

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** (hereinafter called the "Agreement") is made this _____ day of 06 JUL 2022 between:

The **DEPARTMENT OF FOREIGN AFFAIRS**, 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 of Public and Cultural Diplomacy (OPCD) - Media and Public Affairs Division, and herein represented by the **Department's Head of Procurement Entity (HOPE)** Acting Undersecretary Antonio A. Morales (hereinafter referred to as the "**First Party**");

AND

AT EAST, INC. herein represented by its Vice President, **MS. SHARON TRINA TRINIDAD**, as evidenced by the attached Secretary's Certificate executed by At East, Inc. Corporate Secretary, with principal address at East, Inc. Unit 2410 Cityland Herrera Tower, 98 V. A. Rufino Street, Salcedo Village, Makati City and duly authorized (hereinafter referred to as the "**Second Party**");

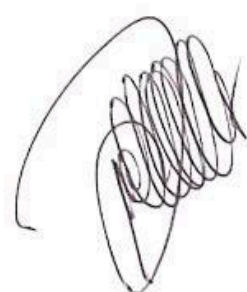
DFA and AT East, Inc. shall hereinafter collectively be referred to as the "**Parties**," and individually as a "**Party**".

WITNESSETH THAT:

WHEREAS, the **First Party**, through its Office of Public and Cultural Diplomacy – Media and Public Affairs Division (OPCD-Media and Public Affairs Division) is updating its multimedia resource cache, which will contain high-quality collateral materials (e.g., photos and videos), for use of the Department and its Foreign Service Posts for their official websites and social media platforms, press releases, as well as social media campaigns;

WHEREAS, the **First Party** currently lacks the appropriate photo and video equipment to provide the highest quality images for the incoming administration, specifically, the new Secretary of Foreign Affairs;

WHEREAS, the **First Party** believes that commissioning a multimedia service provider, mainly a professional photographer, would contribute to the production of high-quality images of officials and officers of the Department, including official portraits and in-action shots. This will then contribute to the updating of the multimedia resource cache to be managed by OPCD and the strengthening the Department's brand and image;



WHEREAS, the **Second Party** employs **MS. SHAIRA ANA TERESIANA LUNA**, one of the more important and prominent photographers in the Philippines at the moment, specifically in the field of portrait photography, possesses the qualifications, necessary authority, and expertise to render services in line with the requirements of the **First Party**;

WHEREAS, commissioning the services of the **Second Party** is a way to highlight and leverage on the untapped potential and talent of the members of the country's creative industries.

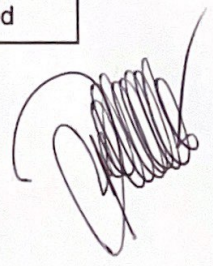
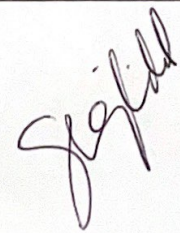
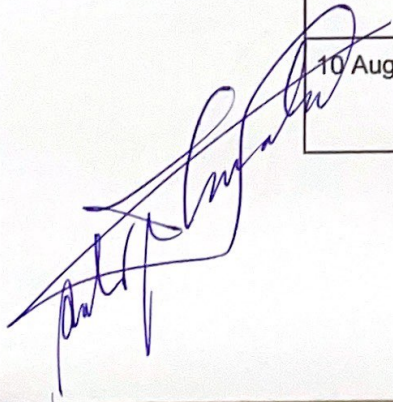
WHEREAS, the **First Party** engages the services of the **Second Party**, and the latter agrees to render its services and share its expertise for the production of the relevant graphic materials for a consideration amounting to **TWO HUNDRED SIXTY-THREE THOUSAND FIVE HUNDRED TWENTY-NINE PESOS AND FORTY-ONE CENTS (PhP 263,529.41)** only, inclusive of VAT and other applicable taxes, which shall be automatically withheld by the **First Party** as a withholding agent. A certificate of taxes withheld can be subsequently issued by the **First Party** to the **Second Party**, if requested and/ or deemed necessary.

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereby agree that:

1. Undertakings of the Parties

- a. The **Parties** shall engage in consultation meetings for the **Second Party's** delivery of the following outputs:

| Timeline | Deliverables |
|---------------------------------|---|
| 7 July 2022 | - Meeting and consultation between parties |
| 8 July 2022 | - Finalization of the concept of the project, including events to be covered - Finalization of the schedule of the photo shoots |
| 29 July 2022 and 08 August 2022 | - Photoshoot sessions/ Taking of the official portraits of the newly-appointed Secretary of Foreign Affairs, and newly-appointed Undersecretaries - Action shots of the abovementioned officials - Official portraits of other officials in the DFA |
| 10 August 2022 | - Final high-resolution copies of photos in Portable Network Graphics (png) format endorsed |



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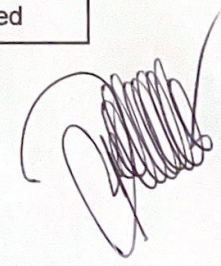
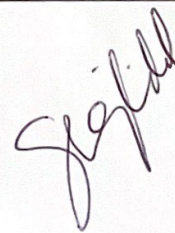
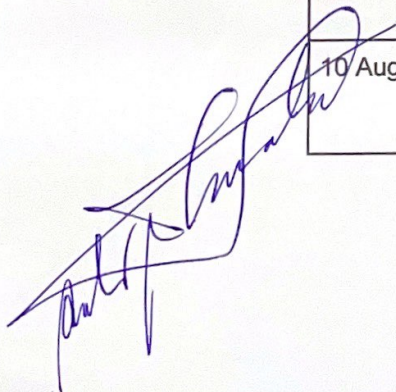
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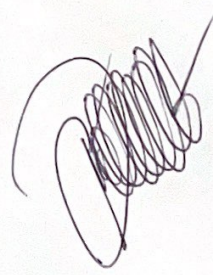
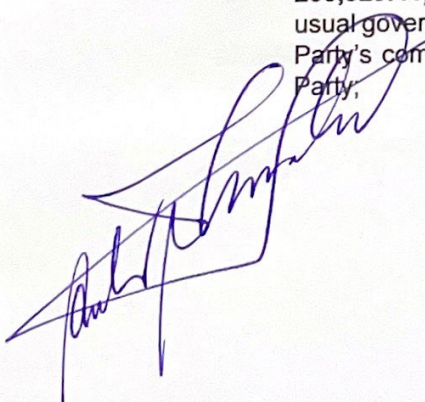
| | |
|--|--|
| | through an external drive (raw and edited files) |
|--|--|

The timeline of the deliverables may be amended as needed and as agreed upon by the Parties.

- b. The **Second Party** shall ensure timely submission of the above deliverables for the approval of the **First Party**.
- c. The **First Party** shall review and approve the photos submitted by the **Second Party**.
- d. The **First Party's** name, logo, or other identification shall not be used by the **Second Party** for any other purpose without the prior written consent and approval of the **First Party** and in accordance with the manner and in the required specifications. In no case shall use thereof be made for commercial purposes.
- e. The **Second Party** shall endorse and submit all final materials (e.g. photos) and outputs to the **First Party**, both raw and edited files, in Portable Network Graphics (png) via an external drive with back-up files stored in the cloud.
- f. In addition to the submission of the Second Party's outputs is the submission of the following for the release of the payment:
 - i. Approved Proposal and Quotation of Services;
 - ii. PHILGEPS Certificate;
 - iii. BIR;
 - iv. Latest Income Tax Return;
 - v. Original Billing Request;
 - vi. Original Provisional Receipt;
 - vii. Copy of this Agreement signed and notarized;
 - viii. Curriculum Vitae;
 - ix. TIN, and;
 - x. Bank details where payment shall be deposited.

2. Payment

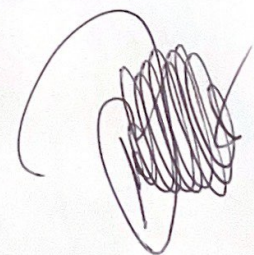
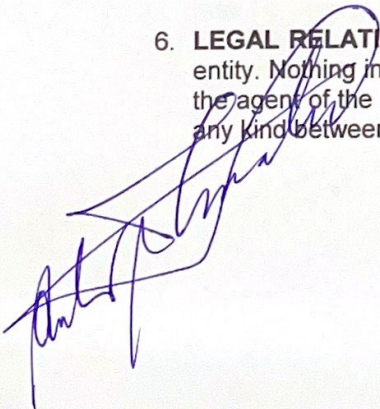
- a. The payment of the contract price inclusive of all applicable taxes and other lawful charges, amounting to **TWO HUNDRED SIXTY-THREE THOUSAND FIVE HUNDRED TWENTY-NINE PESOS AND FORTY-ONE CENTS (PhP 263,529.41) only, inclusive of VAT and other applicable taxes**, subject to the usual government accounting and auditing rules and regulations; and the Second Party's complete submission of the required supporting documents to the First Party.



- b. The payment schedule may be amended as agreed between the Parties in writing to ensure that it remains consistent with the progress of the project;
- c. The payment shall be made upon submission of all deliverables.
- d. The payment shall be made through LLDAP-ADA payable to the **Second Party** and shall be remitted to:

Account Name: At East, Inc.
Account Number: 0181 0505 51
Bank Name: Bank of the Philippine Island
Bank Branch: Mandaluyong Branch


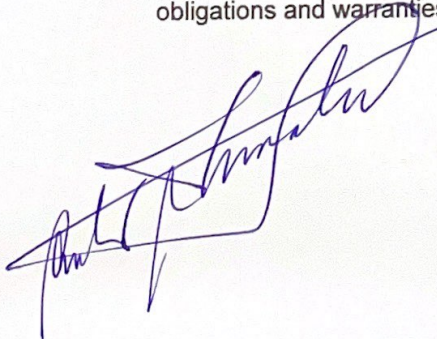
- e. The processing of payment shall only commence upon OFMS' receipt of the invoice and complete documentary requirements. The date of receipt of OFMS shall also be the start of the 30-day processing period.
 - f. On the release of payment within thirty (30) days, the end-user office, OPCD, must submit a certification that the required outputs/ deliverables covered by the payment have been completed by the **Second Party** as the service provider.
 - g. The **Second Party** shall acknowledge payment received from the **First Party** through the issuance of an Official Receipt within seven (7) days from the date of receipt thereof.
3. **GOVERNING LAW:** This Agreement shall be governed, construed and enforced in accordance with Philippine law, rules and regulations.
4. **INTELLECTUAL PROPERTY:** All materials, drafts, and outputs produced by the Second Party pursuant to this Agreement, including exclusive intellectual property rights thereto, are instruments of service and are reserved to the enjoyment of the First Party. Only the first party shall have the license and authority to use copies of such outputs in connection with the purpose for which they are prepared and produced, provided that the Second Party has been paid all the amounts due under this Agreement.
5. **CONFIDENTIALITY OF INFORMATION CLAUSE:** Both Parties hereby agree to keep confidential all information obtained in connection with this Agreement, and will implement and maintain safeguards to further ensure and protect the confidentiality of such information, in accordance with all relevant laws and regulations. Such confidential information shall not, without the prior written consent of the First Party, be disclosed or used for purposes other than those necessary for implementing the objectives of this Agreement. This duty of confidentiality shall survive the duration of this Agreement.
6. **LEGAL RELATIONS:** The Parties agree that each Party is acting as an independent entity. Nothing in this Agreement shall be construed so as to constitute any Party to be the agent of the other or to constitute an employment, a partnership or joint venture of any kind between the Parties hereto.



7. **AMENDMENTS:** This Agreement contains the complete agreement between the Parties with respect to the matters contained herein. Only a written instrument signed by both Parties' duly authorized representatives shall modify, amend, or alter the terms and conditions of this Agreement.
8. **TERMINATION:** This Agreement shall automatically expire and be deemed terminated upon the date of the occurrence of the following:
- a. When a law or regulation is passed and the operation or implementation of which would result in the non-execution of the material obligations of either of the parties to this Agreement in a manner which could not otherwise be reasonably remedied or addressed to implement the Agreement;
 - b. Mutual written agreement of the parties to terminate this Agreement; or
 - c. Complete performance by both Parties of their respective obligations.

In the event of pre-termination, the **Second Party** may be entitled to payment of accrued fees on a quantum meruit basis. Upon such pre-termination, the **First Party** shall have the right to take immediate possession of all data, materials, and other objects in connection with this Agreement. Such transfer of possession shall be at the sole expense of the **Second Party** and without prejudice to the enforcement of procurement rules and regulations on pre-termination and other available remedies to the **First Party**.

9. **SEPARABILITY CLAUSE:** Should any provision of this Agreement be invalid or unenforceable, the same shall apply only to the provision involved and the remaining provisions hereof shall remain valid and enforceable. 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 and objective of the Parties.
10. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same contract.
11. **ASSIGNMENT:** Neither party shall assign or transfer its right and obligations under this Agreement without prior consent of the other in writing.
12. **LIMITATION OF LIABILITY:** The Second Party shall hold the First Party free and harmless from, and indemnify the latter, against any and all losses and cost of suits, claims, actions, and damages that may be suffered by or brought against the First Party or any of its officers, personnel, and/or duly authorized agents as a direct result of the fault or negligence of the Second Party, its officers, employees, or authorized representatives, or the breach or non-performance by the Second Party of its duties, obligations and warranties under this Agreement.




13. **IMMUNITIES:** Nothing in this Agreement shall be construed as a waiver by the First Party of any of its privileges and immunities under Philippine law.

14. **DISPUTE & RESOLUTION:** The Parties shall exert their best efforts to amicably resolve and settle in good faith any dispute arising out of or in relation to this Agreement through negotiations. In the event that an amicable settlement cannot be achieved within thirty (30) calendar days from the date on which either Party has served written notice thereof on the other party, the Parties agree to settle the matter with finality by submitting the same for arbitration in accordance with the Philippine Dispute Resolution Center, Inc.'s (PDRCI) rules and regulations, and shall be governed by Philippine law. The arbitration proceedings, including all records, documents, pleadings, orders and judgments filed or rendered in pursuant thereto, shall be kept confidential and shall be in the English language. The seat and venue of arbitration shall be Pasay City, Metro Manila, Philippines. Nothing in this Agreement shall prevent the Parties from applying to a Philippine court of a competent jurisdiction for provisional or interim measures or injunctive relief as may be necessary to safeguard the property or rights as may be the subject matter of the dispute.

15. **EFFECTIVITY CLAUSE:** This Agreement shall take effect upon its execution until its expiration/termination based on the grounds stipulated.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the ____th day of _____ 2022 at Pasay City.


SHARON TRINA TRINIDAD
Authorized Representative
Vice President, At East, Inc.


ANTONIO A. MORALES
Acting Undersecretary/ HOPE
DEPARTMENT OF FOREIGN AFFAIRS


JAN MICHAEL VILLANUEVA
Sales Manager
At East, Inc.

Signed in the presence of:


EDUARDO MARTIN R. MENEZ
Assistant Secretary, OPCD


LYRIE F. FULGENCIO
Chief Accountant

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
MAKATI CITY) S.S.

SEP 09 2022

BEFORE ME, a notary public in and for MAKATI CITY, Metro Manila Philippines, this ____ day of _____, 2021, personally appeared and presented to me their respective I.D.'s, containing their photos and signatures, as competent proofs of their identities, to wit:

| NAME | IDENTIFICATION |
|------|---|
| | Passport #: Issued By: Valid Until: |
| | |

They are all known to me and to me known to be the same persons who executed the foregoing Memorandum of Agreement and they further acknowledge to me that the same is their free and voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the date and at the place first written above.

Doc. No. 234
Page No. 48
Book No. 237
Series of 2022

ATTY. JOHN DOMINGO A. PONCE, JR.
NOTARY PUBLIC
APPOINTMENT No. M-068 / MAKATI CITY
UNTIL December 31, 2023
PTR No. 8853517 / 01-03-2022 / MAKATI CITY
IBP No. 171184 / 12-22-2021 / RIZAL
MCLE COMPLIANCE No. VI-0027026 / 05-28-2019
ROLL NO. 36452 / TIN No. 106-099-102-000
Unit G-14 Makati Executive Tower 3
Sen. Gil Puyat Avenue, Pio del Pilar,
Makati City, Metro Manila

