

**MEMORANDUM OF AGREEMENT
FOR THE PRINTING SERVICES FOR THE 2022 GCG ANNUAL REPORT**

THIS MEMORANDUM OF AGREEMENT (MOA) for the Printing of the 2022 GCG Annual Report entered into this _____ between the:

17 OCT 2024

GOVERNANCE COMMISSION FOR GOCCs, a central advisory, monitoring, and oversight body attached to the Office of the President, duly organized and existing pursuant to and by virtue of Republic Act No. 10149, with principal office address at 3/F BDO Towers Paseo (formerly Citibank Center), 8741 Paseo de Roxas, Makati City, represented by its Chairperson, **ATTY. MARIUS P. CORPUS** (hereinafter referred to as the "GCG");

-and-

APO PRODUCTION UNIT, INC., (hereinafter, the "SERVICE PROVIDER"), a government instrumentality with corporate powers/ government corporate entity recognized by the Governance Commission for Government Owned or Controlled Corporations (GCG) by virtue of Republic Act No. 10149, and under the supervision and control of the Presidential Communications Operations Office (PCOO), pursuant to Executive Order No. 4, s. 2010 with principal offices at PIA Bldg, Visayas Avenue, Barangay Vasra, Quezon City, Metro Manila, Philippines 1128, represented herein by its General Manager, **ATTY. GIL CARLOS R. PUYAT**;

The **GCG** and the **SERVICE PROVIDER** are hereinafter collectively referred to as the "**PARTIES**"

WITNESSETH: THAT

WHEREAS, the **GCG** requires services of an entity who can provide *Printing Services for the 2022 GCG Annual Report*;

WHEREAS, the **GCG**, after performing a cost-benefit analysis, determined that resort to an Agency to Agency Procurement under Section 53 of RA No. 9184 and its 2016 IRR is more efficient and economical;

WHEREAS, the **SERVICE PROVIDER** is one of the three (3) Recognized Government Printers (RGPs) authorized to perform the printing of accountable forms of the government under Government Procurement Policy Board (GPPB) Resolution 05-2010.

WHEREAS, the **GCG** and the **SERVICE PROVIDER**, under Section 53.5 of the 2016 Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, are qualified to enter Agency to Agency Agreement using negotiated procurement;

WHEREAS, the GCG Bids and Awards Committee (BAC), issued **Resolution No. 24-0048** dated 11 July 2024 recommending the approval of the Procurement of the Printing Services for the 2022 GCG Annual Report through Negotiated Procurement – Agency to Agency as outlined under Section 53.5 of the IRR of RA No. 9184;

NOW, THEREFORE, for and in consideration of the foregoing premises, the **PARTIES** have agreed as follows:

1
gac. J

ARTICLE 1

DEFINITIONS AND ENTIRE AGREEMENT

- 1.1 As used in this Memorandum of Agreement the term:
- 1.1.1 "Applicable Law" refers to the laws and any other instruments having the force of law in the Philippines as they may be issued and enforced from time to time.
 - 1.1.2 "Agreement" refers to this Memorandum of Agreement signed by the **PARTIES** including all agreement documents, appendices and attachments; which shall be used interchangeably with the term "Agreement" in this document.
 - 1.1.3 "The **SERVICE PROVIDER**" means the individual contractor, manufacturer distributor, or firm supplying/manufacturing the Goods and Services under this Agreement.
 - 1.1.4 "Agreement Documents" refer to the following:
 - 1.1.4.1 Purchase Request (PR) (Annex "A");
 - 1.1.4.2 Memorandum from End-User justifying that Agency-to-Agency is efficient and economical to the government ("ANNEX "B");
 - 1.1.4.3 Certification from the **SERVICE PROVIDER** signifying its compliance with the conditions under Section 53.5 of the IRR of RA No. 9184 ("ANNEX "C");
 - 1.1.4.4 Performance Security (Annex "D");
 - 1.1.4.5 Notice to Proceed (NTP) (Annex "E"); and,
 - 1.1.4.6 Other agreement documents that may be required by existing laws and/or the **Procuring Entity**.
 - 1.1.5 "Effective Date" refers to the date on which this Agreement comes into full force and effect.
 - 1.1.6 "Foreign Currency" refers to any currency other than the currency of the Philippines.
 - 1.1.7 "Funding Source" refers to the General Appropriations Act of 2024.
 - 1.1.8 "Government" refers to the Government of the Philippines (GOP).
 - 1.1.9 "Local Currency" refers to the Philippine Peso (Php).
 - 1.1.10 "Party" means the **GCG** or the **SERVICE PROVIDER**, as the case may be, and "**PARTIES**" means both of them.
 - 1.1.11 "Personnel" means employees of **SERVICE PROVIDER**, assigned to the performance of the Services or any part thereof; employees of **SERVICE PROVIDER** are not employees of **GCG**, and neither is there an employer-employee relationship between **GCG** and **SERVICE PROVIDER**.
 - 1.1.12 "Foreign Personnel" means such persons who at the time of being so hired has their domicile outside the Government's country;
 - 1.1.13 "Local Personnel" means such persons who at the time of being so hired has their domicile inside the Philippines.
 - 1.1.14 "Key Personnel" means such persons who contribute in the accomplishment of the project.
 - 1.1.15 "Procuring Agency/Entity" refers to the **GCG**.

- 1.1.16 "Services" refer to the work to be performed by the **SERVICE PROVIDER** pursuant to Article 2 of this Agreement.
- 1.1.17 "Sub-Service Provider" refers to any person or entity to whom/which the **SERVICE PROVIDER** subcontracts any part of the Services.
- 1.1.18 "Third Party" refers to any person or entity other than the Government, the **GCG**, the **SERVICE PROVIDER**, or a Sub-Service Provider.
- 1.2 This Agreement, including the documents specified in Section 37.2.3 of the IRR of RA No. 9184 and those specified in Article 1.1.4 of this Agreement, contains all covenants, stipulations and provisions agreed by the **PARTIES**. No agent or representative of either Party has authority to make any statement, representation, promise, or agreement not set forth herein of which the **PARTIES** shall not be bound by or be liable for.
- 1.3 The headings shall not limit, alter or affect the meaning of this Agreement.
- 1.4 This Agreement has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this **AGREEMENT**.

**ARTICLE 2
SERVICES**

2.1 SCOPE OF SERVICES

The **SERVICE PROVIDER** shall perform the Services under this **AGREEMENT** as agreed upon by the **PARTIES** and all such items, although not specifically mentioned, that can be reasonably inferred as being required for its completion as if such items were expressly mentioned herein. The following shall form part of the Services that the **SERVICE PROVIDER** shall undertake:

- 2.1.1 Within seven (7) working days upon receipt of the ready-to-print file of the 2022 GCG Annual Report, the **SERVICE PROVIDER** shall print and submit a proof copy of the 2022 GCG Annual Report according to the specifications stated in the purchase request for the approval of **GCG**;

2022 GCG Annual Report

Quantity	:	300 copies
Size	:	8.25" x 11.25"
Paper Stock	:	Cover – C2S 220 lbs. Inside – C2S 80 lbs.
Color	:	Cover – Full color w/ Matt Lamination & Spot UV Inside – 4 x 4
No. of Pages	:	75 including cover
Binding	:	Perfect Binding
Others	:	Flash Drive Supplied

- 2.1.2 The **SERVICE PROVIDER** shall submit to the **GCG** 300 printed copies of the 2022 GCG Annual Report according to the specifications stated in the purchase request (Annex "A") and the approved proof to the GCG within thirty (30) calendar days upon receipt of the approval of the proof copy, but not later than **31 December 2024**;
- 2.1.3 The **SERVICE PROVIDER** shall provide access to the **GCG's** employees to supervise the printing of the 2022 GCG Annual Report; and
- 2.1.4 The **SERVICE PROVIDER** shall provide assistance to the **GCG** whenever necessary to ensure that the 2022 GCG Annual Report is printed according to the specifications stated in the purchase request and in a timely manner.




2.2 STANDARD OF SERVICES

- 2.2.1 The **SERVICE PROVIDER** shall fulfill its obligation under this Agreement using its technical knowledge and according to the best-accepted professional standards. The **SERVICE PROVIDER** shall exercise reasonable skill, care, and diligence in the discharge of its duties agreed to be performed and shall always work in the best interest of the Government of the Philippines. To attain these ends, the **SERVICE PROVIDER** shall provide personnel with adequate qualifications and experiences and of such number as may be required for the best fulfillment of the services, subject to the approval of the **GCG**.
- 2.2.2 In consideration of the payments to be made by **GCG** to the **SERVICE PROVIDER** as hereinafter mentioned, the **SERVICE PROVIDER** hereby agrees to provide **GCG** with Printing Services and to address all requirements therein in conformity with the provisions of the Agreement and the Agreement Documents.
- 2.2.3 **GCG** shall have the right to inspect and/or test the goods provided in the immediately preceding section to confirm their conformity with the specifications agreed upon at no extra cost.
- 2.2.3.1 In this regard, **GCG** shall notify the **SERVICE PROVIDER** in writing, in a timely manner, of the identity of any of its representatives retained for these purposes.
- 2.2.3.2 All reasonable facilities and assistance for the inspection and testing of the said goods, if necessary, shall be provided by the **SERVICE PROVIDER** to **GCG**'s authorized inspectors at no additional charge.
- 2.2.4 This Agreement shall include all such services, although not specifically mentioned, that can be reasonably inferred as being required for its completion as if such items were expressly mentioned herein.

2.3 AGREEMENT PERIOD AND EFFECTIVITY

- 2.3.1 The Services shall be completed within **thirty (30) calendar days** from the date stipulated in the **Notice to Proceed (NTP)** to be issued by the **GCG** but in no case later than 31 December 2024 subject to a valid extension, the request for which shall be submitted in writing by the **SERVICE PROVIDER** and subject to the sole discretion and approval of the **GCG**.
- 2.3.2 Either party shall promptly report to each other the occurrence of any event or condition which might delay or prevent the timely completion of the services embraced herein, specifying in writing the amount of time involved, the causes of delay, and its subsequent implications on the entire timetable, work schedule, and budget of the Project.
- 2.3.3 The Services shall be performed at such locations, date and time, whether in the Philippines or elsewhere, as the **GCG** may approve.
- 2.3.4 Unless sooner terminated pursuant to Articles 9.3 or 9.4 hereof, this Agreement shall terminate **thirty (30) days** after receipt of the **SERVICE PROVIDER** of the Certificate of Acceptance issued by the **GCG** or such other time period as the parties may agree in writing without prejudice to any accrued rights of both **PARTIES**, if any.

2.4 OUTPUT TO BE DELIVERED

- 2.4.1 The **SERVICE PROVIDER** shall be in close coordination with the **Strategy Management and Communications Division (SMCD)** of **GCG**. The **SERVICE PROVIDER** shall be readily contacted through electronic and any

other means to schedule meetings as may be needed to accomplish the above-mentioned scope of work.

- 2.4.2 The **PARTIES** hereto agree that the **SERVICE PROVIDER** shall submit and produce the outputs agreed upon in Article 2.1. of this Agreement.
- 2.4.3 Failure on the part of the **SERVICE PROVIDER**, to demonstrate full capability/capacity to provide the Printed 2022 GCG Annual Report stipulated in Article 2.1. of this Agreement shall be a ground for the rescission of this Agreement and the forfeiture of the performance security posted as liquidated damages, without prejudice to other remedies allowed by law.
- 2.4.4 All deliverables must be submitted to the **GCG** within **thirty (30) calendar days** upon receipt of the approval of the proof copy but in no case later than 31 December 2024, subject to a valid extension permitted by the **GCG**.
- 2.4.5 The **SERVICE PROVIDER** shall obtain the **GCG's** prior approval in writing before taking any of the following actions:
 - 2.4.5.1 appointing such members of the Personnel merely by title but not by name; and
 - 2.4.5.2 replacement, during the performance of the agreement for any reason.
- 2.4.6 No modification of the terms and conditions of this **AGREEMENT**, including any modification of the scope of the Services shall be allowed. However, each Party shall give due consideration to any proposal for modification made by the other Party.

ARTICLE 3 PAYMENTS

3.1 AGREEMENT PRICE

- 3.1.1 Payment to the **SERVICE PROVIDER** shall not exceed **TWO HUNDRED FIFTY-FIVE THOUSAND THREE HUNDRED SIXTY PESOS ONLY (P255,360.00)**, inclusive of Value-Added Tax (VAT) and other applicable taxes in consideration of the Services performed by the **SERVICE PROVIDER** under this Agreement.
- 3.1.2 It is agreed that there will be no additional costs beyond what is stated in this Agreement on the part of **GCG** for any excess time and/or charges incurred by the **SERVICE PROVIDER** to satisfy the completion of Services in this Agreement, *provided*, that the **GCG** may refuse to make payments when the terms and conditions of this Agreement are not satisfactorily performed by the **SERVICE PROVIDER** based on the mutually agreed terms and conditions.

3.2 SCHEDULE OF PAYMENT

- 3.2.1 The **GCG** shall process payment within twenty (20) working days upon receipt of complete documents from the **SERVICE PROVIDER** such as, but not limited to, service invoice or billing statement, service report, and other pertinent documents. The foregoing process shall be repeated in case there is a need for revision in the submitted documents.
- 3.2.2 Payments shall be made only upon issuance of a certification by the Authorized Representative of the **GCG** to the effect that the Services have been rendered satisfactorily in accordance with the terms of this contract and have been duly accepted.

- 3.2.3 The **SERVICE PROVIDER** shall not be entitled to any penalty or additional charges from the **GCG** for any delay in payments due to factors beyond the control of the **GCG** and/or its personnel.
- 3.2.4 For instances when it may be difficult to make payments within the required period, the **GCG** shall send a letter informing the **SERVICE PROVIDER** for an extension of payment of twenty (20) working days in accordance with R.A. No. 11032 otherwise known as the "Ease of Doing Business and Efficient Government Service Delivery Act of 2018" signed by the Authorized Representative of the **GCG**.
- 3.2.5 Any amount which **GCG** has paid in excess of the total contract price shall be refunded by the **SERVICE PROVIDER** to the **GCG** within twenty (20) working days from receipt of notice thereof.

3.3 METHOD OF PAYMENT

- 3.3.1 All payments shall be made in Philippine Pesos.
- 3.3.2 All payments under this Contract shall be made to the account of the **SERVICE PROVIDER** as follows:

Account Name:	APO Production Unit, Inc.
Bank Name:	Land Bank of the Philippines
Branch:	East Avenue Branch
Account No.:	0572-1024-32

3.3.3 Notwithstanding Article 3.3.2, payments by the **GCG** to the **SERVICE PROVIDER** shall be made using the Direct Payment Scheme (DPS) via bank debit system through issuance of List of Due and Demandable Accounts Payable – Authority to Debit Account (LDDAP-ADA). However, should the payments be credited to a bank other than Land Bank of the Philippines, any bank fees and charges shall be for the account of the **SERVICE PROVIDER**.

3.4 SERVICE PROVIDER NOT TO BENEFIT FROM GCG, DISCOUNTS, ETC.

3.4.1 The remuneration of the **SERVICE PROVIDER** as provided herein shall constitute the **SERVICE PROVIDER's** sole remuneration in connection with this **AGREEMENT**, the **SERVICE PROVIDER** shall not accept for their own benefit any trade **GCG**, discount or similar payment in connection with activities pursuant to this **AGREEMENT** or in the discharge of their obligations hereunder, and the **SERVICE PROVIDER** shall use its best efforts to ensure that the Personnel and agents of the **SERVICE PROVIDER**, similarly shall not receive any such additional remuneration.

**ARTICLE 4
OBLIGATIONS OF THE GCG**

- 4.1 **GCG** hereby covenants to pay the **SERVICE PROVIDER**, in consideration for the goods and/or services, the agreement price of **TWO HUNDRED FIFTY-FIVE THOUSAND THREE HUNDRED SIXTY PESOS ONLY (P255,360.00)** inclusive of VAT and other applicable taxes.
- 4.2 The **GCG** shall certify the completion of the service within the agreed period.

- 4.3 Whenever the performance of the obligations in this Agreement requires that the **SERVICE PROVIDER** obtain permits, approvals, import, and other licenses from local public authorities, the **GCG** shall, if so needed by the **SERVICE PROVIDER**, make its best effort to assist the **SERVICE PROVIDER** in complying with such requirements in a timely and expeditious manner.
- 4.4 The **GCG** shall make available to the **SERVICE PROVIDER** and the Personnel, for the purposes of the Services and free of any charge, the following:
 - 4.5.1 for services, assistance/facilitation of obtaining information from **GCG**; and
 - 4.5.2 for facilities, conference rooms, workstations and laptops for use within the **GCG's** premises.
- 4.5 The foregoing shall be provided during regular business hours, provided that if such services, facilities and property shall not be made available to the **SERVICE PROVIDER** as and when so specified, the Parties shall agree on:
 - 4.6.1 any time extension that it may be appropriate to grant to the **SERVICE PROVIDER** for the performance of the Services;
 - 4.6.2 the manner in which the **SERVICE PROVIDER** shall procure any such services, facilities and property from other sources.
- 4.6 Subject to the requirement of Confidentiality, the **GCG** warrants that the **SERVICE PROVIDER** shall be provided access to project documents for the **SERVICE PROVIDER** to accomplish its deliverable in a timely and efficient manner.

**ARTICLE 5
OBLIGATIONS OF THE SERVICE PROVIDER**

- 5.1 The **SERVICE PROVIDER** shall fulfill its obligations under this Agreement by using knowledge and technical skills according to the best accepted professional standards. It shall exercise due care and diligence in the discharge of duties agreed to be performed and shall work in the best interest of the Government of the Republic of the Philippines.
- 5.2 In consideration of the payments to be made by **GCG** to the **SERVICE PROVIDER**, the **SERVICE PROVIDER** hereby covenants with the **GCG** to provide the Services in a timely and efficient manner, in conformity with the provisions of the Agreement and to remedy defects therein in conformity in all respects with the provisions of the Agreement.
- 5.3 The **SERVICE PROVIDER** commits to print and submit a proof copy of the **2022 GCG Annual Report** according to the specifications stated in the purchase request for the approval of the **GCG** within seven (7) working days upon receipt of the ready-to-print file of the **2022 GCG Annual Report**, the **SERVICE PROVIDER** shall print:

2022 GCG Annual Report


Quantity	:	300 copies
Size	:	8.25" x 11.25"
Paper Stock	:	Cover – C2S 220 lbs. Inside – C2S 80 lbs.
Color	:	Cover – Full color w/ Matt Lamination & Spot UV Inside – 4 x 4
No. of Pages	:	75 including cover
Binding	:	Perfect Binding
Others	:	Flash Drive Supplied

- 5.4 The **SERVICE PROVIDER** shall submit 300 printed copies of the 2022 GCG Annual Report to the **GCG** according to the specifications stated in the purchase request and the approved proof to within thirty (30) calendar days upon receipt of the approval of the proof copy but in no case later than 31 December 2024, subject to a valid extension if permitted by the **GCG**;
- 5.5 The **SERVICE PROVIDER** shall provide access to the **GCG**'s employees to supervise the printing of the 2022 GCG Annual Report; and
- 5.6 The **SERVICE PROVIDER** shall, whenever necessary, ensure that the 2022 GCG Annual Report is printed according to the specifications stated in the purchase request and in a timely manner.
- 5.7 The **GCG** undertakes no responsibility in respect of life, health, accident, travel or any other insurance coverage for the **SERVICE PROVIDER**, the Personnel of the **SERVICE PROVIDER** or for the dependents of any such Personnel.

ARTICLE 6 RELATIONSHIP OF PARTIES

- 6.1 Nothing contained herein shall be construed as establishing a relation of employer and employee or of principal and agent as between the **GCG** and the **SERVICE PROVIDER**. The **SERVICE PROVIDER**, subject to this Agreement, has complete charge of its Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.
- 6.2 The **SERVICE PROVIDER** shall, during the performance of the Services, be an independent contractor of the **GCG** retaining complete control over its Personnel, conforming to all statutory requirements with respect to all its employees, and providing all appropriate employee benefits.
- 6.3 The **SERVICE PROVIDER** shall hold the **GCG** free and harmless from any and all liabilities resulting from the acts and omissions of the **SERVICE PROVIDER**'s Personnel pursuant to this **AGREEMENT**, provided there is no fault, negligence, or omission, on the part of the **GCG**.
- 6.4 Subject to additional provisions, if any, the **SERVICE PROVIDER**'s liability under this **AGREEMENT** shall be as provided by the laws of the Republic of the Philippines.

ARTICLE 7 AUTHORIZED REPRESENTATIVES AND NOTICES

- 7.1 Any action required or permitted to be taken and any document required or permitted to be executed under this Agreement by both **PARTIES** may be taken or executed by the authorized representatives of the **PARTIES**. 

7.1.1 The authorized representatives are as follows:

For the **GCG**:

- a. Primary Representative – ATTY. MARIUS P. CORPUS, Chairperson
- b. Alternate Representative – Commissioner or Director of the Strategy, Communications, and Information Technology Office (SCITO) 

For the **SERVICE PROVIDER**:

ATTY. GIL CARLOS R. PUYAT, General Manager

- 7.2 FORM OF NOTICE 

Any notice, request, consent, or correspondence required or permitted to be given or made pursuant to this Agreement shall be in writing. Any such notice, request, consent or correspondence shall be deemed to have been given or made when signed by the authorized representatives of the **PARTIES**, and shall be deemed received by either party when sent by registered mail, telex, telegram, facsimile, or email, to the addresses of the **PARTIES** as stated below:

Procuring Entity: **GOVERNANCE COMMISSION FOR GOCCs**
Address: 3rd Floor, BDO Towers Paseo, 8741 Paseo de Roxas, Makati City
Facsimile: 5328-2030 loc. 301
Email Address: feedback@gcg.gov.ph

Service Provider: **APO PRODUCTION UNIT, INC.**
Address: PIA Bldg, Visayas Avenue, Barangay Vasra, Quezon City
Facsimile: (632) 8927-6793
Email Address: sales@apo.gov.ph

7.3 EFFECTIVITY OF NOTICE

Notice shall be deemed to be effective as follows:

- 7.3.1 In the case of personal delivery, registered mail, telegram, or courier, upon delivery;
- 7.3.2 In the case of facsimile and electronic mail, upon sending by the other **PARTY**.

ARTICLE 8 FORCE MAJEURE

- 8.1 For purposes of this Agreement the terms “force majeure” and “fortuitous event” may be used interchangeably. In this regard, a fortuitous event or force majeure shall be interpreted to mean an event which the **PARTIES** could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the concerned **PARTY**.
- 8.2 The failure of a **PARTY** to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under this Agreement insofar as such inability arises from an event of force majeure, *provided*, that the **PARTY** affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.
- 8.3 Unless otherwise agreed herein, force majeure shall **not** include:
 - 8.3.1 Any event which is caused by the negligence or intentional action of either **PARTY** or the Personnel of **SERVICE PROVIDER**;
 - 8.3.2 Any event which a diligent **PARTY** could reasonably have been expected to both take into account at the time of the conclusion of this Agreement and avoid or overcome in the carrying out of its obligations hereunder;
 - 8.3.3 Insufficiency of funds or failure to make any payment required hereunder; or
 - 8.3.4 The **GCG's** failure to review, approve or reject the outputs of the **SERVICE PROVIDER** beyond a reasonable time period.
 - 8.3.5 Acts against the confidentiality, integrity, and availability of computer data and systems, including, but not limited to, illegal access, illegal

interception, data interference, system interference, and misuse of devices

- 8.4 A **PARTY** affected by an event of force majeure shall take all reasonable measures to remove such **PARTY**'s inability to fulfill its obligations hereunder immediately or within a reasonable time.
- 8.5 A **PARTY** affected by an event of force majeure shall notify the other **PARTY** of such event as soon as possible, and in any event not later than five (5) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- 8.6 The **PARTIES** shall take all reasonable measures to minimize the consequences of any event of force majeure.
- 8.7 Not later than fifteen (15) calendar days after the period stated in Article 8.5 above, the **PARTIES** shall consult with each other with a view to agreeing on appropriate measures considering the circumstances.
- 8.8 In the case of disagreement between the **PARTIES** as to the existence, or extent of force majeure, the matter shall be submitted to Dispute Settlement in accordance with Article 10 hereof.

ARTICLE 9 SUSPENSION AND TERMINATION

9.1 SUSPENSION BY THE GCG

The **GCG** may, by written Notice of Suspension to **SERVICE PROVIDER**, suspend all payments to the **SERVICE PROVIDER** for any or no reason, such as when the **SERVICE PROVIDER** fails to perform any of its obligations due to own fault or due to force majeure or other circumstances beyond the control of either party under this Agreement, including the carrying out of the Services, provided that, such notice of suspension, if applicable, shall specify the nature of the failure and request the **SERVICE PROVIDER** to remedy such failure within a period not exceeding thirty (30) days after receipt by the **SERVICE PROVIDER** of such notice of suspension.

9.2 SUSPENSION BY THE SERVICE PROVIDER

The **SERVICE PROVIDER** may, by written Notice of Suspension, suspend the Services if the **GCG** fails to perform any of its obligations which are critical to the delivery of the **SERVICE PROVIDER**'s services such as, non-payment of any money due to **SERVICE PROVIDER** within thirty days (30) days after receiving Notice from the **SERVICE PROVIDER** that such payment is overdue.

9.3. TERMINATION BY GCG

The **GCG** may terminate this Agreement for any or no reason by giving written notice to **SERVICE PROVIDER** at least thirty (30) days before the intended date of termination, such as when any of the following conditions attends its implementation:

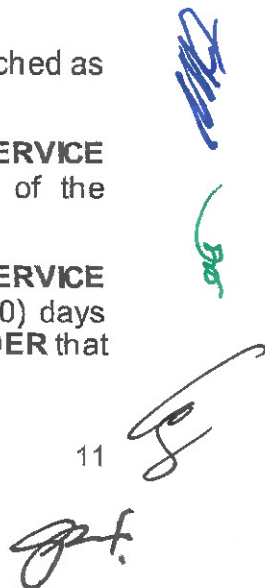
- 9.3.1 Outside of force majeure, the **SERVICE PROVIDER** fails to deliver or perform the Services as set forth in Article 2 and Article 5 hereof within the period(s) specified in this Agreement, or within any extension thereof granted by the **GCG** pursuant to a request made by the **SERVICE PROVIDER** prior to the delay.
- 9.3.2 As a result of force majeure, the **SERVICE PROVIDER** is unable to deliver or perform a material portion of the Service as set forth in Article 2 and Article 5 hereof for a period of not less than sixty (60) calendar days after

the **SERVICE PROVIDER's** receipt of the notice from the **GCG** stating that the circumstance of force majeure is deemed to have ceased.

- 9.3.3 In whole or in part, at any time for its convenience, the Head of the **GCG** may terminate the Agreement for its convenience if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and National Government policies.
- 9.3.4 If the **SERVICE PROVIDER** is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction; in which event, termination will be without compensation to the **SERVICE PROVIDER**, provided, that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to either Party.
- 9.3.5 In case there is a *prima facie* determination of the **GCG** that the **SERVICE PROVIDER** has engaged, before or during the implementation of this Agreement, in unlawful deeds and behaviors relative to agreement acquisition and implementation, such as, but not limited to, the following: corrupt, fraudulent, collusive and coercive practices; drawing up or using forged documents; using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and any other act analogous to the foregoing.
- 9.3.6 The **SERVICE PROVIDER** fails to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to Article 9.1 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the **GCG** may have subsequently approved in writing.
- 9.3.7 The **SERVICE PROVIDER's** failure to comply with any final decision reached as a result of arbitration proceedings pursuant to Article 10 hereof.
- 9.3.8 The **SERVICE PROVIDER** fails to perform any other obligation under the Agreement.

9.4 TERMINATION BY THE **SERVICE PROVIDER**

- 9.4.1 The **SERVICE PROVIDER** must serve a written notice to the **GCG** of its intention to terminate this Agreement at least thirty (30) calendar days before its intended termination. This Agreement is deemed terminated if no action has been taken by the **GCG** with regard to such written notice within thirty (30) calendar days after the receipt thereof.
- 9.4.2 The **SERVICE PROVIDER** may terminate this Agreement after 30 days of receiving written notice to the **GCG**, due to any of the following conditions:
 - 9.4.2.1 The **GCG** is in material breach of its obligations pursuant to this Agreement and has not remedied the same within sixty (60) calendar days following its receipt of **SERVICE PROVIDER's** notice specifying such breach.
 - 9.4.2.2 The **GCG's** failure to comply with any final decision reached as a result of arbitration pursuant to Article 10 hereof.
 - 9.4.2.3 As the direct and proximate result of force majeure, the **SERVICE PROVIDER** is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
 - 9.4.2.4 The **GCG** fails to pay any money due to the **SERVICE PROVIDER** pursuant to this Agreement within sixty (60) days after receiving written notice from the **SERVICE PROVIDER** that such payment is overdue.



9.5 PAYMENT UPON TERMINATION

Upon termination of this Agreement, the **GCG** shall make the following payments to the **SERVICE PROVIDER**:

9.5.1 Remuneration for services including actual and/or miscellaneous expenses incurred by the **SERVICE PROVIDER** in compliance with the Services as provided under Article 2 of this Agreement. *Provided that*, the Services submitted by the **SERVICE PROVIDER** has been certified by the **GCG** as accepted prior to the effective date of termination. *Provided further*, that under no circumstance or instance shall the total payment for services, including actual and/or miscellaneous expenses be in excess of the allotted payment(s) as provided in Article 2 of this Agreement.

9.5.2 There shall be no remuneration for services and no payment for actual and/or miscellaneous expenses incurred made to the **SERVICE PROVIDER**, when such services should/could not have been reasonably and necessarily incurred by the **SERVICE PROVIDER** given that the Service is not yet due or reasonably close to its due date for submission by reason of the schedule and the proximity of periods as provided under Article 2 of this Agreement.

9.6 CESSATION OF RIGHTS AND OBLIGATIONS

9.6.1 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Articles 9.3 or 9.4 hereof, the **SERVICE PROVIDER** shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

9.6.2 Cessation of Rights and Obligations

Upon termination of this Agreement pursuant to Article 9.3 or 9.4 hereof, or upon expiration of this Agreement, all rights and obligations of the **Parties** hereunder shall cease, except:

9.6.2.1 Such rights and obligations as may have accrued on the date of termination or expiration;

9.7.2.2 The obligation of confidentiality as set forth herein;

9.7.2.3 The **SERVICE PROVIDER's** obligation to permit inspection, copying and auditing of their accounts and records; and

9.7.2.4 Intellectual Property Rights of the **PARTIES**.

ARTICLE 10 DISPUTE SETTLEMENT

10.1 Any and all disputes arising from the implementation of this Agreement shall be submitted to arbitration in the Philippines according to the provisions of Book IV, Chapter 14 on *Controversies Among Government Offices and Corporations* of the Administrative Code of 1987. The seat of arbitration is the Philippines, whose laws shall be the law of the arbitration agreement. The language of the arbitration shall be English.

ARTICLE 11 WARRANTIES AND LIABILITY LIMITATIONS

11.1 The **SERVICE PROVIDER** shall always ensure that during its performance of the Services provided in this Agreement, professional staff shall be provided.

- 11.2 If the **SERVICE PROVIDER's** services do not conform to the requirements agreed between the **PARTIES**, the **GCG** shall promptly notify the **SERVICE PROVIDER** subject to Article 7 and the **SERVICE PROVIDER** shall re-perform any non-conforming services at no additional charge or, the **PARTIES** may consider termination of this Agreement pursuant to Articles 9.3 and 9.4 with Liquidated Damages for Delay.
- 11.3 The **SERVICE PROVIDER** shall indemnify and hold the **GCG** and its officers, employees, and representatives free and harmless against any and all actions, proceedings, costs, claims, demands, losses, expenses, and liabilities arising out of or in connection with fraud or unauthorized activity by the **SERVICE PROVIDER**, or any act or omission of the **SERVICE PROVIDER**, its directors, officers, agents, and employees in the implementation of this Agreement.
- 11.4 The **GCG** shall in no event have any liability to the **SERVICE PROVIDER** or any third party for any loss of profits, loss of revenue, loss of capital, loss of anticipated savings, or loss of data, or for any special, indirect, incidental, punitive, or consequential damages or losses arising out of or in connection with this Agreement, under any theory of liability.
- 11.5 The maximum extent of liability of the **GCG** to the **SERVICE PROVIDER** for any and all claims and injuries shall be limited to the amounts actually payable by **GCG** to the **SERVICE PROVIDER** under this Agreement.
- 11.6 In the event the **Commission of Audit** or any court, tribunal, agency, or officer of competent jurisdiction orders the suspension, disallowance, refund, restraint, or injunction of any payment made or to be made by the **GCG**, the parties shall comply with such order.

ARTICLE 12 GENERAL CONDITIONS

12.1 NON-ASSIGNMENT

12.1.1 The **SERVICE PROVIDER** may not assign or transfer its rights and obligations under this Agreement without the prior written consent of the **GCG**.

12.1.2 In the course of providing the Services, subcontracting is not allowed pursuant to Annex "H" of the IRR of RA No. 9184.

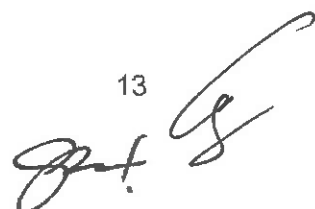
12.2 GOVERNING LAW

12.2.1 The **SERVICE PROVIDER** shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that the Personnel of the **SERVICE PROVIDER** complies with the Applicable Law.

12.2.2 The **GCG** shall notify the **SERVICE PROVIDER** in writing of relevant local customs, and the **SERVICE PROVIDER** shall, after such notification, respect such customs.

12.2.3 If, after the date of this Agreement, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the **SERVICE PROVIDER** in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the **SERVICE PROVIDER** under this Agreement shall be increased or decreased on a *no loss-no gain* basis, and corresponding adjustments shall be made to the ceiling amounts specified in Article 3, provided that the cost is within the Approved Budget for the Agreement (ABC).

12.3 AMENDMENT



This Agreement may be amended only by a written amendment or supplement signed by both **PARTIES**.

12.4 NOTICE OF DELAY

In the event that the **SERVICE PROVIDER** encounters delay obtaining the required services or facilities under this Agreement, it shall promptly notify **GCG** of such delay and may request for an extension for the completion of services, *provided*, that the extension of time may only be granted if the delay is deemed reasonable and justifiable as determined by the **GCG**.

12.5 OWNERSHIP OF MATERIALS

12.5.1 Any output prepared by the **SERVICE PROVIDER** for the **GCG** under this Agreement shall become and remain the property of the **GCG**. The **SERVICE PROVIDER** may retain a copy such, exclusively for personal records purposes.

12.5.2 The **SERVICE PROVIDER** shall, prior to termination or expiration of this Agreement, deliver all such documents and/or software to the **GCG**, together with a detailed inventory thereof.

12.5.3 The **GCG** shall retain exclusive intellectual property rights in the 2022 GCG Annual Report, each and every portion thereof, and all other materials that the **GCG** has provided or will provide to the **SERVICE PROVIDER**. The **SERVICE PROVIDER** shall retain the intellectual property rights in any systems techniques, methodologies, ideas and concepts utilized in the course of the performance of the Services. The **GCG** shall have a non-exclusive, non-transferrable license to use such intellectual property within the documents and software concerned for its own internal purposes. If required, the **GCG** shall have the right to improve, develop, and expand develop derivatives upon the intellectual property, but this does not impact the **SERVICE PROVIDER's** ownership of the intellectual property.

12.6 LIQUIDATED DAMAGES FOR DELAY

12.6.1 If **SERVICE PROVIDER** fails to deliver any or all of the Services within the period(s) specified in this Agreement due to breach of agreement, negligence, or any other tort, due directly and solely to the fault or omission of **SERVICE PROVIDER**, the **GCG** shall, without prejudice to its other remedies under this Agreement and under the law, deduct from the agreement price, as liquidated damages, a sum equivalent to one-tenth of one percent of the price of the unperformed portion of the Services for each day of delay based on the approved agreement schedule up to a maximum deduction of ten percent (10%) of the agreement price. Once the maximum is reached, the **GCG** may terminate this Agreement under Article 9.

12.7 CONFIDENTIALITY

12.7.1 Except with the prior written consent of the **GCG**, the **SERVICE PROVIDER** and its Personnel shall not at any time, even after the termination of this Agreement, communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the **SERVICE PROVIDER** make public the recommendations formulated in the course of, or as a result of, the Services. For purposes of this clause, "confidential information" means any information or knowledge acquired by the **SERVICE PROVIDER** arising out of, or in connection with, the performance of the Services under this Agreement that is not otherwise available to the public.

12.7.2 The **SERVICE PROVIDER** shall not be obligated to treat as confidential information any information disclosed by the **GCG** which:

- 13.7.2.1 is rightfully known to the **SERVICE PROVIDER** prior to its disclosure by the **GCG**;
 - 13.7.2.2 is released by the **GCG** to any other person or entity without restriction;
 - 13.7.2.3 is independently developed by the **SERVICE PROVIDER** without any use of or reliance on Confidential information;
 - 13.7.2.4 is in or enters the public domain without breach of this confidentiality obligation; or
 - 13.7.2.5 may be lawfully obtained by the **SERVICE PROVIDER** from any third party.
- 12.7.3 The **SERVICE PROVIDER**, in addition to the conditions set forth in the clause on Confidentiality, shall abide by the restrictions and requirements of R.A. No. 10173 or the Data Privacy Act of 2012 and any other applicable laws, rules or regulations on acquiring and/or processing any information that may be required in the course of, or as a result of, the Services.
- 12.7.4 In the event the **SERVICE PROVIDER** encounters a breach of personal or sensitive personal information which it acquired from the **GCG** due to this Agreement, it shall immediately notify the **GCG** of the same. The **GCG**, through its Data Privacy Technical Working Group and Data Privacy Breach Response Team, reserves its right to apply security measures to minimize the impact of the breach and report the same to the National Privacy Commission (NPC) for appropriate action.

12.9 ACCOUNTING, INSPECTION AND AUDITING

12.9.1 The **SERVICE PROVIDER** shall:

- 12.9.1.1 keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as shall clearly identify all relevant time changes and costs, and the bases thereof;
 - 12.9.1.2 permit the **GCG** or its designated representative and/or the designated representative of the Funding Source at least once for short-term Agreement, and annually in the case of long-term Agreement, and up to one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the **GCG**; and
 - 12.9.1.3 permit the **GCG** to inspect the **SERVICE PROVIDER's** accounts and records relating to the performance of the Service and to have them audited by auditors approved by the **GOP**, if so required.
- 12.9.2 The basic purpose of this audit is to verify payments under this Agreement and, in this process, to also verify representations made by the **SERVICE PROVIDER** in relation to this Agreement. The **SERVICE PROVIDER** shall cooperate with and assist the **GCG** and its authorized representatives in making such audit. In the event the audit discloses that the **SERVICE PROVIDER** has overcharged the **GCG**, the **SERVICE PROVIDER** shall immediately reimburse the **GCG** an amount equivalent to the amount overpaid. If overpayment is a result of the **SERVICE PROVIDER** having been engaged in what the **GCG** (or, as the case may be, the **GOP**) determines to constitute corrupt, fraudulent, or coercive practices, as defined under the Applicable Laws, the **GCG** shall, unless the **GCG** decides otherwise, terminate this Agreement.

- 12.9.3 The determination that the **SERVICE PROVIDER** has engaged in corrupt, fraudulent, coercive practices shall result in the **GCG** and/or the **GOP** seeking the imposition of the maximum administrative, civil and criminal penalties up to and including imprisonment.
- 12.9.4 Any inspection or audit conducted pursuant to this Agreement is subject to the following restrictions:
- 12.9.4.1 not less than 15 business days prior written notice has been given to the **SERVICE PROVIDER**;
 - 12.9.4.2 such inspection or audit is conducted in a manner that does not disrupt the **SERVICE PROVIDER's** business operations;
 - 12.9.4.3 the **GCG** acknowledges that no access will be given to those records, logs and materials contain information related to the other clients of the **SERVICE PROVIDER**;
 - 12.9.4.4 such inspection or audit shall be performed subject to reasonable security restrictions of the **SERVICE PROVIDER**;
 - 12.9.4.5 the **GCG** agrees to treat any finding and other information disclosed as a result of such inspection or audit as confidential information of the **SERVICE PROVIDER**; and
 - 12.9.4.6 if the **GCG** instructs its agent or any independent third party (who does not offer services or products that compete with the **SERVICE PROVIDER's** own) to conduct such inspection or audit, the prior consent of the **SERVICE PROVIDER** be obtained and such third party enters into appropriate confidentiality agreement with the **SERVICE PROVIDER** before commencement of the inspection or audit.

12.10 INSURANCE

- 12.10.1 The **SERVICE PROVIDER**, at its own cost, shall be responsible for taking out or maintaining any insurance policy against any risk related to the Project.
- 12.10.2 The **GCG** undertakes no responsibility in respect of life, health, accident, travel, or any other insurance coverage for the Personnel or for the dependents of any such Personnel.

IN WITNESS WHEREOF, the **PARTIES** hereto have caused this Agreement to be executed in accordance with the laws of the Republic of the Philippines on the 17 OCT 2024 of 2023, in the City of Makati, Philippines.

QUEZON CITY

GOVERNANCE COMMISSION FOR GOCCs

By:



ATTY. MARIUS P. CORPUS
Chairperson

APO PRODUCTION UNIT, INC.

By:



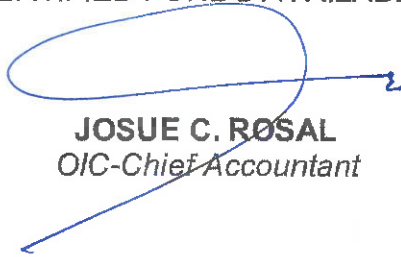
ATTY. GIL CARLOS R. PUYAT
General Manager

Signed in the Presence of:


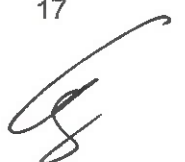

JAYPEE O. ABESAMIS
Witness


Dominic F. Tajon
Sales & Marketing Manager
Witness

CERTIFIED FUNDS AVAILABLE:


JOSUE C. ROSAL
OIC-Chief Accountant




17


ACKNOWLEDGMENT

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

BEFORE ME, a Notary Public for and in the **QUEZON CITY**, Philippines,
personally appeared and exhibited to me their respective identification documents:

Name	ID #	Date/Place Issued
ATTY. MARIUS P. CORPUS	DRIVER'S LICENSE No. X01-81-000654	08 SEPTEMBER 2023 QUEZON CITY
ATTY. GIL CARLOS R. PUYAT		

During such appearance, they declared to me (1) that they voluntarily affixed their signatures on the foregoing instrument for the purposes stated therein; (2) that they executed the instrument as their free and voluntary act and deed; and (3) that they have full authority to sign the instrument.

This instrument, including this page, has _____ () pages. **17 OCT 2024**

WITNESS MY HAND AND SEAL, on the date and place first above written.

Doc. No. 103
Page No. 21
Book No. 415
Series of 2024.

NOTARY PUBLIC

ATTY. JASON G. DE BELEN
Roll No. 36259
Atty. No. NP-008 Notary Public
Notary Public for Quezon City
My Commission expires on December 31, 2025
No. 7M Panay Ave. cor. Sct. Borromeo St., Q.C.
IBP No. 385735; Q.C.; 1-2-2024
PTR No. 5554846; Q.C.; 1-2-2024
MCLE VII-0019570; 5-30-22

(Handwritten signatures and initials)