

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (hereinafter referred to as the "MOA") is made and entered into this ____ day of 19 MAR 2021 2021, at Pasay City, Philippines, 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 of Public and Cultural Diplomacy - Cultural Diplomacy Division (OPCD-CDD) and herein represented by the **Department's Head of Procurement Entity (HOPE) Undersecretary Ernesto C. Abella**;

and

SINEMATIKA, INC., represented by its President, Mr. John Philip Y. Co, (hereinafter referred to collectively as the "**SECOND PARTY**"), hired by the Office of Strategic Communications and Research – Cultural Diplomacy Division for the production and implementation of the series of online events entitled, "Fiesta Filipinas: An Online Celebration of Philippine Festivals," with principal address at GF Coco Center Building, 291 Dansalan St., Brgy. Barangka Ilaya, Mandaluyong, Philippines 1550;



WITNESSETH:

WHEREAS, the **First Party**, through its Office of Public and Cultural Diplomacy – Cultural Diplomacy Division (OPCD-CDD) conceptualized a series of online events entitled, "Fiesta Filipinas: An Online Celebration of Philippine Festivals" (hereinafter referred to as "**THE PROJECT**") (see "Annex A" for Concept Note) as a way to continue the Department's mandate to promote Philippine culture in the global sphere amid the pandemic;

WHEREAS, the **First Party** conceptualized **the Project** be a six-part, multi-format online event series which will simulate the experience of a festival through a combination of live and pre-recorded videos and a live online workshop to introduce the Philippine festivals, culture, and traditions; encourage participation of foreigners in the fiestas; and invite visitors to the Philippines through our rich cultural celebration of resiliency, *bayanihan*, and ingenuity that hopes to inspire many during these challenging times;

WHEREAS, **the Project** will be held every month online from December 2020 to June 2021 wherein one Philippine festival will be featured as a way for the locals to introduce their cultural festivity to the world stage. As festivals are participative in nature, each online event will also have an activity which will be marked with a post-event output;

WHEREAS, the **First Party** agrees to hire the services of the **Second Party** to produce and execute the remaining three online events of **the Project** for another four months from March 2021 to June 2021;

WHEREAS, the Parties are authorized to enter into this Agreement;

WHEREAS, the **Second Party** will implement the tasks and submit the deliverables to the **First Party**;

WHEREAS, the **First Party** retains the full rights of all materials submitted by the **Second Party**;

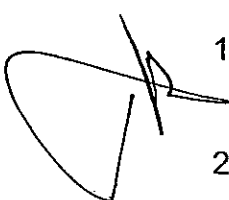
WHEREAS, the **First Party** will ensure the release of the payment to the **Second Party** in three (3) tranches the total amount of **TEN MILLION FIVE HUNDRED FORTY THREE THOUSAND EIGHT HUNDRED TWENTY-SIX PESOS ONLY (PHP10,543,826.00)** as total net amount of payment, inclusive of all costs, taxes, and expenses not otherwise specifically indicated as being undertaken by the First Party;

NOW, THEREFORE, for and in consideration of the foregoing, the Parties hereto have formally agreed and bound themselves to the following terms and covenants:

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 four months from March 2021 to June 2021, unless earlier terminated;

Section 2. Undertakings of the First Party. DFA undertakes the following:

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1. To provide guidance and assistance to the **Second Party** in the production and execution of the online events to be held.
 2. To review and approve the deliverables of the **Second Party** subject to its compliance of the Guidelines stated herein and as may be advised by the First Party;
 3. To provide the full payment in accordance with Section 7 for the services rendered by the **Second Party** for the period of four months from March 2021 to June 2021;
 4. To broadcast and release on the official DFA platforms the online events produced by the **Second Party**.
 5. To shoulder the costs and facilitate the shipment via diplomatic pouch of the Fiesta Filipinas kits provided by the **Second Party** to the DFA for distribution to the Foreign Service Posts.

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

1. To assume all taxes, fees expenses, and costs arising out of or as a consequence of this Agreement.

2. To immediately report to DFA in writing any problems encountered which may endanger or obstruct the implementation of this Agreement; and
3. Submit all documents required for the processing of the payment.
4. Attend scheduled meetings for updates and consultations with DFA-OPCD-CDD.
5. Develop and submit the creative concept and key visuals for the event based on the Concept Note of the **First Party** for review and approval.
6. Provide the necessary personnel (i.e. key staff, production team, hosts, etc.) and be responsible for the payment of their professional fees, transportation expenses, food, accommodations, and other costs that will be incurred for the production and execution of the online events for a period of four months from March 2021 to June 2021.
7. Procure the necessary technical equipment and software to be used in the production and execution of the online events for a period of four months from March 2021 to June 2021.
8. Write the script for the pre-produced videos and live online events.
9. Facilitate the conduct of the live online events during the three-month period from March 2021 to June 2021.
10. Procure the contents and provide the **First Party** a total of 3,000 pcs. (1,000 kits per event) of Fiesta Filipinas kits for use of the participants for the online events. The contents of the kits shall be approved by the **First Party**.
11. Provide post-event videos for the online events conducted for uploading on the platforms of the **First Party**. The post-event video shall be subject to review and approval of the **First Party**.
12. Submit final videos used in the online event (i.e. trailer video, music video, to DFA-OPCD-CDD complete with editing, graphics, and color grading)

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 **First Party** will ensure that the **Second Party** will deliver their expected output based on the timeline submitted:

NO.	DELIVERABLES	PROPOSED DEADLINE OF SUBMISSION
1	Pre-production for Event 4	20 March 2021

2	Sending of Fiesta Filipinas Kits for Event 4	21 March 2021
3	Event 4: Visita Iglesia	27 March 2021
4	Submission of Post-Event Video for Event 4	28 March – 2 April 2021
5	Pre-production for Event 5	21 April – 23 May 2021
6	Sending of Fiesta Filipinas Kits for Event 5	22 April – 5 May 2021
7	Event 5: Flores de Mayo Festival	29 May 2021
8	Submission of Post-Event Video for Event 5	30 May – 4 June 2021
9	Pre-Production for Event 6	25 – 28 May 2021
10	Sending of Fiesta Filipinas Kits for Event 6	8 – 19 March 2021
11	Event 6: Lami-Lamihan Festival	26 June 2021
12	Submission of Post-Event Video for Event 6	27 June to 2 July 2021

Section 6. Guidelines - The Parties shall be guided by the following guidelines in implementing the project

1. Ensure that all materials used will be faithful to the concept.
2. Provide accurate, well-researched historical information on the video.
3. Make use of modern digital technology in shooting, editing, and transferring copies.
4. Ensure that script, and other artistic creation are original and not plagiarized.
5. Ensure that the final videos submitted is par excellence.

Section 7. Payment Procedure

A. The **First Party** shall:

1. The aforementioned amount shall be released in three (3) tranches to the **Second Party** subject to the provisions of this agreement and the usual government accounting and auditing rules and regulations and upon submission of the following supporting documents:

- a. Approved program/concept complete with the preferred/tentative listing of artists and production crew;
- b. Line item budget showing the breakdown of cost/expenses.
- c. PHILGEPS
- d. BIR
- e. Income Tax Return
- f. Mayor's Permit
- g. Billing Request for each tranche (Original)
- h. Provisional Receipt for each tranche (Original)
- i. Duly Signed and Notarized Contract
- j. Curriculum Vitae of the Proponent/ Company Profile
- k. Bank Details and TIN No.

2. Said amount shall be used by **the Second Party** to pay for any and all expenditures in relation to the production of the four online events including the press conference and implementation of this Agreement, including professional fees, production expenses, administration expenses and other charges, fees, and/or taxes, if any;

3. The payment will be as follows:

- 15% - Upon submission of post-event video for the fourth event (Visita Iglesia)
- 65% - Upon submission of post-event video for the fifth event (Flores de Mayo)
- 20% - Upon submission of post-event video for the sixth event (Lami-Lamihan Festival)

B. **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.

II. CONDUCT AND BEHAVIOR

The **Second Party** shall be responsible for the conduct, discipline, and compliance with labor related matters of its staff hired (if applicable). The **Second Party** undertakes to ensure that it shall comply with all relevant rules and regulations of the DFA, the Philippine Government, and the terms of this Agreement.

III. NO EMPLOYEE-EMPLOYER RELATIONSHIP

It is mutually understood that the **Second Party** is an individual contractor. The production crew of the **Second Party** are deemed not employees of the **First Party**. Thus, the **First Party** shall not in any way be liable or responsible for any personal injury, claim, and/or damage during effectivity of this agreement. The **Second Party** holds the **First Party** free and harmless from any such claims and liabilities.

IV. LIMITATION OF LIABILITY

The **Second Party** shall be solely responsible for any liability that may arise from the execution and implementation of this Agreement, and undertakes to hold the **First Party** free and harmless from any claim arising there from brought about by the **Second Party's** employees, officers, creditors, suppliers, subcontractors or any other claimants of their heirs, administrators and assigns, by reason of non-payment, suits, actions, recoveries, and judgement of every nature and/or kind.

- a. DFA shall in no manner be answerable or accountable for any incident or injury which may occur to any person participating in the implementation of this Agreement, nor for any injury, loss or damage arising from fault, negligence or carelessness of the Proponent or any person or to their property. The **Second Party** agrees to assume, as it does hereby assume, all liabilities for any such injury, loss or damage and to hold DFA free from liability therefrom; and

- b. Dispute Resolution: In the event of any dispute or difference that may arise between the Parties herein 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. However, in case such dispute is not amicably settled, the Parties shall submit themselves to the exclusive venue of the appropriate court in Pasay City to the exclusion of any and all other courts and tribunals that may exercise concurrent or coordinate jurisdiction.

V. THIRD PARTY CONTRACTS

Any other contract or agreement entered into by the **Second Party** and 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 Department 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 activity.

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

All outputs produced and submitted by the **Second Party** are instruments of service, and the originals thereof and the corresponding copyright shall remain the property of the **First Party**. The **First Party** shall have a license 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.

VIII. TERMINATION /PRE-TERMINATION

Either Party may terminate this Agreement upon prior written notice at least thirty (30) days. Upon such termination, DFA shall have the right to take immediate possession and intellectual property rights of all data and items pertaining to this Agreement, as far as practicable provided that **the Second Party** shall have been paid for work already rendered, and goods already ordered. In the event that **the Second Party** deliberately, willfully, and capriciously fails to comply with the terms of this Agreement and DFA opts to terminate the agreement by reason of such, the costs shall be at the expense of **the Second Party**.

IX. VALIDITY OF TERMS AND CONDITIONS

This Agreement shall take effect immediately upon its execution and shall be valid until completion of the parties undertaking herein, unless sooner terminated in accordance hereof.

IN WITNESS WHEREOF, the parties have hereto affixed their signatures on this day of 19 MAR 2021, 2021 at PASAY CITY.


ERNESTO C. ABELLA
DEPARTMENT OF FOREIGN AFFAIRS


JOHN PHILIP Y. CO
President, Sinematika Inc.

Signed in the presence of:


MARIE YVETTE L. BANZON-ABALOS
Executive Director
WITNESS, DFA


JENIFEER M. ENCABO
Executive Producer
Sinematika 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 July 2017
JOHN PHILIP Y. CO	P4732113A	DFA- P Prinsesa	15 Oct 2017

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 **OCT 12 2021** day of _____ 2021, in Pasay City, Philippines.

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Series of 2021.


ATTY. JOVINO R. ANGEL
NOTARIAL COMMISSION NO. 19-37
NOTARY PUBLIC FOR AND WITHIN PASAY CITY
UNTIL DEC. 31, 2021
SUITE 1 WHITE HOUSE
170 VILLARDOY BLVD PASAY CITY M.M.
ROLL NO ATTORNEYS REG. 20761
PTR NO. 730112007 1-4-2007 PASAY CITY
IBP NO. 1410607 1-4-2007 PASAY CITY
MCLE COMPLIANCE VI-002244/4-4-19
ADMITTED TO THE BAR ON APRIL 21, 1978