

MTC 119-21

MEMORANDUM OF AGREEMENT

23 JUL 2021

This Memorandum of Agreement ("Agreement") is made and entered into this \_\_\_ day of \_\_\_ 2021 in Pasay City by and between:

The DEPARTMENT OF FOREIGN AFFAIRS (hereinafter referred to as "FIRST PARTY"), a national government agency of the Philippine Government created by virtue of Commonwealth Act No. 732 dated 03 July 1946, with principal address at 2300 Roxas Boulevard, Pasay City, Metro Manila, Philippines, through its office, Office of Public and Cultural Diplomacy (OPCD), and herein represented by the Department's Head of Procurement Entity (HOPE) Undersecretary Ernesto C. Abella.

and

ManilART Foundation, Inc. (hereinafter referred to as the "SECOND PARTY"), an organization duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address 4<sup>th</sup> Floor Building A, SM Megamall, Mandaluyong City, represented by its President, IMELDA ROSARIO W. LOSTE. (attached as Annex A)

WITNESSETH:

WHEREAS, the services of the SECOND PARTY will be engaged for the commemoration of the Museums and Galleries Month by the FIRST PARTY;

WHEREAS, the SECOND PARTY will serve as the institutional partner to promote Balay Kalipay, located in Malagos, Davao City, as featured museum and will feature its ManilART 21 "off-site exhibition";

WHEREAS, the SECOND PARTY shall produce, curate, and host an online 360 walkthrough video tour exhibit of Balay Kalipay Museum and an online panel discussion/forum, and make d make available all online materials related thereto (the "Project");

WHEREAS, the SECOND PARTY shall adhere to the pre-declared objective and goal of the FIRST PARTY in performing the services;

WHEREAS, the SECOND PARTY shall be responsible to secure all permits required in producing the 360 museum video tour and forum;

WHEREAS, the FIRST PARTY shall own the rights of the video of the virtual reality tour;

WHEREAS, the SECOND PARTY warrants and represents that it possesses the qualifications, resources, necessary authority/licenses, and expertise to render services required by the First Party under the terms and conditions specified herein";

NOW, THEREFORE, for and in consideration of the foregoing premises, and the covenants and undertaking herein below set forth, the Parties agree as follows:

I. SCOPE AND EFFECTIVITY

Section 1. Scope and Effectivity. – The Parties hereby agree to enter into this Agreement upon its signing by both Parties, for the duration of the conduct of the production of the virtual video tour and upon fulfillment of the Parties' undertakings herein, unless earlier terminated.

Section 2. Undertakings of the FIRST PARTY

FIRST PARTY shall be responsible for the following:

1. To pay the SECOND PARTY a service fee inclusive of all government tax in the amount of THREE HUNDRED AND THIRTY-THREE THOUSAND PESOS AND THIRTY-THREE CENTAVOS (Php 333,333.33) to SECOND PARTY, to cover the cost of the 360 online museum video tour mounted and produced for the commemoration of the Museum and Galleries Month. The foregoing fee shall be payable in two (2) tranches in accordance with such schedule as

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LUIS R. REBAGODA  
Signing Officer

Ernesto C. Abella

[Signature]

[Signature]

may be agreed under this Agreement or in writing by the parties, without need of further demand;

2. To approve, based on the guidelines provided herein, the production schedule, work plan submitted by the **SECOND PARTY**.
3. To ensure all health protocols and prescribed safety guidelines for the location shoot are followed by the production crew. Any and all cost related to the such compliance and enforcement thereof shall be for the account of the **FIRST PARTY**.
4. To ensure that no part of the video is recorded, reproduced, transmitted or made available to the public without the prior written consent of the parties and that, where required, that the creator's prior consent to the recording has been obtained. This includes an obligation on the part of the **SECOND PARTY** to ensure that action is taken to prevent members of the audience from making unauthorized recordings on mobile telephones, tablets or other electronic devices.
5. To ensure that third parties such as advertisers and event sponsors shall not use the **FIRST PARTY** and the **SECOND PARTY** and all exhibits involved or likeness for the endorsement of any product or service without the written consent of all parties involved.
6. To allow the use of the Project and all materials related thereto by the **SECOND PARTY** for the duration of Museums and Galleries Month and ManilART21 specifically for its portal at [www.manilartfair.com](http://www.manilartfair.com).

### Section 3. Undertakings of the **SECOND PARTY**.

1. Conceptualize and manage the mounting of the video tour.
2. Create a Production Management Team to coordinate and oversee the shooting of the video production.
3. Submit a detailed production schedule, shot plan, and video tour guidelines.
4. Develop and submit the creative and narrative concept, online forum details.
5. Invite the panelists for the online forum.
6. Attend meetings for updates and consultations with the **FIRST PARTY**.
7. Edit videos with voice over and interviews of the curator and featured artist.
8. Produce and present the first and subsequent drafts of the Video to the **FIRST PARTY** for review and comments.
9. Produce and present the revised Video and the 5-minute teaser for final approval.
10. Submit the final Video to the **FIRST PARTY** complete with editing, graphics, and color grading saved in a portable external hard drive, plus 3 separate copies in MP4 format and DCP format in flash drives with a 5-minute teaser will also be submitted.
11. Turn over all raw materials used for the production of the documentary that will be saved in a portable external hard drive.
12. Pay all the staff hired for the production of the video tour production.
13. Not to use for commercial purposes, the name, logo, or other identification of the **FIRST PARTY** without its prior consent and approval in accordance with the required specifications.
14. To immediately report to the **FIRST PARTY** in writing any problems encountered which may endanger or obstruct the implementation of this Agreement and its proposed solutions;
15. Submit all documents required for the processing of the payment.
16. Agrees to the location shoot and coordinate with the **FIRST PARTY** for any preferred location.
17. Attend scheduled meetings or send representative for updates and consultations with the **FIRST PARTY**.
18. Ensure that all materials used will be reasonably faithful to the concept, no advertising of products used, clothes worn, equipment used, location/venue used for the video tour.
19. Provide accurate, well researched curatorial information for the script of the video tour.
20. Ensure that the songs used are protected under copyright laws, and permits were secured.
21. Make use of modern digital technology in shooting, editing, and transferring copies.
22. Ensure that the script, curatorial notes, and other artistic creation are original and not plagiarized.
23. Cite or seek permission for photos, video that will be used in the exhibit and video tour production.
24. Ensure that the final Video submitted is par excellence.
25. The **SECOND PARTY** must be responsible for the conduct, discipline, and compliance with labor related matters of its staff hired, including members of the Production Management Team or production crew, and any other third party it deems necessary to contract, if any, and ensure that they shall comply with all relevant rules and regulations of the First Party, the Philippine Government, and the terms of this Agreement;

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26. The **SECOND PARTY** shall furnish the **FIRST PARTY** with a copy of the list of names and other information as may be required, of the production management and crew.
27. The **SECOND PARTY** must comply with the standard health protocols of the IATF.
28. The **SECOND PARTY** must ensure all health protocols and prescribed safety guidelines for the location shoot are followed by the production crew.
29. The **SECOND PARTY** must ensure any and all cost related to the such compliance and enforcement thereof shall be for the account of the **SECOND PARTY**.
30. The parties agree that the intellectual property rights over any creative work or conceptualization arising out of this Agreement shall be owned exclusively by the **SECOND PARTY**; however, the **SECOND PARTY** shall license the use of the same in accordance with the purpose of this Agreement to the **FIRST PARTY** during the duration of the term of this Agreement.
31. The **SECOND PARTY** must assume all taxes, fees expenses, and costs arising out of or as a consequence of this Agreement

**Section 4. Confidentiality.** – The Parties hereto agree to keep all dealings, transactions, communications, correspondences, documents, and records relative to this particular Agreement, whether acquired by either Party prior to, during, or after the consummation of this Agreement, confidential and such shall be considered proprietary information and subject to non-disclosure by both Parties, except when so required in the organization and implementation of the project or as required by law.

**Section 5. Timeline and Deliverables** — The **SECOND PARTY** shall deliver to the **FIRST PARTY**, the following expected output within the corresponding timeline provided. Any delay in the submission of the deliverables shall constitute a ground for termination of the Agreement, without prejudice to the **FIRST PARTY's** availment of any and all remedies available to it, unless otherwise agreed upon by the Parties in writing, or where such delay is due to force majeure or other justifiable reasons; provided that due written notice is given by the **SECOND PARTY** to the **FIRST PARTY**;

ACTIVITY	Date
Concept Meeting, Approval of Concept	27-30 July 2021
Profiles of Balay Kalipay, Panelists, Kublai Millan and other exhibitors	27-30 July 2021
Deck of the video tour submitted for approval	10 September 2021
Submission of teaser Video, Online Forum Script	10 September 2021
Submission of Final Virtual Reality Video with Exhibit Hosting of the video tour and online panel discussion/forum	20 September 2021

**Section 7. Payment Procedure**

**A. The FIRST PARTY shall:**

1. The aforementioned amount shall be released in **two (2) tranches** to the **SECOND PARTY** subject to the provisions of this Agreement and the usual government accounting and auditing rules and regulations. Payments shall be made within thirty (30) calendar days upon receipt of the invoice with the following supporting documents:
  - a. PHILGEPS
  - b. BIR or Mayor's Permit
  - c. Income Tax Return
  - d. Billing Request (Original- Format provided by DFA)
  - e. Provisional Receipt (Original- Format provided by DFA)
  - f. Duly Signed and Notarized Contract
  - g. Curriculum Vitae of the Artist
  - h. Bank Details and TIN No.
2. The contract price, inclusive of all applicable taxes and other lawful charges amounts to **THREE HUNDRED AND THIRTY-THREE THOUSAND PESOS AND THIRTY-THREE CENTAVOS (Php 333,333.33)**, with payment to be made in two (2) tranches, as follows:
  - 50% - Upon Submission of Initial research, quotation, concept notes, work schedule submission of Script, Video Deck
  - 50% - Upon submission of the Final and approved teaser and final video and hosting of the video tour and online panel discussion/forum
3. The total amount above shall cover the professional fees of artists, production and related costs of the Project, materials, administration expenses, and all other costs, expenditures, charges, fees, and/or taxes, if any, in relation to the production, conduct

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*LR*

LUIS R. REBAGODA  
Signing Officer

Shirley and Mary

*[Handwritten signature]*

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4. The **SECOND PARTY** shall:

1. Issue an official receipt to the **FIRST PARTY** as proof and acknowledgment of receipt of the herein mentioned amount for the herein mentioned purpose.

**III. NO EMPLOYEE-EMPLOYER RELATIONSHIP**

Nothing in this Agreement shall be construed as establishing any agency, partnership joint venture, employer-employee, or any other joint relationship between the **FIRST PARTY** and its employees, staff, personnel, participants, agents, and representatives, on the one hand, and the **SECOND PARTY** and its employees, staff, personnel, participants, agents, and representatives, on the other. Neither is deemed to be an employee, agent, or representative of the other.

Each Party shall be responsible for the payment of wages, fees, salaries, allowances, expenses under applicable laws, and all other claims of their respective employees, staff, personnel, participants, agents, and representatives, as applicable.

**IV. DISPUTE RESOLUTION**

In the event of any dispute or difference that may arise between the **Parties** in connection with this Agreement or the interpretation and project of any of its provisions, the **Parties** shall exert their best efforts to amicably settle such dispute or difference. In the event that an amicable settlement cannot be achieved, the **Parties** agree to settle the matter with finality by submitting the same for arbitration which shall be conducted by one (1) arbitrator to be appointed by the President of PDRCI and in accordance with Philippine Dispute Resolution Center, Inc. (PDRCI) subsisting Rules. The arbitration proceedings, including all records, documents, pleadings, orders and judgments filed or rendered in pursuant thereto, shall be kept confidential. The seat and venue of arbitration shall be Pasay City, Metro Manila, Philippines. Nothing in this Agreement shall prevent the **FIRST PARTY** from applying to a court of a competent jurisdiction for provisional or interim measures or injunctive relief as may be necessary to safeguard the property or rights that are the subject matter of the dispute;

**V. THIRD PARTY CONTRACTS**

Any other contract or agreement entered into by the **SECOND PARTY** with a third party shall be exclusively between such parties, to the exclusion of the **FIRST PARTY**. The **SECOND PARTY** warrants that it shall hold free and harmless the **FIRST PARTY** from any and all such suits, and in no event shall it be held liable to such third parties for any special, incidental, indirect, consequential, or punitive damages relating to the conduct or completion of the Project.”;

**VI. NON-ASSIGNMENT or TRANSFER OF RIGHTS**

Neither Party may assign, transfer, or convey its rights or obligations to this Agreement in favor of third parties unless the other Party consents to such assignment. In all cases of approved assignment of rights, however, the assigning Party shall ensure that the assignee respects and abides by all the terms and conditions of this Agreement;

**VII. INTELLECTUAL PROPERTY**

The **SECOND PARTY** assigns to the **FIRST PARTY** all intellectual property rights pertaining to the **SECOND PARTY** on the Projects and related activities conducted by the **SECOND PARTY** pursuant to this Agreement. The **FIRST PARTY** shall have a license to use copies of the outputs of the Project in connection with the purpose for which they are prepared and produced, provided that the **SECOND PARTY** has been paid the full amount stated herein. No recording in whatever form of the Project or any such activity of the **SECOND PARTY** or portions thereof shall be reproduced or used in any form for any other purpose other than that stated in this Agreement, without the prior written consent of the **FIRST PARTY**;

Except for Clause I, Section 2, Item No.5, the **FIRST PARTY** owns all the copyright over the Project. The **FIRST PARTY** shall have a license to use copies of the outputs of the Project in connection with the purpose for which they are prepared and produced, provided that the **SECOND PARTY** has been paid the full amount stated herein. The **SECOND PARTY** shall keep all the moral rights over the Project on behalf of the creators;

**VIII. TERMINATION /PRE-TERMINATION**

This Agreement shall terminate upon: (i) Complete project by both Parties of their respective obligations under this Agreement; or (ii) upon mutual written agreement of the Parties; or (iii) Cancellation of the Project. Either Party may terminate this Agreement upon all cases fifteen (15)

*Edwards & Mearns*

AGREEMENT UPON ALL CASES FIFTEEN (15)  
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*JR*

LUIS R. REBAGODA  
Signing Officer

days prior written notice to the other Party, without prejudice to the payment of accrued fees. Upon such termination, the **FIRST PARTY** shall have the right to take immediate possession and intellectual property rights of all data and materials pertaining to the Project and this Agreement, as far as practicable. Such transfer of possession and rights shall be at the sole expense of the **SECOND PARTY** if the latter deliberately, willfully, and capriciously fails to comply with the terms of this Agreement, without prejudice to the enforcement of procurement rules and regulations on pre-termination and available remedies;

**IX. BINDING EFFECT/AUTHORIZATIONS.**

The Parties agree that if any provision of this Agreement is judicially declared to be void, invalid or otherwise unenforceable, said provision shall not invalidate the remaining provisions thereof. The Parties shall, subject to their mutual agreement, promptly amend this Agreement and/or execute such additional documents as may be necessary to give legal effect to the void, invalid or unenforceable provision in a manner that, when taken with the remaining provisions, will achieve the intended purpose of the void, invalid, or otherwise unenforceable provision;

**X. AMENDMENT.**

Only a written instrument signed by both parties' duly authorized representatives shall modify, amend, or alter the terms and conditions of this Agreement;

**XI. COUNTERPARTS.**

The Agreement may be executed in counterparts, and all of those counterparts taken together shall constitute one and the same instrument, provided that, this Agreement shall not be effective unless both parties have executed its counterpart;

**XII. SEVERABILITY.**

The Parties agree that if any provision of this Agreement is judicially declared to be void, invalid or otherwise unenforceable, said provision shall not invalidate the remaining provisions thereof. The Parties shall, subject to their mutual agreement, promptly amend this Agreement and/or execute such additional documents as may be necessary to give legal effect to the void, invalid or unenforceable provision in a manner that, when taken with the remaining provisions, will achieve the intended purpose of the void, invalid, or otherwise unenforceable provision;

**XIII. ENTIRE AGREEMENT.**

This Agreement and all of its attachments constitute the entire understanding between the parties with respect to the subject matter hereof, and supersedes any and all prior understandings, arrangements, and agreements, oral and in writing, relating thereto;

**XIV. FURTHER ACTS AND ASSURANCES.**

Each of the parties agrees to execute and deliver all such further instruments, and to do and perform all such further acts and things, as shall be necessary or convenient to carry out the provisions of this Agreement;

**XV. GOVERNING LAW.**

This Agreement shall be deemed to have been made in and shall be governed by and construed in accordance with the laws of the Republic of the Philippines;

**XVI. NON-WAIVER.**

The failure of either party at any time to enforce any provision of this Agreement will in no way affect the right of such party thereafter to require the project of such provision by the other party. The waiver of any breach of any provision hereof will not be interpreted or held to be a waiver of any succeeding breach of the same provision, or as a waiver of the provision itself.

**XVII. NON-SOLICITATION.**

Neither party shall contract, entice, employ, directly or indirectly, any employee of the other Party or any of its affiliates throughout the effectivity of this Agreement, and for a period of six (6) months from (i) the termination of this Agreement, or (ii) the full payment of the Project and Other Related Fees, whichever is later;

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JUN 17 2022  
*LR*

LUIS R. REBAGODA  
Signing Officer

*Edwards and M...*

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**XIX. LIMITATION OF LIABILITY**

The Parties acknowledge and agree that each of the Party shall be solely liable for the acts, omissions, fault, negligence, fraud, misconduct, default or breach of this Agreement, or violation of any applicable law by, their respective employees, staff, personnel, participants, agents, and representatives, as applicable.

Each Party (including their respective employees, staff, personnel, participants, agents, and representatives, as applicable) ("Indemnifying Party") shall indemnify, save, and defend the other party (including their respective employees, staff, personnel, participants, agents, representatives as applicable) ("Indemnified Party") free and harmless from and against, any and all claims, demands, losses, damages, liabilities, fines, penalties, costs, charges, suits, actions, and liabilities ("claims") suffered or incurred by the Indemnified Party arising from or as result of: (i) any claim for personal or bodily injury, disease, illness, or death of any person whatsoever, or any damage or loss to any property, resulting from any act or omission of the Indemnifying Party; or (ii) any breach, fault, negligence, fraud, misconduct, or violation of applicable law, in the project of their respective obligations under this Agreement.

Notwithstanding the foregoing, nothing herein shall apply to any Claims in respect of which and to the extent that the Indemnified Party is otherwise compensated pursuant to any insurance or the like. Any liability arising under this Agreement shall survive the termination or expiration of this Agreement until its full settlement.

Neither Party shall be liable for any indirect, consequential, incidental, punitive or special damages or losses, whether or not such party has been advised of the possibility of the same.

*Edmundo M. Mendez*

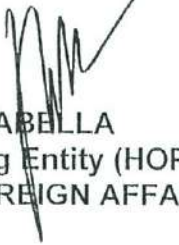



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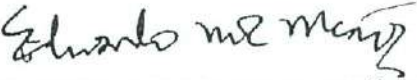
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LUIS R. REBAGODA  
Signing Officer

IN WITNESS THEREOF, the parties have read, understood, and agree to the terms and conditions under this Agreement, and have caused their duly authorized representatives to execute this Agreement, as of the date and place first above written.

  
**ERNESTO C. ABELLA**  
 Head of the Procuring Entity (HOPE)  
 DEPARTMENT OF FOREIGN AFFAIRS

  
**IMELDA ROSARIO-W. LOSTE**  
 President  
 ManilaART Foundation, Inc.

Signed in the presence of:

  
**EDUARDO MARTIN R. MENÉZ**  
 Assistant Secretary  
 WITNESS, DFA

  
**ALDIANE MENÉZ**  
 WITNESS, ManiART Foundation, Inc.

**ACKNOWLEDGMENT**

Republic of the Philippines )  
 City of Pasay ) s.s.

BEFORE ME, a Notary Public for and in the City of Pasay, personally appeared the following:


NAME	PASSPORT/ID NUMBER	ISSUED AT	ISSUED ON
ERNESTO C. ABELLA	P3609943A	DFA-MANILA	07 /07/2017
IMELDA ROSARIO W. LOSTE	P06765318	DFA-NCR EAST	02/14/2019

known to me to be the same persons who executed the foregoing instruments and acknowledged to me that the same is their own free act and deed and of the entities they represent.


This instrument duly signed by both parties and their instrumental witnesses on each and every page thereof.

WITNESS MY HAND AND SEAL this SEP 20 2021 day of QUEZON CITY 2021, in Pasay City, Philippines.

Doc. No. 218  
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 Book No. 1x  
 Series of 2021.

  
**ATTY. ROGELIO J. BOLIVAR**  
 NOTARY PUBLIC IN QUEZON CITY  
 J.M. Adm. Div. No. 21, ... 21 2002  
 TROUBLE ...  
 M.C.E. No. ...  
 Address: 314 Harvard St., Cubao, Q.C.

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**JUN 17 2022**  


**LUIS R. REBAGODA**  
 Signing Officer