

20-00166

SERVICE CONTRACT

KNOW ALL MEN BY THESE PRESENTS:

That this Agreement, made and entered into this 30th day of April 2020 in the City of _____, Philippines, by and between

The **DEPARTMENT OF TOURISM**, a government agency with principal office address at the New DOT Building, 351 Sen. Gil Puyat Avenue, Makati City, Philippines 1200 and represented by its Undersecretary **ARTURO P. BONCATO JR.** of legal age, Filipino, hereinafter referred to as the **FIRST PARTY**;

and

CEBU AIR, INC. is a private entity existing and duly registered under the laws of the Philippines, with office address at Cebu Pacific Building Domestic Road Barangay 191 Zone 20 Pasay City, Philippines 1301 and represented by its Authorized Representative Chief Strategy Officer, **ALEXANDER G. LAO**, and hereinafter referred to as the **SECOND PARTY**;

Each a Party, and collectively, the **PARTIES**.

WITNESSETH:

WHEREAS, the **FIRST PARTY** is the primary planning, programming, coordinating, implementing and regulatory government agency in the development and promotion of the tourism industry, both domestic and international;

WHEREAS, on 08 March 2020, the President issued Proclamation No. 922 *Declaring a State of Public Health Emergency Throughout the Philippines* in light of the 2019 Corona Virus Disease (COVID-19);

WHEREAS, on 09 March 2020, the Government Procurement Policy Board (GPPB) issued Resolution No. 03-2020 entitled *Approving the Adoption of Efficient, Effective, and Expedient Procurement Procedures During a State of Public Health Emergency*;

WHEREAS, on 16 March 2020, the President issued Proclamation No. 929 *Declaring a State of Calamity throughout the Philippines due to Corona Virus Disease 2019 (COVID-19)*;

WHEREAS, on 28 April 2020, the Inter-Agency Task Force for the Management of Emerging Infectious Diseases issued the Resolution No. 29 *Recommendations relative to the Management of the Coronavirus Disease 2019 (COVID-19) Situation* which authorized the Department to undertake necessary measures to charter and find sweeper flights for stranded domestic tourists from other regions to the National Capital Region (NCR);

WHEREAS, the **FIRST PARTY** is in need of the services of the **SECOND PARTY** to provide a sweeper flight to ferry stranded local tourists in Cebu City on 02 May 2020;

WHEREAS, the requirement was processed in compliance with the procedure on **Negotiated Procurement (Emergency Cases)** pursuant to Section 53.2 of the Implementing Rules and Regulations (IRR) of Republic Act No. 9184 (Government Procurement Reform Act), as amended by GPPB Resolution No. 03-2020;

WHEREAS, the Bids and Awards Committee (BAC) of the **FIRST PARTY**, through **BAC Resolution No. 2020-093**, has declared the **SECOND PARTY** to be the bidder with the Lowest Calculated and Responsive Bid (LCRB) for **Item No. 5** as its quotation is found to be

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compliant and responsive to the technical specifications indicated in the Request for Quotation (RFQ);

NOW, THEREFORE, based on the foregoing, the **PARTIES** hereby agree as follows:

1. **SERVICES.** The **SECOND PARTY** shall provide the **FIRST PARTY** with the necessary requirements as follows:
 - Route: MNL-CEB-MNL
 - Aircraft: Airbus 320 with 180 seats
 - Inclusive of fuel cost, overfly and navigational fees, ground handling services, and other logistics required

Details of the technical specifications are indicated in the attached **Terms of Reference**, which forms an integral part of this contract.
2. **COMPENSATION.** By way of compensation for its services, the **FIRST PARTY** shall pay the **SECOND PARTY** the total amount indicated in the Statement of Account, which shall be based on actual expenses incurred, but not to exceed **Six Hundred Sixty-Five Thousand Two Hundred Eighty Pesos Only (Php 665,280.00)** for the total actual cost of services rendered inclusive of VAT and other taxes.
3. **PAYMENT.** The above consideration will be paid by the **FIRST PARTY** within seven (7) working days after presentation of the required Statement of Account and complete supporting documents. It is understood, however, that payment shall only be made after it has fully and satisfactorily rendered its undertaking under this agreement.
4. **LIQUIDATED DAMAGES.** When the **SECOND PARTY** fails to satisfactorily render the services under this Agreement within the specified schedule, the **SECOND PARTY** shall be liable for damages for the delay and shall pay the procuring entity liquidated damages, not by way of penalty, in an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the delayed services scheduled for delivery for every day of delay. The **FIRST PARTY** need not prove that it has incurred actual damages to be entitled to liquidated damages. Such amount shall be deducted from any money due or which may become due to the **SECOND PARTY**, or collected from any securities or warranties posted by the **SECOND PARTY**, whichever is convenient to the procuring entity concerned. In no case shall the total sum of liquidated damages exceed ten percent (10%) of the total contract price, in which event the **FIRST PARTY** concerned may rescind the contract and impose appropriate sanctions over and above the liquidated damages to be paid.
5. **FREE AND HARMLESS.** The **SECOND PARTY** shall hold the **FIRST PARTY** free and harmless from, and hereby binds and obligates itself to indemnify the **FIRST PARTY** for any and all liabilities, losses, damages, injuries, including death, claims, demands, suits, proceeding, judgements, awards, fines, penalties and all expenses, legal or otherwise of whatever kind or nature arising from and by reason of this Agreement, due to the fault, negligence, act, act omission, delays, conduct, breach of trust, or non-observance or violation of this Agreement, or any of its stipulation and warranties by the **SECOND PARTY** and/or any of its employees, agents, representatives, or sub-contractors.
6. **DISPUTE RESOLUTION.** If any dispute shall arise between the **FIRST PARTY** and the **SECOND PARTY** in connection with this Agreement, the Parties shall make every effort to resolve such dispute amicably. Should such dispute not be resolved, the same will be referred for arbitration in accordance with RA No. 876 or the *Arbitration Law* and RA No. 9285 or the *Alternative Dispute Resolution Act of 2004*.
7. **ELECTRONIC SIGNATURES.** The parties shall be entitled to sign and transmit this Agreement with an electronic signature whether by facsimile, e-mail, or other electronic

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means, which signature shall be binding on the Party whose name is contained therein. Any Party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed Agreement upon request.

8. **COMPLETENESS OF AGREEMENT.** This Agreement, along with the select provisions in the annexes made integral parts hereof, contains the complete understanding of the Parties and may not be modified or amended except through another Agreement in writing duly executed by the parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives on the date stated above.

DEPARTMENT OF TOURISM

By:



ARTURO P. BONCATO JR.
Undersecretary

CEBU AIR, INC.

By:



ALEXANDER G. LAO
Chief Strategy Officer

Signed in the presence of:





FUNDS AVAILABLE:



Ms. AIDA T. SORIANO
Chief, Accounting Division, DOT

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ACKNOWLEDGEMENT

Republic of the Philippines) S.S
City of Makati

On this 7th day of October, 2020 personally appeared before me, a Notary Public in and for the City of Makati, the following persons:

Name	Government ID	Date Issued	Place Issued
<u>Arturo P. Boncato, Jr.</u>	<u>DOT ID# 180039</u>		
<u>Alexander G. Lao</u>	<u>PA 80572498A</u>		

all known to me to be the same person who executed the foregoing Agreement and acknowledgement that the same is an act of their free and voluntary will and deed and of the entity that they respectively represent.

IN WITNESS WHEREOF, I hereunto sign this document and affix my seal of office on this date and place aforementioned.

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Page No. 89
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Series of 2020.

ATTY: AUDELEE RAMORA
NOTARY PUBLIC
UNTIL DECEMBER 2021
PENTHOUSE, LEGAL AFFAIRS SERVICE, DOT BLDG
PTR NO. 8144677 - 1/15/20 - MAKATI CITY
IBP LIFETIME MEMBER 04646 / MAKATI CITY
ROLL NO. 44115-MCLE VI-0024349

[Handwritten signatures and initials on the right margin]