.2 The term of this Contract begins from the Effectivity Date until the release of the Performance Security, without prejudice to the surviving provisions of this Contract including the warranty provision as prescribed in Article 10.

Article 3 - SCOPE OF THE PROJECT:

3.1 Forward deployment via sea cargo, if possible, of all election-related equipment, paraphernalia, forms and supplies used in the 2019 National and Local Elections and previous years to the Commission on Elections in the Philippines, particularly:

- Sealed Boxes with Official Ballots
- Return to Sender (RTS) envelopes
- Empty Envelopes
- Materials and Supplies used by SBEIs
- Invalid Ballots
- Invalid/Spoiled Ballots
- Unused Official Ballots torn into half
- Unused Thermal Paper Rolls
- Unused Supplies
- Application Records-OV Registration, 2016-2018
- Other Materials used during past Elections

3.2 The Consignee of the shipment shall be the COMELEC.

3.3 Cargoes shall be picked-up from [Post].

3.4 The Service Provider shall load properly the cargoes from the Philippine Post in accordance with its nature, and packing and shipping standards.

3.5 Release of cargoes shall be made only to the addressee or to its authorized representative.

3.6 Submit to the [Post] within ninety (90) calendar days, reckoned from the Post's dispatch the following:

- Delivery Status Report and Delivery Receipts duly acknowledged by the addressee or his/her authorized representatives, with signature

- over his/her printed name as proof that the addressee has received the cargoes;
- Other reports and relevant documents as may be required by the Post; and
 - Billing/Statement of Accounts.

Article 4 - DELIVERY TERMS AND CONDITIONS:

4.1 Service Provider agrees to strictly follow the instructions of [Post] in the performance of its obligations and responsibilities under this Contract, the Terms of Reference (TOR), Schedule of Requirements, as well as any subsequent agreement that may be reached by the parties in furtherance of [Post] shipment requirements.

4.2 Service Provider shall exercise extraordinary diligence in the handling and delivery of all cargoes. Any loss or damage to the shipments is subject to the pertinent provisions of this Contract.

4.3 The classification and quantity of the cargoes to be shipped out, the chargeable weights, destination, and other material details required to be declared/manifested in the Bill of Lading shall be the exclusive concern of COMELEC. All other matters shall be governed by Service Provider's waybills.

4.4 All cargoes subject of deployment shall be weighed immediately upon receipt by the [COMELEC] in the presence of Service Provider's representative/s. Said weight shall be cross-referenced with the weight indicated in Service Provider's waybill to determine whether there is a discrepancy. If there is a discrepancy, the [COMELEC] weighing scale shall prevail and the weight obtained therefrom shall be written on the waybills. The representatives of the [COMELEC] and Service Provider shall affix their signatures at the back of all waybills.

4.5 Service Provider shall give priority to this shipment, and shall ensure that the same are delivered on time, intact and undamaged, to the consignee specified in the BL.

4.6 Service Provider shall use the cheapest but fastest means of transportation. However, in case of urgency, Service Provider may, subject to prior approval of the COMELEC via [Post] employ all the necessary means, including transport by air or diversion of routes, to ensure that shipments shall arrive at intended destination on time.

4.7 Failure of Service Provider to employ the most economical means of transportation as warranted by circumstances, or if it has misrepresented in its urgent or instant request to divert route/s, specifically if it is detrimental to the interest of [Post] and COMELEC, the latter shall be entitled to reimbursement of the difference in the rate/charge if the same were transported by the most economical mode of transport (land or sea). This is without prejudice to civil and/or criminal actions that may be taken against Service Provider and motu proprio termination of any existing contract or agreement with the [Post].

4.8 Service Provider shall be precluded from:

- (a) Bumping off cargoes in favor of other clients;
- (b) Refusing to deliver the cargoes, unless due to force majeure or fortuitous event;
- (c) Exercising stoppage in transit or other analogous circumstance, which would halt any cargoes in transit from proceeding to its destination, except in case of fortuitous event or force majeure.

4.9 Upon the effectivity of this Contract, Service Provider shall deliver to [Post] the following:

- (i) an accurate, regular and timely cargo monitoring system or tracking device to regularly and frequently up-date the [Post] of all movements; and
- (ii) an efficient means of updating the [Post] such as a valid and active e-mail account and a website where the [Post]'s representative could conveniently and accurately monitor the movements of cargoes;

4.10 The parties agree that this Contract, as well as its annexes, is subordinate to the rules and regulations which may be imposed from time to time by the government regulatory bodies pertaining to the shipment and transportation of goods.

Article 5 - CONTRACT PRICE AND PAYMENT:

5.1 COMELEC shall pay the Service Provider for its services actually rendered. Such payment shall not exceed Service Provider's financial offers for this deployment project in the total amount of Ten Thousand Two Hundred Thirty-Five US Dollars (US\$10,235.00) VAT exempt, inclusive of all other applicable taxes.

5.2 For purposes of claiming payments, the all in rates of Service Provider are fixed and not subject to variation or price escalation on any account.

5.3. Service Provider shall be paid in the following manner:
50% upon loading of the materials from the Post;
50% when cargo is ready for delivery to the address provided by COMELEC.

5.4 All payments shall be based on the rates and parameters stated in this Article.

5.5. For purposes of determining claims to loss of shipment, the value indicated in the BL shall be controlling.

5.6 The Mode of Payment shall be through the Electronic Modified Disbursement System (eMDS) to Service Provider's account. It shall be through Authority to Debit Account prepared by COMELEC.

Article 6 - RESPONSIBILITIES OF POST:

6.1 During the provision of the Services, the Client hereby agrees to:

A) Cooperate with the Service Provider for anything the Service Provider may reasonably require;

B) Provide any information and/or documentation needed by the Service Provider relevant to the provision of Services or payment for the provision of Services;

C) Require any staff or agents of the Client to co-operate with and assist the Service Provider as the Service Provider may need;

D) Make available to the Service Provider, without fee or cost, any facilities, which may include, but are not limited to, a work space, computer, or other physical equipment, the Service Provider may reasonably require.

Article 7 - RESPONSIBILITIES OF SERVICE PROVIDER:

7.1 Service Provider hereby agrees to provide [Post] the service as described in Article 3 (Scope of the Project) of this Contract and the Terms of Reference (TOR).

7.2 The Services to be performed shall be done with utmost efficiency and care demanded of a good father of a family in accordance with the Technical Specifications and the Schedule of Delivery.

7.3 Service Provider shall not be liable for liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under this Contract is the result of a force majeure or an event which Service Provider 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 Service Provider.

Force majeure may include acts of God or the public enemy, war, riot, embargo, fire, explosion, sabotage, flood, accident, labor disputes, and other analogous causes.

7.4 Service Provider shall immediately notify [Post] not later than three (3) hours upon discovery of such loss, theft, robbery or damage.

Article 8 - RESPONSIBILITIES OF THE COMELEC:

8.1 COMELEC agrees to pay the Service Provider the Contract Price in accordance with the mode and terms of payment set forth in Article 5 of this Contract.

8.2 Whenever the performance of the obligations under this Contract requires the Service Provider to obtain permits, approvals, import, and other licenses from local public authorities, the COMELEC shall, if so, needed by the Service Provider, make its best effort facilitate and /or to assist the Service Provider in complying with such requirements in a timely and expeditious manner.

Article 9 - WARRANTIES:

9.1 The Service Provider represents and warrants that it will perform the Services using reasonable care and skill for a Service Provider in their field and that any end products or materials given by the Service Provider to the [Post] under the terms and conditions of this Contract will not infringe on or violate the intellectual property rights or any other right of any third party.

Article 10 - ENTIRETY AND MODIFICATION OF CONTRACT:

10.1 Subsequent memoranda, letters of instruction, agreements and all communications coming from the parties shall form part and parcel of this Service Contract.

10.2 This contract cannot be altered, modified, amended, changed, extended, waived or terminated, except in writing and signed by both parties.

Article 11 - TIME FOR PERFORMANCE:

11.1 Time shall be of the essence for the performance by the Service Provider of its obligations under the Contract. Any dates, periods or times for performance specified in the Contract are to be met, and in default, the Service Provider will be in breach of the Contract.

Article 12 - TERMINATION:

12.1 This Contract may be terminated by either party, upon notice in writing to [Post]:

- (a) if the other party commits a material breach of any term of this Agreement that is not capable of being remedied within fourteen (14) days or that should have been remedied within fourteen (14) days after a written request and was not;
- (b) if the other party becomes unable to perform its duties hereunder, including a duty to pay or a duty to perform;
- (c) if the other party or its employees or agents engage in any conduct prejudicial to the business of the other, or in the event that either party considers that a conflict or potential conflict of interest has arisen between the parties.

12.2 This Contract may be terminated by the Service Provider if the COMELEC fails to pay any requisite fees within fifteen (15) after the date they are due as stated in Article 5 of this Contract. If this Contract is terminated before the expiration of its natural term, and for any and all expenditure due for payment after the date of termination for commitments reasonably made and incurred by Service Provider related to the rendering of Services prior to the date of termination. Any termination of under this subpart shall not affect the accrued rights or liabilities of

either Party under this Contract or at law and shall be without prejudice to any rights or remedies either Party may be entitled to. Any provision or subpart of this Contract which is meant to continue after termination or come into force at or after termination shall not be affected by this subpart.

Article 13 - DATA PRIVACY, SECURITY AND NON-DISCLOSURE CLAUSE:

13.1 All documents that the Service Provider shall receive from the [Post] in the course of the Project are deemed confidential information. In the event that the Service Provider receives information from the [Post] which contains personal information and sensitive personal information, it shall comply with the relevant provisions of the Data Privacy Act of 2012.

13.2 The Service Provider shall keep all confidential information secret and shall not disclose said confidential information except to those personnel involved in this Project. Such personnel are bound by obligations of confidentiality no less effective than those contained in this Contract and applicable law and rules.

13.3 The Service Provider shall use the confidential information only to the extent necessary in connection with the purpose of the Project.

13.4 The Service Provider shall use the standard under the Data Privacy Act of 2012 to establish and maintain satisfactory security measures to safeguard the confidential information from unauthorized access or use.

13.5 The Service Provider undertakes not to make or have made any copy, record or duplication of any of the confidential information or reduce it into writing or in any medium if disclosed orally, without the prior written consent of the COMELEC through [Post], except to the extent that is reasonably necessary for the Project.

13.6 The Service Provider shall be liable for inadvertent, deliberate or unauthorized disclosure and improper use of confidential information under pertinent laws and rules.

13.7 All confidential information of the COMELEC, including any copies, thereof, shall remain to be its property and shall be promptly returned by the Service Provider upon the termination of this Contract. Upon such termination, all copies made by the Service Provider of the confidential information shall be promptly sent by the Service Provider to the COMELEC through [Post].

13.8 All proprietary rights in the confidential information of the COMELEC shall remain vested in it. The confidentiality obligations contained herein shall remain in force even after the termination of this Contract. In no case shall the Service Provider retain any copy of the confidential information.

Article 14 - SETTLEMENT OF DISPUTES:

14.1 If any dispute shall arise between the Parties in connection with or arising out of this Contract, the Parties shall make every effort to resolve amicably such dispute by mutual consultation.

14.2 If after thirty (30) days, the Parties have failed to resolve their dispute by such mutual consultation, then either Party may give notice to the other Party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

14.3 Any dispute in respect of which a notice of intention to commence arbitration has been given in accordance with this Article shall be settled by arbitration by an arbitral tribunal composed of three (3) arbitrators. The first arbitrator will be appointed by the Party giving notice of its intention to commence arbitration, the second arbitrator, except for the case as specified hereinafter, will be appointed by the other party within fifteen (15) days after the date on which the latter has received notice of arbitration, and the third arbitrator, who will act as Chairman of the arbitral tribunal, will be designated by mutual agreement of the two arbitrators already appointed by the Parties within fifteen (15) days after the appointment of the second arbitrator or, failing such agreement, by the President of the Dispute Resolution Centre, Inc. ("PDRCI"). The President of the PDRCI shall also designate: (i) the second arbitrator if the party receiving the notice of arbitration has failed to nominate the second arbitrator; and (ii) the replacement of any arbitrator who is unable or unwilling to accept the appointment or to continue acting as such. Arbitration may be commenced prior to or after the performance of the Services and the delivery of the Goods under this Contract.

14.4 In the case of a dispute between the Parties, the dispute shall be resolved in accordance with RA 9285, otherwise known as the Alternative Dispute Resolution Act of 2004. The arbitration proceeding shall be conducted within Metro Manila and the proceedings shall be conducted in English. The decision of the arbitral tribunal shall be final and binding upon the Parties.

14.4 Notwithstanding any reference to arbitration herein, the Parties shall continue to perform their respective obligations under this Contract unless they otherwise agree; and the COMELEC shall pay the Service Provider any monies due the Service Provider.

Article 15 - GENERAL PROVISIONS:

15.1 GOVERNING LAW: This Contract shall be governed in all respects by the laws of the Philippines and the United States and any applicable law. Both Parties consent to jurisdiction under the law where this Contract is executed.

15.2 LANGUAGE: All communications made or notices given pursuant to this Contract shall be in the English language.

15.3 ASSIGNMENT: This Contract, or the rights granted hereunder, may not be assigned, sold, leased or otherwise transferred in whole or part by either Party.

15.4 NO WAIVER: None of the terms of this Contract shall be deemed to have been waived by any act or acquiescence of either Party. Only an additional written agreement can constitute waiver of any of the terms of this Contract between the Parties. No waiver of any term or provision of this Contract shall constitute a waiver of any other term or provision or of the same provision on a future date. Failure of either Party to enforce any term of this Agreement shall not constitute waiver of such term or any other term.

15.5 SEVERABILITY: If any provision of this Contract is declared illegal, unenforceable or void, the parties shall negotiate in good faith to agree upon a substitute provision that is legal and enforceable and consistent with the intentions of the Project. The rest of this Contract that is not materially affected by such declaration shall subsist.

15.6 NOTICES ELECTRONIC COMMUNICATIONS PERMITTED: i) Any notice to be given under this Contract shall be in writing and shall be sent by first class mail, air mail, or e-mail, to the address of the relevant Party set out at the head of this Contract, or to the relevant email address set out below or other email address as that Party may from time to time notify to the other Party in accordance with this clause. The relevant contact information for the Parties is as follows:

Service Provider:

Air Sea Land Shipping & Moving Inc.
405 Lexington Avenue, 7th Floor
New York, NY 10174
Tel. No. +1-212-983-8886

[Post]:

Philippine Consulate General, New York:
556 Fifth Avenue
New York, NY 10036
Tel. No. +1-212-764-1330

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives hereby sign this Contract this 24th day of February 2022, in the City of New York, U.S.A.

For the [Post]:


ELMER G. CATO
Consul General *h*

For the [Service Provider]


AJITH TILAKASIRI
Field Operations Manager

**AIR SEA LAND SHIPPING & MOVING
INC
405 LEXINGTON AVE, 7TH FLOOR
NEW YORK, NY 10174
TEL: (212) 983-8886**

Witnesses:


