

TERMS OF REFERENCE COURIER SERVICE

WITNESSETH: That,

The **OFFICE OF THE SOLICITOR GENERAL (OSG)** needs to engage the services of a qualified and licensed courier service provider which would ensure a faster, efficient and timely delivery of all its official documents and other printed matter, to local destinations.

I. OBLIGATIONS OF THE SERVICE PROVIDER

The main objective of this Terms of Reference is to ensure a secured handling and expedited delivery of the **OSG's** sensitive and valuable documents to the addressee/s. Towards this end, the **SERVICE PROVIDER** undertakes to deliver in an efficient and timely manner the **OSG's** official documents and other printed matter in the specified geographic area/s, in local destinations. Pursuant thereto, the **SERVICE PROVIDER** shall, to the satisfaction of the **OSG**, render, undertake and perform the following terms and conditions:

- a. **Daily pick-up of documents and other printed matter from the OSG, at 4:00pm, or as often as the need arises.**
- b. Delivery of mails to the addressee/s of the **OSG's** documents and other printed matter within one (1) calendar day, reckoned from the date of pick-up, to wit:
 - Within Metro Manila and nearby provinces (Regions 3 & 4) - within one (1) calendar day;
 - Other parts of Luzon – within one (1) calendar day;
 - Any part of Visayas Region – within one (1) calendar day;
 - Any part of Mindanao Region – within one (1) calendar day.
- c. In instances where the addressee/s cannot be located, or delivery is not effected at the first attempt for the reasons not due to the fault of the **SERVICE PROVIDER**, the latter shall pursue the delivery until there (3) attempts within the period specified as follows: (i) three (3) calendar days, if within Metro Manila, nearby provinces and other parts of Luzon; and, (ii) five (5) calendar days, in any parts of Visayas and Mindanao Regions.
- d. Release of courier containing OSG document and other printed matters shall be made only to the addressee or authorized representative and only upon presentation to and verification by the **SERVICE PROVIDER** of the authenticity of the identification card/s presented by the addressee or authorized representative.
- e. Return to the **OSG** all unclaimed couriers containing the OSG documents and other printed matter within five (5) calendar days from the **OSG's** dispatch.
- f. Submit to the **OSG** within thirty (30) calendar days, reckoned from the **OSG's** dispatch the following:
 - Delivery Status Report and Delivery Receipts duly acknowledged by the addressee/s or his/her authorized representatives, with signature over his/her printed name as proof that the addressee has received the document/printed matter.;
 - Other reports and relevant documents as may be required by the **OSG**;
 - Billing/Statement of Accounts on a monthly basis.

II. SERVICE FEE AND ALLOCATED BUDGET

The **OSG** shall pay the amount/s due to the **SERVICE PROVIDER** for the services actually rendered by the latter to the former, strictly in accordance with the fee schedule prescribe hereunder.

The price ceiling and allocated budget per geographic area shall be as follows:

LOCAL DESTINATIONS:

| Geographic Area | Price Ceiling per Area (in Php) | Estimated Annual Number of Mails for Courier Delivery | Budget Allocation (in Php) |
|--------------------|---------------------------------|---|----------------------------|
| Manila/NCR | 85.00 | 1200 | 102,000.00 |
| Luzon | 110.00 | 2500 | 275,000.00 |
| Mindanao | 120.00 | 1025 | 123,000.00 |
| GRAND TOTAL | | | 500,000.00 |

The above stated amounts shall be understood as inclusive of any and all taxes (including, but not limited to the applicable Value Added Tax), fees, duties and such other imposts or levies which may be required by the government.

III. BILLING

The **OSG** shall effect payment in check within thirty (30) working days from receipt of the billing statement from the **SERVICE PROVIDER**. All payments made by the **OSG** shall be subject to applicable taxes and usual accounting and auditing rules currently in force.

IV. DURATION

The Contract shall immediately take effect upon its execution and shall remain effective for a period of one (1) year from **January 2018 to December 2018**.

The **OSG** reserves the right to terminate this Contract for any cause which may include failure of the **SERVICE PROVIDER** to perform in a timely and acceptable manner any of their works, duties, functions, responsibilities or obligations stipulated herein or failure to carry out the tasks herein required in a manner acceptable to the **OSG** or violation by the **SERVICE PROVIDER** of any of the terms and conditions of this Contract, subject to sanctions and remedies provided for herein and under the pertinent laws, rules and regulations.

V. CONFIDENTIALITY

The **SERVICE PROVIDER** agrees that the services covered by this Contract are strictly confidential and that a breach of any of the terms and conditions thereof by the **SERVICE PROVIDER** may subject the **OSG** to financial, material and operational loss, and therefore, the **SERVICE PROVIDER**, hereby agrees as follows:

- a. The **SERVICE PROVIDER** and any of its personnel shall not, either during the term of this Contract or at anytime thereafter reveal, disclose, or furnish

in any manner, to any person, firm or corporation any information relating to the **OSG** which the **SERVICE PROVIDER** or other members of its staff/team, may have acquired or which came to his/their knowledge or possession during their work for the **OSG**;

- b. Only the persons expressly authorized by the **OSG** shall be allowed by the **SERVICE PROVIDER** to have access to the documents/records in the custody of the **SERVICE PROVIDER**. The authorization shall be in writing. For this purpose, the **OSG** shall inform the **SERVICE PROVIDER** in writing of the person/s authorized to have access to the documents/records;
- c. **The SERVICE PROVIDER** shall prevent any unauthorized person from gaining access to the documents/records;
- d. **The SERVICE PROVIDER** agrees to assume sole responsibility and hereby undertakes to indemnify the **OSG**, for any damage, which the **OSG** may sustain by reasons of breach of the above conditions.

VI. REPRESENTATIONS AND WARRANTIES

The **SERVICE PROVIDER** represents and warrants to the **OSG** that:

- a. It is a domestic corporation duly registered and existing under and by virtue of the laws of the Republic of the Philippines.
- b. It has full legal power, authority and right to carry on its present business. It further warrants that its representative _____ has full legal power to sign, execute and deliver this Contract and that it will comply, perform, and observe the terms and conditions thereof.
- c. All corporate and other actions necessary to validate or authorize the execution and delivery of this Contract have been taken.
- d. This Contract, when executed and delivered, will be legal, valid and enforceable in accordance with its terms.
- e. It has proven track record of at least three (3) years in the handling of "door-to-door and immediate delivery" of sensitive and valuable documents.
- f. It has a wide-range delivery network in the areas specified in Section II hereof.

VII. PERFORMANCE SECURITY

- a. To guarantee the faithful performance of the obligations and services required under this Contract, the **SERVICE PROVIDER** shall, upon execution of this Contract, post in favour of the **OSG** a Performance Security in the form of Surety Bond in an amount equivalent to _____% of Php _____.
- b. In the event that the Performance Security offered by the **SERVICE PROVIDER** would be deemed inadequate or otherwise rendered unacceptable, the **OSG** shall have the right to require the **SERVICE PROVIDER** to post a performance in the form and amount determined by the **OSG**, and allowed under existing laws and regulations.
- c. The Performance Security shall be released seven (7) working days from **OSG's** issuance of the certification of the **SERVICE PROVIDER's** faithful and complete performance of its obligations under this Contract. The Performance Security shall answer for any damage the **OSG** may suffer from reason of the **SERVICE PROVIDER's** default of any of its obligations

and/or breach of the terms and conditions of this Contract. It shall likewise guarantee payment for any loss, damage or injury that may be caused by the **SERVICE PROVIDER** to the **OSG**, its employees and guests.

- d. The Performance Security shall be forfeited in favor of the **OSG** in the event that the **SERVICE PROVIDER** is in default or breach of its obligations under this Contract. Any changes made in this Contract shall in no way annul, release or affect the liability of the **SERVICE PROVIDER** and the surety.
- e. Failure of the **SERVICE PROVIDER** to comply with any of the terms and conditions of this Contract shall result in the forfeiture of the Performance Security, in addition to other remedies that the **OSG** may exercise under this Contract, pertinent laws, rules and regulations.

VIII. LIQUIDATED DAMAGES

- a. In the event that the **SERVICE PROVIDER** violates any of the terms and conditions of this Contract, or neglects to perform in a timely manner any of the works, duties, functions, responsibilities or obligations stipulated herein, inclusive of the duly granted time extension, if any, or fails to carry out the tasks herein required in an acceptable manner for any reason whatsoever, the **SERVICE PROVIDER** shall be liable for damages for such failure and shall pay the **OSG** liquidated damages in an amount equivalent to one-tenth (1/10) of one percent (1%) of the total contract price of every day of delay or breach, in addition to other remedies that **OSG** may exercise under this Contract, pertinent laws, rules and regulations until services are finally delivered and accepted by the **OSG**. In the event that the total sum of liquidated damages of the total cost to the **OSG** of any such delay or inability by the **SERVICE PROVIDER** to deliver its obligations exceeds 10% of the Contract price, the **OSG** may terminate this Contract upon giving the **SERVICE PROVIDER** written notice at least five (5) calendar days prior to the intended date of termination and impose other appropriate sanctions over and above the liquidated damages.
- b. The **OSG** need not prove that it has incurred damages to be entitled to liquidate damages. Furthermore, the **OSG** reserves the right to deduct any and all of the liquidated damages, including all other liabilities, from any money due or payments which may become due to the **SERVICE PROVIDER**, under the terms of this Contract and/or from the performance security filed by the **SERVICE PROVIDER**, as the **OSG** may deem convenient and expeditious under the prevailing circumstance.

IX. SUSPENSION OF PAYMENT/TERMINATION FOR DEFAULT

- a. The **OSG** shall have the right to suspend, in whole or in part, any payment due to the **SERVICE PROVIDER** under this Contract in the event there is delay, default, failure or refusal on the part of the **SERVICE PROVIDER** to perform its obligations under this Contract in an acceptable manner. Further, the **OSG** shall have the right to procure/engage, upon such terms and manner as the **OSG** shall deem appropriate, the services of another contractor to undertake the unperformed/undelivered service(s) of the **SERVICE PROVIDER**. Any and all expenses that may be incurred in relation thereto shall be for the exclusive account of the **SERVICE PROVIDER**.
- b. In the event that such delay, default, failure or refusal continues for a period equivalent or corresponding to more than ten (10%) percent of the Contract price or time, whichever comes first, inclusive of the duly granted time extension, if any, the **OSG** shall have the right to terminate this Contract upon giving the **SERVICE PROVIDER** written notice at least five (5) calendar days prior to the intended date of termination. In addition, the **OSG**

shall have the right to procure/engage the services of another contractor to complete the services required of the **SERVICE PROVIDER** under this Contract. Any and all expenses that the **OSG** may incur in connection there to shall be for the sole account of the **SERVICE PROVIDER**.

- c. The **SERVICE PROVIDER** hereby agrees that the remedies mentioned above shall be understood to be without prejudice to other right and remedies that the **OSG** may exercise under this Contract, applicable laws, rules and regulations.

X. OTHER GROUNDS FOR TERMINATION

- a. The **OSG** may immediately terminate this Contract, after giving the **SERVICE PROVIDER** written notice at least five (5) calendar days prior to the intended date of termination, whenever it is determined by the **OSG** that the **SERVICE PROVIDER** has engaged, before or during the implementation of this Contract, in unlawful deeds and behaviors relative to Contract acquisition and implementation. Unlawful acts shall include, but not necessarily limited to, the following:

- Corrupt, fraudulent, and coercive practices as defined under R.A 9184 otherwise known as the "*Government Procurement Reform*;"
- Drawing up or using forged document; and
- Any other act analogous to the foregoing.

- b. The **SERVICE PROVIDER** hereby agrees that the termination referred to herein shall be understood to be without prejudice to other rights and remedies available to the **OSG** under this Contract or the applicable laws.

XI. INDEMNITY

The **SERVICE PROVIDER** shall indemnify the **OSG** against any lose, injury or damage either to person or property which the **OSG** may suffer by reason of the willful, unlawful or negligent act or omission of the **SERVICE PROVIDER** or any of its personnel or representative. The indemnity required herein shall be in addition to the forfeiture of the Performance Security.

XII. RELATION OF THE PARTIES

The **SERVICE PROVIDER** shall have no authority, express or implied, to assume or create any obligation or responsibility on behalf of or in the name of **OSG** in any manner whatsoever. The **SERVICE CONTRACTOR's** personnel, representatives or staff shall not be construed as employees of the **OSG**. The **SERVICE PROVIDER** is being engaged herein as an independent contractor. Nothing herein shall be construed as creating an employer/employee relationship between the **SERVICE PROVIDER's** employees, representatives or staffs and the **OSG**.

XIII. NON-WAIVER OF RIGHTS

The failure of the **OSG** to insist upon the strict performance of any of the terms, conditions and covenants hereof shall not be deemed a relinquishment or waiver of any right or remedy that the **OSG** may have nor shall it be construed as a waiver of any subsequent breach or default of the terms, conditions and covenants hereof, which in turn, shall continue to be in full force and effect. No waiver by the **OSG** of any of its right under this Contract shall be deemed to have been made unless expressed in writing and signed by the **OSG**.

XIV. MISCELLANEOUS PROVISIONS

a. **Severability** – If any provision of this Contract should, for any reason, be held void or unenforceable, the legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired, and shall remain in full force and effect.

b. **Binding Effect/ Assignment of Rights** – This Contract shall be binding upon the **SERVICE PROVIDER**, its partners, successors-in-interest, its legal representatives and assigns. Foregoing, notwithstanding, the **SERVICE PROVIDER** shall not in any manner, directly or indirectly, assign or transfer its rights and obligations under this Contract without the written approval of the **OSG**.

c. **Amendment** – This Contract may be amended or modified only in writing upon mutual agreement of the parties thereto.

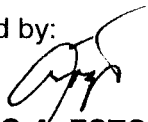
d. **Governing Law and Language** – The right and obligation of the parties hereto shall be governed and interpreted in accordance with the laws of the Republic of the Philippines, specifically, the provisions of RA 9184, otherwise known as the “Government Procurement Reform Act” and other applicable laws, rules and regulations.

e. **Documents Incorporated** – The Provisions of this Contract shall be read in harmony with the Terms of Reference and other related bid documents. In case of conflict, the provisions of this Contract shall prevail.

f. **Venue of Action** - It is hereby agreed that any and all actions that shall arise from this Contract shall be instituted and tried before the proper court/s of the City of Makati only.

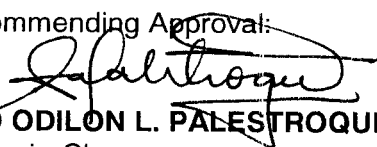
g. **Attorney’s Fees** – In the event that the **OSG** is compelled to seek judicial relief to enforce the provisions of this Contract, it shall be entitled to attorney’s fees and liquidated damages equivalent to ten percent (10%) and fifteen percent (15%) respectively, of the contract price or the amount claimed in the judicial action whichever is higher, aside from the costs of litigation and other expenses incidental thereto.

Prepared by:



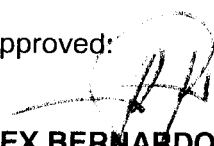
ARTEMIO A. ESTOQUE, JR.
Supervising Administrative Officer

Recommending Approval:



NILO ODILON L. PALESTROQUE
Officer-in-Charge
Docket Management Service

Approved:



REX BERNARDO L. PASCUAL
Assistant Solicitor General ⁱⁿ
Supervising ASG for DMS