

**MEMORANDUM OF AGREEMENT**

This **Memorandum of Agreement** ("Agreement") is made and entered into this \_\_\_\_\_ day of 13 APR 2022 2022, at Pasay City, Philippines by and between:

The **DEPARTMENT OF FOREIGN AFFAIRS ("DFA")** (hereinafter referred to as the "**FIRST PARTY**"), a national government agency of the Philippine Government created by virtue of Commonwealth Act No. 732 dated on 03 July 1946, with office address at 2330 Roxas Boulevard, Pasay City, Metro Manila, Philippines, through its **Office of Public and Cultural Diplomacy (OPCD)**, and herein represented by the **Department's Head of Procuring Entity (HOPE) Undersecretary Sarah Lou Y. Arriola**

and

**TAO FOUNDATION FOR CULTURE AND ARTS, INC.** (hereinafter referred to as the "**SECOND PARTY**"), a duly organized and existing organization registered under and by virtue of the laws of the Republic of the Philippines under *Securities and Exchange Commission Certificate of Registration* No. ANO94-00003953 dated 12 October 1994 (attached as **Annex A**), with principal address Tao Foundation for Culture and Arts, Inc. Primehomes-Capitol Hills, South Zuazuarregi St., cor/ Capitol Hills Drive Matandang Balara 3, Quezon City represented and represented by its Founding president and Trustee Dr. Grace S. Nono by virtue of the *Secretary's Certificate* dated 01 March 2022 (attached as **Annex B**).

**WITNESSETH :**

**WHEREAS**, the **First Party**, through its Office of Public and Cultural Diplomacy (OPCD) shall be producing a video documentary featuring the narratives of the *Babaylans* and other wisdom keepers to commemorate the National Literature's Month, Earth Day, and *Araw ng Kagitingan*, hereinafter referred to as the "**Project**";

**WHEREAS**, the **First Party** desires to engage the services of Tao Foundation for Culture and Arts, Inc., a qualified organization that specializes in local, ancestral, and traditional knowledge.

**WHEREAS**, the **Second Party** shares the same objective with the **First Party** of creating an artistic and culturally-conscious environment, and possesses the qualifications, authority, and expertise to render services to the **First Party** in line with the latter's requirements;

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**WHEREAS**, the **Second Party** has offered to the **First Party** its services and the latter has agreed to engage the **Second Party** for such services for a consideration and under the terms and conditions specified herein;

**WHEREAS**, this Agreement is undertaken pursuant to *BAC Resolution No. NTC-6522* dated *13 April 2022* (attached as **Annex C**), and *Notice of Award* (attached as **Annex D**), in compliance with the applicable provisions of Republic Act No. 9184 and its Implementing Rules and Regulations;

**NOW THEREFORE**, for and in consideration of the foregoing premises, the **Parties** have agreed to enter into this Agreement with the following terms and conditions:

**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 Project until the complete fulfillment of the Parties' undertakings herein, unless earlier terminated.

**Section 2. Undertakings of the First Party.** – The **First Party** shall be responsible the following:

1. Provide guidance and assistance to the **Second Party** in the production and execution of the **Project** by making available resources and information needed to undertake the services;
2. To accept and approve the **Second Party's** outputs and deliverables upon assessment of its compliance with the **First Party's** requirements and Section 5 herein, to the satisfaction of the **First Party**;
3. Provide the full payment in accordance with Section 6 for the services rendered by the **Second Party**;
4. Broadcast and release the **Project** produced by the **Second Party** on the **First Party's** chosen official platforms;
5. Assign a designated focal point person who will coordinate with the **Second Party** for all matters relating to the Project; and
6. Keep an audio-visual, photographic and/or sound recording of the Project and related activities conducted by the **Second Party** pursuant to this Agreement, exclusively for non-commercial use, including documentation, news reporting, archiving, promotion, and research.

**Section 3. Undertakings of the Second Party.** – The **Second Party** undertakes to do the following:

1. Conceptualize and manage of the mounting of the Project video documentary for National Literature Month, Earth Day, and *Araw ng Kagitingan*.
2. Create a Production Management Team to coordinate and oversee the **Project**;

violation of applicable law, in the performance 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.

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.

**Section 9. 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**.

**Section 10. 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 and all relevant government procurement laws and regulations.

**Section 11. Intellectual Property.** - All outputs produced and submitted by the **Second Party** are instruments of service, and the originals thereof and the corresponding copyright thereto shall be deemed the property of the **First Party**, including all materials and footage (raw and edited) created and used for the Project. The **Second Party** assigns to the **First Party** all intellectual property rights pertaining to the **Second Party** on all related activities conducted and outputs produced thereon by the **Second Party** pursuant to this Agreement. The **First Party** shall have a license to use such outputs and their copies, if any, in connection with the purpose for which they are prepared and produced, provided that the **Second Party** has been paid the full amount due under this Agreement.

No recording in whatever form of the **video production or 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**.

**Section 12. Termination.** - This Agreement shall terminate upon: (i) performance by the parties of their respective undertakings under this Agreement; or (ii) mutual written agreement of the parties; or (iii) cancellation of the **Project**.

Either Party may terminate this Agreement upon prior written notice at least fifteen (15) without prejudice to the payment of accrued fees, and subject to the exercise of such applicable liens on any work or work products until due payment is made. Upon such termination, the **First Party** shall have the right to take immediate possession

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they shall comply with all relevant rules and regulations of the **First Party**, the Philippine Government, and the terms of this Agreement;

18. Furnish the **First Party** with an official list of the names and other information as may be required by the **First Party**, of the **Second Party's** staff, performers, agents, representatives and invited speakers for the Online Conference;

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

**Section 5. Timeline and Deliverables.** – The **Second Party** shall submit to the **First Party**, the following deliverables within the corresponding timeline provided:

DELIVERABLES	DATE
Concept Meeting and approval of Concept	01 March 2022
Profiles of the interviewees and project team	04 March 2022
Documentary requirements for processing of payment	04 March 2022
Submission of Video Script for approval	18 April 2022
Submission of video for review and dry run	24 April 2022
Submission of teaser video and Final Video	25 April 2022

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**.

**Section 6. Payment Procedure. -**

1. The **First Party** shall release and deliver the total amount of **Two Million Two Hundred Thousand Pesos (PHP2,200,000.00)** ("**Contract Price**") to the **Second Party** as payment for services rendered by the latter herein;
2. The total amount above shall cover the professional fees of artists, production and related costs of the video production materials, administration expenses, and all other costs, expenditures, charges, fees, and/or taxes, if any, in relation to the production, conduct and implementation of the **Project**;
3. The release of payment to the **Second Party** shall be made in **four (4) tranches** no earlier than the conclusion of the **Project**, subject to the relevant government accounting and auditing rules and regulations and the **Second Party's** complete submission of the required supporting documents to the **First Party**, including the following:

- a. Deliverable/s due;
- b. PhilGEPs;
- c. Bureau of Internal Revenue (BIR) Certification
- d. Mayor's Permit;
- e. Income Tax Return;
- f. Tax Identification Number (TIN);
- g. Billing Request;
- h. Provisional Receipt;
- i. Duly Signed and Notarized *Memorandum of Agreement*;
- j. Company Profile;
- k. Proposal and Quotation; and
- l. Bank Details.

4. The **Second Party** shall issue an official receipt to the **First Party** as proof and acknowledgment of receipt of the contract price.

**Section 7. No Employer-Employee Relationship.** – It is mutually understood by the Parties that the **Second Party** is an individual contractor. 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.

All of the personnel, officers, staff, and agents of the **Second Party** shall be under its complete control and supervision; and all of the **First Party's** employees, staff, personnel, participants, agents, and representatives shall be under the complete control of the **First Party**. 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.

**Section 8. 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

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and intellectual property rights of all data and materials pertaining to the Project, 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.

**Section 13. Binding Effect / Authorizations.** – Both Parties represent and warrant that: (a) All necessary authorizations and approvals have been obtained to enter into, implement, and perform their respective obligations under this Agreement; and (b) It has duly and validly executed the Agreement, and the obligations herein shall be valid, binding, and enforceable against it, in accordance with its terms.

**Section 14. 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.

**Section 15. Counterparts.** – This 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 the same in writing.

**Section 16. Severability.** - If any term or condition of this Agreement is judicially declared illegal, invalid, or unenforceable, such provision shall not invalidate the remaining provisions. 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.

**Section 17. 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 performance 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.

**Section 18. 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 enforce such provision against 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.


**Section 19. 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 the termination of this Agreement.

**Section 20. 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.


**Section 21. 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.

**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.


For the **FIRST PARTY**,


  
\_\_\_\_\_  
**SARAH LOU Y. ARRIOLA**  
Head of the Procuring Entity (HOPE)  
DEPARTMENT OF FOREIGN AFFAIRS

For the **SECOND PARTY**,

  
\_\_\_\_\_  
**GRACE S. NONO**  
President,  
TAO FOUNDATION FOR  
CULTURE AND ARTS, INC.

Signed in the presence of:

  
\_\_\_\_\_  
**EDUARDO MARTIN R. MENEZ**  
Assistant Secretary, DFA-OPCD

  
\_\_\_\_\_  
Nono  
Tao Foundation for Culture and Arts, Inc

### ACKNOWLEDGEMENT

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 parties bearing competent proof of their respective identities in compliance with the 2004 Rules on Notarial Practice as follows:


Name	Government Issued ID & Description
SARAH LOU Y. ARRIOLA	Philippine Passport D0007888A issued by DFA-Manila on 09 November 2018
GRACE S. NONO	Philippine Passport P3072227B issued by DFA-NCR-Northeast on 11 October 2019

The parties are known to me to be the same persons who executed the foregoing instrument consisting of **Nine (9)** pages, including this page where this *Acknowledgement* is written. They further acknowledged to me that the same is their free and voluntary act and deed and that they have been duly authorized by the entities they represent respectively.

**WITNESS MY HAND AND SEAL**, this JUN 10 2022, 2022 in the City of Pasay, Philippines.

### NOTARY PUBLIC

Doc. No. 288 ;  
Page No. 19 ;  
Book No. XXI ;  
Series of 2022.

  
ATTY. ROGELIO J. BOLIVAR  
NOTARY PUBLIC IN QUEZON CITY  
AM Adm. Matter No. 204 June 21, 2021 to Dec 31, 2022  
IBP O.R. No. 132134 MD 2021 & IBP O.R. No. 133076 MD 2022  
PTR O.R. No. 2463255 D 1/3/22 / Roll No. 33832 / TIN# 129-871-009  
MCLE No. VI-0029583 valid from 12/16/19 valid until 04/14/22 Quezon City  
Address: 31-F Harvard St., Cubao, Q.C.