



SERVICE AGREEMENT
COLD CHAIN MANAGEMENT SERVICES FOR CORONAVIRUS
DISEASE 2019 VACCINES

KNOW ALL MEN BY THESE PRESENTS:

This Agreement entered into by and between:

QUEZON CITY GOVERNMENT, a public corporation existing under the laws of the Philippines, represented herein by the Honorable **MA. JOSEFINA G. BELMONTE**, in her capacity as City Mayor, with office at Quezon City Hall Compound, Elliptical Road, Diliman, Quezon City, Metro Manila, and hereinafter referred to as the "CITY"

MA. JOSEFINA G. BELMONTE
City Mayor

-and -

ZUELLIG PHARMA CORPORATION, a corporation duly organized and incorporated under the laws of the Republic of the Philippines with office address at Km 14 West Service Road South Super Highway corner Edison Ave, Sun Valley, Parañaque, Metro Manila, Philippines, represented herein by its General Manager and Authorized Representative, **MR. DANILO J. CAHOY**, hereinafter referred to as the "SERVICE PROVIDER"

(CITY and SERVICE PROVIDER may be referred to individually as a "Party" and collectively, as "Parties.")

RECITAL

WHEREAS, in view of the CITY's mandate to mitigate and contain the transmission of COVID-19, it is imperative to procure a service provider who will provide vaccine Cold Chain Management Service for One Million One Hundred Thousand (1,100,000) doses of COVID-19 vaccines which are to be stored at 2°C to 8°C;

DANILO J. CAHOY
Authorized Representative

WHEREAS, in its Resolution No. 03-44 Series of 2021 duly approved by the City Mayor, the Bids and Awards Committee on Goods and Services (the "Committee") recommended the use of negotiated mode as an alternative method of procurement for Cold Chain Management Services For Coronavirus Disease 2019 Vaccines with PR No. GF-21-02-00124 (the "Project") pursuant to Section 53.2, of the Revised Implementing Rules and Regulations of RA 9184, states among others that negotiated procurement may be resorted to when time is of the essence arising from other causes where immediate action is necessary to prevent damage to or loss of life or property;

WHEREAS, in accordance with pertinent laws, rules and issuances on Negotiated Procurement (Emergency Cases), the CITY sent Requests for Quotation to various suppliers of known qualification who are technically, legally and financially capable of delivering the required services for the Project;



WHEREAS, the **SERVICE PROVIDER** participated and submitted its quotation for the Project and upon evaluation, was determined to be a supplier which possesses the technical, legal and financial capabilities to deliver the required services;

WHEREAS, the **SERVICE PROVIDER** was declared as the Lowest Calculated and Responsive Quotation;

NOW THEREFORE, for and in consideration of the foregoing premises, the Parties hereto agreed and do hereby mutually agree to be bound by the covenants and stipulations herein set forth as follows:

Section 1. Scope of Work. Pursuant to and in accordance with the Contract Documents provided herein, the **SERVICE PROVIDER** undertakes to deliver to the **CITY** the required services, which includes processes relating to handling from the receipt of the order, receiving, storing, quality control, release for transportation and shipment to various vaccination sites to ensure the quality and integrity of the vaccines, the technical specifications of which are defined in the Terms of Reference.

Section 2. Contract Documents. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:

- (a) Request for Quotation;
- (b) Terms of Reference (TOR);
- (c) Eligibility requirements, documents, undertakings and/or statements;
- (d) Purchase Request;
- (e) Affidavit of Undertaking;
- (f) Omnibus Sworn Statement
- (g) Notice of Award; and
- (h) Notice to Proceed

The documents mentioned above shall be collectively referred to as "Contract Documents".

Section 3. Term. This Agreement shall be effective for a period commencing on MAR 30 2021 and ending on DEC 31 2021.

Section 4. Contract Price. In consideration of the complete and faithful delivery of any and all Services and performance of any and all obligations of the **SERVICE PROVIDER** under this Agreement, the **SERVICE PROVIDER** shall be paid for the entire duration of the Agreement the total amount of **THIRTY SIX MILLION THREE HUNDRED THOUSAND PESOS AND 00/100 (Php36,300,000.00)** inclusive of the 12% Value Added Tax (VAT) (the "**Contract Price**") in accordance with the conditions set forth in Section 6 hereof.

Section 5. Terms of Payment. The City shall be billed thirty (30) days after delivery to the COVID-19 vaccination facility identified. The City shall also verify the billed amount against the original Property Transfer Report (PTR) of delivered COVID-19 vaccines.

The processing of payments will entail the approval by the **CITY** of the **SERVICE PROVIDER'S** complete documentation and deliverables before invoices may be processed for payment. The **CITY** likewise reserves the right to validate billing/invoice before payment of fees.

MA. JOSEFINA G. BELMONTE
 City Mayor

DANILO J. CAHOY
 Authorized Representative



Section 6. Project Cost Adjustment. As stated in Republic Act 9184, otherwise known as the Government Procurement Reform Act, Section 61.2, in cases where the cost of the awarded contract is affected by any applicable new laws, ordinances, regulations, or other acts of the Government of the Philippines, promulgated after the date of bid opening, [such as, but not limited to, increase in minimum daily wage pursuant to law or new wage order], a contract price adjustment shall be made on a no loss-no gain basis.

Section 7. Standard of Performance. The **SERVICE PROVIDER** shall, consistent with the TOR, perform the required services and carry out its obligations with all due diligence, efficiency and economy. It shall observe the highest degree of standards based on industry practice.

Section 8. Penalties. The **SERVICE PROVIDER** shall be liable for penalty for any breach of contract under all applicable laws, issuances and regulations.

Section 9. Liquidated Damages. It is understood and agreed that time is of the essence of this Agreement. In the event the **SERVICE PROVIDER** refuses or fails to completely supply and deliver to the **CITY** the **Services** defined herein within the delivery schedule at no fault of the **CITY**, the **SERVICE PROVIDER** shall be liable for liquidated damages in the amount equivalent to one tenth of one percent (1/10 of 1%) of the Contract Price for every day of delay until the Project is completely delivered: *Provided*, that, the total cumulative amount of liquidated damages shall not exceed ten percent (10%) of the Contract Price: *Provided*, further, that, once the cumulative amount of liquidated damages exceeds ten percent (10%) as provided herein, the **CITY**, in accordance with Section 68 of the IRR of R.A. 9184, may rescind or terminate this Agreement without prejudice to other remedies and other courses of action available to the **CITY** under this Agreement and pursuant to any and all applicable laws.

Section 10. Authority to Deduct Penalties and Liquidated Damages. For purposes of assessment and enforcement of the penalties and liquidated damages in the immediately preceding sections, the **CITY**, upon written notice to the **SERVICE PROVIDER**, is hereby authorized to deduct any amount due as penalty and/or liquidated damages from any amount due or may become due and owing to the **SERVICE PROVIDER** or from any and all bonds or securities posted by the **SERVICE PROVIDER** in favor of the **CITY**, at the option of the latter. It is hereby agreed and understood that the imposition of penalty and assessment of liquidated damages are cumulative and not alternative remedies of the **CITY** under this Agreement.

Section 11. Assignment and Sub-contracting. This Contract or any portion hereof shall not be assigned, transferred or ceded to any other party/ies without the written consent of the **CITY**. **SERVICE PROVIDER** is further prohibited from sub-contracting any obligations in this contract to any other party.

Section 12. Representations and Warranties of the Service Provider. The **SERVICE PROVIDER** hereby represents and warrants to the **CITY** as follows:

- a. The **SERVICE PROVIDER** is a corporation duly organized, validly existing and in good standing under the laws of the Republic of the Philippines.
- b. The **SERVICE PROVIDER** has full legal right, power and authority to carry on its present business, to own its properties and assets, and to execute and deliver this Agreement and all other documents executed, or required or necessary to be executed pursuant thereto, and to perform and observe the terms and conditions thereof.

MA. JOSEFINA G. BELMONTE
City Mayor

DANILO J. CAHOY
Authorized Representative



c. All appropriate and necessary corporate and legal actions have been taken by it to authorize the execution and delivery of this Agreement, and all other documents executed, or required or necessary to be executed pursuant thereto and the performance of all provisions, conditions, covenants, and other terms hereof and thereof, as well as all the transactions contemplated herein.

d. This Agreement and all other documents executed, or required or necessary to be executed pursuant thereto, constitute, or when executed and delivered pursuant thereto, will constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms.

e. The execution and delivery of this Agreement and all other documents executed, or required or necessary to be executed pursuant thereto and the performance of its obligations hereunder will not:

i. conflict with its Articles of Incorporation, By-Laws or other constitutive documents;

ii. conflict with, result in the breach of, or constitute an event which would either immediately or with the lapse of time or giving of notice or both, result in a default under, or accelerate the performance required by, the terms of any agreement, document, contract, instrument or commitment to which it is a party or by which it or any of its assets is bound;

iii. conflict with or require any written consent or approval under any judgment, order, writ, decree, permit or license to which it is a party or by which any of its assets is bound; or

iv. require the written consent or approval of any other party to any agreement, document, contract, instrument or commitment to which it is a party or by which any of its assets is bound.

f. There are no actions, suits or proceedings existing, pending or, threatened against or directly affecting the **SERVICE PROVIDER** and/or any of its assets before any court, arbitrator or governmental or administrative body or agency that affect the validity or enforceability of this Agreement or that would affect the ability of the **SERVICE PROVIDER** to perform its obligations hereunder.

g. No event has occurred and is continuing which might materially and adversely affect the carrying out of its obligations under this Agreement.

h. It is in compliance with all applicable laws and regulations in connection with the delivery of the Project.

i. Each of the representations and warranties herein shall survive the execution of this Agreement and shall be deemed repeated during the effectivity of this Agreement.

Section 13. Indemnification. The **SERVICE PROVIDER** shall indemnify and save the CITY and all its officers, employees, personnel and persons acting as agents or representatives and render them free and harmless from any and all claims, actions, liabilities, losses and suits which may be brought or instituted against them arising out of or resulting from the **SERVICE PROVIDER's** supply, deliver and performance of its Services under this Agreement.

Section 14. Events of Default of the Service Provider. Any of the following shall constitute an Event of Default under this Agreement:

a. When the **SERVICE PROVIDER** becomes insolvent, or commits or suffers any act of bankruptcy, which term shall include: (i) the filing of a petition, by or against the **SERVICE PROVIDER**, in any bankruptcy, insolvency, administration, suspension of payment, reorganization, winding-up or liquidation proceeding, or any other

MA. JOSEFINA G. BELMONTE
City Mayor

DANILO J. CAHOY
Authorized Representative



proceeding analogous in purpose and effect; (ii) the making of an assignment by the **SERVICE PROVIDER** for the benefit of its creditors; (iii) the admission in writing by the **SERVICE PROVIDER** of its inability to pay its debts; (iv) the entry of any order of judgment of any competent court, tribunal or administrative agency or body confirming the bankruptcy or insolvency of the **SERVICE PROVIDER** or approving its reorganization, winding-up or liquidation, or (v) the lawful appointment of a receiver or trustee to take possession of the properties of the **SERVICE PROVIDER**;

b. When the **SERVICE PROVIDER** suspends or discontinues all or a substantial portion of its business operations, whether voluntarily or involuntarily, for a period of at least sixty (60) days;

c. Any material breach by the **SERVICE PROVIDER** of any of its warranty, representation or covenant made under this Agreement.

Section 15. Consequences of Default. Upon occurrence of any Events of Default under this Agreement, the **CITY** may declare the **SERVICE PROVIDER** in default and shall have the right to:

- a. Terminate this Agreement;
- b. Call on the Performance Security to answer for any and all damages of whatever nature suffered by the **CITY** resulting or arising from the **SERVICE PROVIDER's** default; and
- c. Take such other steps or actions against the **SERVICE PROVIDER** for the full protection and enforcement of the **CITY's** rights and interests.

Section 16. Compliance with Laws, Ordinances and Regulations. The **SERVICE PROVIDER** shall comply with any and all laws, ordinances and regulations of the national and local government applicable to or binding upon the parties hereto. For this purpose, any and all pertinent provisions of RA 9184 and its IRR, and other applicable laws and regulations are deemed written and incorporated in this Agreement. In case of conflict between any of the provisions of this Agreement and those of the applicable laws and regulations, the latter shall prevail.

Section 17. Indemnities and Attorney's Fees. Should any of the parties resort to court action in order to enforce their respective rights under this Agreement, the prevailing party or its successors-in-interest shall be entitled to be indemnified by the other party by way of attorney's fees, a reasonable sum equivalent to the actual amount of fees paid or to be paid by the prevailing party.

Section 18. Notification. All notices and communications shall be done in writing and shall be directed as follows:

CITY	:	OFFICE OF THE CITY MAYOR c/o Bids and Awards Committee Secretariat 2 nd Floor Finance Bldg, Quezon City Hall Complex, Elliptical Road, Diliman, Quezon City
SERVICE PROVIDER:	:	ZUELLIG PHARMA CORPORATION Km 14 West Service Road South Super Highway corner Edison Ave, Sun Valley, Parañaque Metro Manila, Philippines

MA. JOSEFINA G. BELMONTE
City Mayor

DAMILO J. CAHOY
Authorized Representative



Republic of the Philippines
PROCUREMENT DEPARTMENT
Quezon City Government



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Section 20. Effectivity. This Agreement shall be effective upon execution by the parties hereto.

Section 21. Miscellaneous Provisions.

a. This Agreement, including the documents and/or agreements specifically incorporated herein by reference, constitutes the entire agreement between the parties. This Agreement may be amended and supplemented in writing at any time as decided and agreed upon by mutual consent of the parties.

b. This Agreement and all documents related thereto shall be binding upon and inure to the benefit of the parties herein and/or their respective heirs, agents, representatives, successors-in-interest, and assigns. The **SERVICE PROVIDER** shall not assign its rights and obligations under this Agreement without the written consent of the CITY.

c. This Agreement embodies the entire arrangement or agreement of the parties and no undertaking, verbal or otherwise, in relation thereto, shall exist between the parties except as herein expressly set forth.

d. The parties hereby certify that they have read or caused to be read to them all the provisions of the foregoing Agreement, receipt of a signed copy of which is hereby expressly acknowledged by the parties and that they have fully understood the same.

e. The parties hereby represent and warrant that they have the necessary power and corporate authority to execute and deliver this Agreement and perform their obligations as incorporated herein and that such execution, delivery and performance do not and will not contravene any provision of their respective Articles of Incorporation, by-laws, any agreements or instruments to which they are a party or any laws or regulations of any governmental authority.

f. If any provision of this Agreement be declared by any court or other authorized agency of the government to be null and void, the nullity thereof shall not affect the validity of this transaction or any other provisions herein which shall then be considered as valid and binding between the parties.

g. Any and all disputes arising from the implementation of this Agreement shall be submitted to arbitration in the Philippines according to the provisions of RA 876, otherwise known as the "Arbitration Law" and RA 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004": Provided, that, by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.

MA. JOSEFINA G. BELMONTE
City Mayor

DANILO J. CAHOY
Authorized Representative



Republic of the Philippines
PROCUREMENT DEPARTMENT
Quezon City Government



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IN WITNESS WHEREOF the parties have hereunto set their hands to this Agreement on MAR 30 2021, at Quezon City.


QUEZON CITY GOVERNMENT

ZUELLIG PHARMA CORPORATION


By:

By:


MA. JOSEFINA G. BELMONTE
City Mayor


DANILO J. CAHOY
Authorized Representative

Signed in the presence of:


RUBY G. MANANGU
City Accountant
City Accounting Department

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES }
_____ }s.s.

BEFORE ME, a Notary Public for and in MAR 30 2021, this _____, personally appeared:

Name	Competent Proof of Identity
HON. MA. JOSEFINA G. BELMONTE, in her capacity as Mayor of the Local Government of Quezon City	OCM - 0081744
DANILO J. CAHOY, in his capacity as the General Manager and Authorized Representative of ZUELLIG PHARMA CORPORATION	Driver's License K01-88-017442

all known to me and to me known to be the same persons who executed this Agreement, and they acknowledged to me that the same is their free and voluntary act and deed, and the free and voluntary act and deed of the parties which they respectively represent.

I certify that the foregoing Agreement, signed by the parties and their instrumental witnesses, consists of seven (7) pages, including this page on which the acknowledgement is written.

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

Doc. No. 299;
Page No. 60;
Book No. 001;
Series of 2021.

ATTY. MARK JOSEPH E. MARCELO
Notary Public
Room 405, Security Bank Building,
Matalino St., Quezon City
Adm. Matter No. NP-103
Commission expires on December 31, 2022
Attorney's Roll No. 69314
IBP Lifetime No. 016606, Quezon City Chapter
PTR No. 0699739, 01/08/2021 Quezon City
MCLE Compliance No. VI-AR026095