

**CONTRACT OF LEASE FOR THE PROVISION OF COLD STORAGE SERVICES**

This **CONTRACT OF LEASE FOR THE PROVISION OF COLD STORAGE SERVICES** ("Contract," hereinafter) is made and entered into this 3<sup>rd</sup> day of January 2022, by and between:

**DEPARTMENT OF FOREIGN AFFAIRS**, a National Government agency created under Philippine law, with principal office at 2330 Roxas Boulevard, Pasay City, represented by its **Acting Undersecretary for Administration and Epidemic Response Committee Chair, Antonio A. Morales**, and hereinafter referred to as the "**DFA**";

-and

**ISOC COLD CHAIN LOGISTICS, INC.**, *doing business under the name and style of ORCA COLD CHAIN SOLUTIONS*, a corporation established under Philippine law, with principal office at 6/F Hanston Building, F. Ortigas Jr. Road, Ortigas Center, Pasig City, represented by its President, **Mr. Yerik C. Cosiquien**, and hereinafter referred to as "**ORCA**";

(The two Parties shall be collectively referred to as the "**PARTIES**");

WITNESSETH THAT:

**WHEREAS**, the **DFA**, is a National Government agency with personnel falling under Vaccination Priority Categories A1, A2, A3, and A4 of the COVID-19 Vaccination Program, which is being implemented pursuant to Inter-Agency Task Force for the Management of Emerging Infectious Diseases Resolution No. 117, series of 2021;

**WHEREAS**, the **DFA**, is authorized under Section 3 of Republic Act 11525, otherwise known as the COVID-19 Vaccination Program Act of 2021, to procure, in cooperation with the Department of Health and the National Task Force against COVID-19, ancillary services for the storage, transport, deployment, and administration of COVID-19 vaccines;

**WHEREAS**, in view of the need for cold storage services for COVID-19 vaccines and in line with its Vaccination Plan (attached as Annex A), the **DFA** has allocated the amount of one million pesos (P1,000,000.00), as provided in the attached Certificate of Availability of Funds No. 09-21-0033 (attached as Annex B), which shall be charged against the Department's FY 2020 Continuing Appropriation;

**WHEREAS**, **ORCA** is engaged in the business of cold storage services with multiple state-of-the-art facilities in cities of Taguig and Caloocan; and,

**WHEREAS**, **ORCA** is willing and has the legal, technical, and financial capacity to provide the **DFA** with the required cold storage services;

**WHEREAS**, **ORCA**, pursuant to DFA BAC Resolution No. NTC 141-21 (attached as Annex C), was awarded by the DFA's Head of the Procuring Entity the contract on the provision of cold storage services, as evidenced by the attached Notice of Award dated 30 July 2021 (Annex D).

**NOW THEREFORE**, for and in consideration of the foregoing premises, the **PARTIES** agree to the following terms and conditions:

**1. SCOPE OF SERVICES**

- a) **ORCA** shall provide the **DFA** with cold storage services for the COVID-19 vaccines acquired by the latter, including the following:
- Handling of vaccines based on the immunization plan of the **DFA**;
  - Receipt and dispatch of the packed and allocated vaccines;
  - Transportation of the vaccines, using the *Orca Solutions Insulated Vaccine Carrier* (Transport Box) and any mode of transportation appropriate for the safe delivery of such items, to and from locations identified by the **DFA**;
  - Management of the Inventory and preparation of a basic inventory report;
  - Preparation of a daily broadcast report; and
  - Documentation and preparation of reports on the receipt and dispatch of vaccines.

- b) The Orca Solutions Insulated Vaccine Carrier shall be used to safely transport the vaccines from the vaccine supplier's premises to ORCA's cold storage facility, and then to the vaccination site or sites identified by the DFA. This service, referred to hereinafter as "Vaccine Transportation," shall include temperature and location tracking, security sealing, and documentation management.
- c) ORCA shall store, handle, and deliver the vaccines in accordance with the vaccine manufacturer's instructions, as well as the terms and conditions of this Contract.
- d) ORCA shall, upon instructions of DFA's authorized representative, safely return any unused vaccines from the vaccination site or site to its storage facility. No vaccine dose shall be disposed, regardless of its condition, without the prior written consent of the DFA.
- e) ORCA shall immediately inform the DFA of the need for any service not expressly included in this contract ("excluded service," hereinafter), but necessary for the safe storage, handling, and delivery of the vaccines. No excluded service shall be rendered without prior written consent of the DFA.

**2. DURATION**

This Contract shall be in effect until 31 December 2022 or until the exhaustion of the Department's COVID-19 vaccine supply, whichever comes first. The PARTIES may likewise terminate the Contract earlier, in accordance with Section 8 below.

**3. RATES AND CHARGES**

Charges shall be based on the following:

a) Vaccine Storage Rates

The total storage and handling charges shall be based on the following rate:

Brand	Required Temperature (°C)	Rate per dose for first 30 days*
Moderna	As prescribed by the vaccine manufacturer.	Sixty-six pesos and Twenty-six centavos (P66.26)

\*Twelve percent VAT will be added to the basic rate.

After the first 30-day storage period, an additional three percent (3%) of the cold storage basic fee shall be charged for each remaining dose kept in storage, upon the DFA's instructions, for each succeeding 30-day period.

b) Vaccine Transportation Container Rates

Charges for the use of an Orca Solutions Insulated Vaccine Carrier shall be based on the following rates:

Orca Solutions with Temperature Logger and GPS Tracker	Per Shipment (PhP)*	Size	Capacity
Small	700.00	8" x 8" x 8"	8.4L
Medium	1,100.00	10" x 10" x 10"	16.4L
Large	1,800.00	14" x 14" x 14"	45L

\*Twelve percent VAT will be added to the basic rate.

c) Billing

The PARTIES agree to implement a 30-day billing cycle, which shall start on the date this Contract was signed. ORCA shall issue an invoice after the end of each billing cycle. Payment shall be made by the DFA within 30 working days from complete submission of the physical copy of the invoice, a certificate of service rendered issued by the DFA's Human Resource Management Office, and other pertinent documents that may be required by the DFA's Office of Financial Management Services.

All billed charges shall be based only on services actually provided. No excluded service shall be paid unless it was rendered with prior written consent of the DFA.

d) **Total Contract Cost and Payment**

All billed amounts shall be inclusive of all applicable taxes and other lawful charges, and payment shall be subject to the provisions of this Contract and usual Government accounting and auditing rules and regulations. In no case shall the total cost, including taxes and other charges imposed by ORCA, exceed **one million pesos (P1,000,000.00)**.

**4. OBLIGATIONS OF THE DFA**

- a) That ORCA shall, at all times, be fairly and timely compensated in accordance with the terms and conditions of this Contract.
- b) DFA shall furnish all necessary documents or clearances in furtherance of the purpose herein.

**5. OBLIGATIONS OF ORCA**

- a) To provide the services enumerated in Item 1 in accordance with the vaccine manufacturer's instructions and the provisions of this Contract, as well as exercise extraordinary diligence in their performance.
- b) Should the cold storage facility be completely or partially damaged, or otherwise rendered unfit for the purpose of this Contract, ORCA shall give preference to the DFA for the use of its other facilities located within or outside of Taguig City, provided that these meet the standards prescribed by this Contract.
- c) Should all of ORCA's storage facilities become unfit for use, it may transfer the vaccines to another suitable facility with prior written notice to DFA.
- d) If immediate transfer is required to preserve the vaccines, ORCA shall, as soon as possible, inform the DFA of such transfer.

**6. BREACH OF CONTRACT**

The following are deemed substantial breach of this agreement:

- a) Failure to store the vaccines at the appropriate storage temperature;
- b) Mishandling by ORCA's authorized personnel of the vaccine during transport or storage;
- c) Any other deviation from manufacturer's instructions and/or accepted industry standards in the handling and storage of the vaccines;
- d) Failure to inform the DFA within twenty-four hours (24 hours) upon discovery, of an occurrence that may compromise the normal functioning of the cold storage facilities or may have impaired the optimum storage of the vaccines;
- e) Failure to inform the DFA within twenty-four hours (24 hours) upon discovery of the loss or destruction of the vaccines;
- f) Other analogous circumstances.

Any substantial breach shall entitle the DFA to terminate the agreement without incurring liability to ORCA, and without prejudice to other remedies available to it under the law and applicable rules and regulations.

**7. FORCE MAJEURE**

- a) Should the cold storage facility be completely or partially damaged, or otherwise rendered unfit for the purpose of this Contract, due to fire, flooding, weather disturbances, earthquake, armed conflict, civil unrest, or similar events, the Contract may be terminated by either PARTY, without compensation, upon written notice.
- b) Disruption of services due to force majeure shall not exempt the DFA from payment of any fees and charges for services already rendered.

## 8. TERMINATION

- a) The PARTIES reserve the right to terminate this MOA at any time, with or without cause, by giving the other PARTY at least thirty (30) days advance written notice of termination.
- b) Should ORCA decide to terminate the Agreement, it shall assist the DFA in finding a suitable storage facility and in the safe transfer of the vaccines to the identified facility.

## 9. NON-ASSIGNMENT

The PARTIES agree not to assign transfer or convey their respective rights, title, or interest in this Contract.

## 10. MODIFICATIONS

No amendment, modification, or extension to this Contract shall be valid or binding upon the PARTIES unless agreed upon in writing.

## 11. DISPUTE RESOLUTION

- a) Any dispute, controversy, or claim between the PARTIES arising out of or relating to this Contract, including the interpretation or performance thereof ("dispute"), shall be resolved by the PARTIES in good faith within five days from receipt by a PARTY of a written notice of the issue subject of the dispute.
- b) In the event of failure of the PARTIES to settle the dispute amicably within the five-day period it shall be referred to and finally and exclusively resolved and settled by arbitration in accordance with Arbitration Rules of the Philippine Dispute Resolution Center, Inc. (PDRCI) in force at the time of the dispute. The venue of the arbitration shall be Metro Manila, Philippines, and the language of arbitration shall be English. The number of arbitrators shall be three, to be appointed in accordance with the PDRCI Arbitration Rules. The arbitration is without prejudice to the right of the PARTIES to seek protective orders or seek enforcement of the arbitral awards from a competent court.

## 12. SCOPE OF AGREEMENT

This Contract constitutes the entire agreement between the PARTIES. No representation, whether written or verbal, made prior to its execution and not otherwise incorporated in this Contract shall bind the PARTIES. In case of inconsistencies between the interpretation of the PARTIES, the interpretation that would fulfil the purpose of this Contract shall prevail.

## 13. AUTHORIZED SIGNATORIES

The Parties represent (whose representations shall survive the execution and performance hereof) and warrant that:

- a) the signatories to this Contract are duly authorized and any action relative to the execution thereof is binding to the respective organizations that they represent;
- b) this Contract has been duly executed and constitutes a legal, valid, and binding obligation enforceable in accordance with its terms;
- c) each of the officers executing this Contract has the authority to execute the same and binds the Party that he or she represents; and
- d) that their entering into and performance of their obligations under this Contract do not violate any laws or regulations nor result in a breach of any contract agreement or other obligation to which they may be bound.

## 14. PRIVILEGES AND IMMUNITIES OF THE DFA

Nothing in this agreement shall constitute as a waiver of any of the privileges and immunities of the DFA or its personnel under the domestic laws of the Republic of the Philippines and international laws."

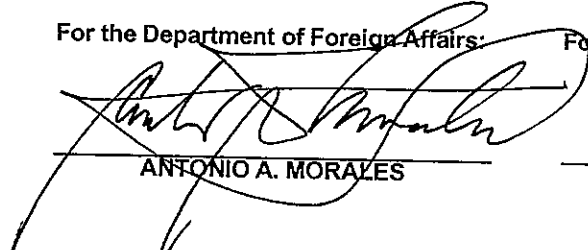
**16. SEPARABILITY**

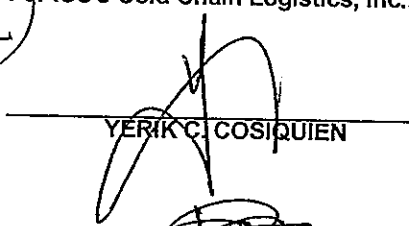
If any provision of this Contract is for any reason found to be void, invalid, or unenforceable, the unaffected provisions shall remain in full force and effect. The PARTIES shall promptly amend this Contract and/or execute such additional documents as may be necessary and/or appropriate to give legal effect to the void, invalid, or otherwise unenforceable provision in such a manner that, when taken with the remaining provisions, will help achieve the intended purpose of the Contract.

Done this 3 January 2022.

For the Department of Foreign Affairs:

For ISOC Cold Chain Logistics, Inc.:

  
ANTONIO A. MORALES

  
YERIK C. COSIQUIEN

  
CHRISTOPHER B. MONTER  
Assistant Secretary

SIGNED IN THE PRESENCE OF:

  
Ramon Jansam S. Bautista III

**ACKNOWLEDGEMENT**

REPUBLIC OF THE PHILIPPINES  
CITY OF PASAY, MANILA CITY ) S.S.


BEFORE ME, a Notary Public for and in the above jurisdiction, personally appeared the following:

NAME	ID Type	ID Number	Expiration Date
Antonio A. Morales	DFA ID	921470	3 August 2024
Yerik C. Cosiquien	Passport	P6288633A	4 March 2028

all known to me to be named persons who executed the foregoing instruments and acknowledged to me that the same is their own free will and voluntary act and deed and of the entities they represent. This instrument consists of five (5) pages, including this page wherein this Acknowledgement is written, and is signed by the PARTIES and their instrumental witnesses on each and every page hereof.

WITNESS MY HAND AND SEAL, this JUL 06 2022 day of \_\_\_\_\_ 2022 in  
PASAY CITY Philippines.

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Series of 21022

  
ATTY. IMELDA A. PANIS  
NOTARY PUBLIC EXTENDED PER EM 3795 UNTIL DEL. 31 2021  
PTR NO. 0007500 JAN. 03. 2022  
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MCLE NO. VI-0029300 NOV. 11. 2010 UNTIL #022  
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