

MEMORANDUM OF AGREEMENT
OWWA MEMBERSHIP AND BENEFITS E-CARD PROJECT
(PHASE I)

KNOW ALL MEN BY THESE PRESENTS:

This contract made and executed by and between the **OVERSEAS WORKERS WELFARE ADMINISTRATION**, represented by Administrator **HANS LEO J. CACDAC** with office address at OWWA Bldg., 7th street corner F.B. Harrison Street, Pasay City, hereinafter called the "**OWWA**"

and

APO PRODUCTION UNIT, INC. a government-owned or -controlled corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 2/F PIA Building, Visayas Avenue, Brgy VASRA, Quezon City, represented herein by its Chairman and CEO, **MICHAEL J. DALUMPINES**, duly authorized for the purpose, and hereinafter referred to as the "**CONTRACTOR**"

WITNESSETH:

WHEREAS, under Section 11 of Republic Act 10801, otherwise known as the "OWWA Act," OWWA is mandated to issue an E-Card or Other proof of membership to its member-OFWs upon their payment of the required contribution, at no additional or extra charge;

WHEREAS, pursuant to Board Resolution No.50 Series of 2018, the OWWA Board of Trustees has approved the issuance of the aforesaid OFW E-Card to all its member-OFWs to be undertaken through the "OWWA OFW E-Card for Membership and Benefits Project (Phase 1)" (hereinafter, the "Project");

WHEREAS, the OFW E-Card will enhance the efficiency of service delivery to its member-OFWs by simplifying requirements and procedures, reducing red tape, and expediting non-business related transactions with OWWA and other government agencies, pursuant to Republic Act 11032, otherwise known as the "Ease of Doing Business and Efficient Government Service Delivery Act of 2018;

WHEREAS, the first phase of the "OWWA OFW E-Card for Membership and Benefits Project" (hereinafter, the "Project") will involve the printing of Five Hundred Thousand (500,000) OFW E-Cards for active OWWA members availing of the "Balik Manggagawa (BM) Program";

WHEREAS, there is need to look for government-owned or controlled corporation (GOCC) contractors who has the capacity and expertise to print and deliver the OFW E-Card for OWWA members, while being compliant with RA 10173, otherwise known as the "Data Privacy Act (DPA) of 2012," by way of an agency-to-agency (A2A) transaction;

NOW, THEREFORE, for and in consideration of the foregoing premises and the terms and conditions herein contained, the parties hereto hereby agree as follows:

1. SCOPE OF SERVICES

The CONTRACTOR shall perform the following services in line with the printing of the OFW E-CARD (Phase 1):

1.1 Printing Service

The CONTRACTOR shall undertake to perform the required printing services in accordance with the membership card specifications stated in **Section IV. Technical Requirements** on the Terms of Reference (TOR) of "OWWA OFW E-Card for Membership and Benefits Project (Phase 1)".

1.2 Creative, Data Validation and Quality Assurance Services

The CONTRACTOR shall undertake to perform all required information technology (IT), creative, data validation and quality assurance services as specified in **Section V. Scope of Work** of the Terms of Reference (TOR) for the "OWWA OFW E-Card for Membership and Benefits Project (Phase 1)."

2. CONFIDENTIALITY OF INFORMATION AND DATA PROTECTION

2.1 The parties hereby agree to keep confidential and all information that may be disclosed under the Contract. Neither party shall disclose any information herein obtained to a third person without the written consent of the other party.

2.2 OWWA and the CONTRACTOR shall comply with Republic Act No. 10173, otherwise known as the "Data Privacy Act of 2012" and all other related laws and issuances in order to ensure the protection of data and information obtained under the Contract.

3. FEES AND BILLING SCHEDULE

3.1 For and in consideration of all the foregoing services, as well as compliance by the CONTRACTOR with all the terms and condition of this Contract, OWWA shall pay the CONTRACTOR the sum of PESOS: SEVENTY (Php70.00) per card or a total amount of PESOS: THIRTY FIVE MILLION (Php35,000,000.00) for five hundred thousand (500,000) cards, Philippine currency, inclusive of any and all taxes (including, but not limited to, the applicable Value Added Tax), fees, duties and such other imposts or levies which may be required by the government, both national and local.

3.3 The Contractor shall bill OWWA on a monthly basis through the issuance of monthly billing statements reckoned as of the end of each calendar month. OWWA shall make payment within thirty (30) calendar days upon receipt of said billing statement.

4. DURATION

4.1 This Contract shall commence on the date of the CONTRACTOR'S receipt of the **Notice to Proceed**. The CONTRACTOR shall promptly and completely perform all items of work under Section 1 hereof and submit all corresponding deliverables within the period and in accordance with the schedule agreed upon by both parties. This Contract will end after the delivery of Five Hundred Thousand (500,000) pieces of non-defective OFW ID Cards.

4.2 In the event that the CONTRACTOR fails to complete any activity within the period specified, except for "**Force Majeure**" stated in **Section 5** hereof, the CONTRACTOR shall, in addition to other remedies that OWWA may exercise under this Contract, pertinent laws, rules and regulations, pay OWWA **Liquidated Damages** as stated in **Section 6** hereof. OWWA may, at its option, make amendments or modifications in the deliverables herein above imposed.

4.3 This Contract shall automatically terminate upon the expiry of the Phase 1 of the Printing Project. Prior to the expiration of this Contract, CONTRACTOR may be eligible to bid for the second (2nd) Phase of the Project based on an entirely different Terms of Reference and Contract.

4.4 OWWA reserves the right to terminate this Contract for any cause which may include failure of the CONTRACTOR to perform in a timely and acceptable manner any of their works, duties, functions, responsibilities or obligations stipulated herein or failure to carry out the task herein required in a manner acceptable to OWWA or violation by the CONTRACTOR of any of the terms and conditions of this Contract, subject to sanctions and remedies provided for herein and under the pertinent laws, rules and regulations.

4.5 Upon the expiration of this Contract, ownership of the system and of its components, the artworks, the database, the web services and application programming interfaces APIs that are needed to decrypt the security functions of the OFW E-Card, and the final compiled version of the source code together with the intellectual property rights relating thereto, shall be transferred to OWWA.

5. FORCE MAJEURE

5.1 Neither party shall be liable for any delay or failure to perform the obligations provided in the TOR, if such delay or failure is caused by Force Majeure. In such

- 5.2 "Force Majeure" shall refer to and include any circumstance or occurrence beyond either party's reasonable control which materially and adversely affects the performance by the affected party of its obligations under this Contract and TOR. Such circumstances and occurrence include, but are not limited to acts of God, war, civil war, insurrections, terrorist attacks, strikes, fires, floods, earthquakes, labor disputes, epidemics and embargoes.
- 5.3 The party seeking to be excused from any delay or failure to perform its obligation provided in this Contract and the TOR shall advise the other party in writing of the date of commencement of such force majeure, the nature and expected duration thereof, and the actions to be taken to try to prevent or reduce the effects of such event. The notice shall be sent by such party immediately but not later than ten (10) days after the date on which such party first gains knowledge of such force majeure. If it fails to deliver such notice in accordance with this provision, such party shall not be entitled to invoke the benefits of this item.
- 5.4 The time for completion shall be extended by a period of time reasonably necessary to overcome the effect of the delay of performance due to force majeure. If force majeure continues for a period exceeding thirty (30) calendar days, either party, after consultations, shall be entitled to terminate this Contract without liability, by written notice.

6. LIQUIDATED DAMAGES

- 6.1 In the event that the CONTRACTOR violates any of the terms and conditions of this Contract, or neglects to perform in a timely manner any of the works, duties, functions, responsibilities or obligations stipulated herein, inclusive of the duly granted time extension, if any, or fails to carry out the tasks herein required in an acceptable manner for any reason whatsoever, the CONTRACTOR shall be liable for damages for such failure and shall pay OWWA liquidated damages in an amount equivalent to one-tenth (1/10) of one (1%) percent of the total contract price for every day of delay or breach, in addition to other remedies that OWWA may exercise under this Contract, pertinent laws, rules and regulations, until such services are finally delivered and accepted by OWWA. In the event that the total sum of liquidated damages or the total cost to OWWA of any such delay or inability by the Contractor to deliver its obligations exceeds 10% of the contract price, OWWA may terminate this Contract upon giving the CONTRACTOR written notice at least five (5) calendar days prior to the intended date of termination and impose other appropriate sanctions over and above the liquidated damages.

- 6.2 OWWA need not prove that it has incurred damages to be entitled to liquidated damages. Furthermore, OWWA reserves the right to deduct any and all of the liquidated damages from any money due or payments which may become due to



7. SUSPENSION OF PAYMENT/TERMINATION FOR DEFAULT

7.1 OWWA shall have the right to suspend, in whole or in part, any payment due to the CONTRACTOR under this Contract in the event there is delay, default, failure or refusal on the part of the CONTRACTOR to perform its obligations under this Contract in an acceptable manner. Further, OWWA shall have the right to procure/engage, upon such terms and manner as OWWA shall deem appropriate, the services of another contractor to undertake the unperformed/undelivered service(s) of the CONTRACTOR. Any and all expenses that may be incurred in relation thereto shall be for the exclusive account of the CONTRACTOR.

7.2 In the event that such delay, default, failure or refusal continues for a period equivalent or corresponding to more than ten (10%) percent of the Contract price or time, whichever comes first, inclusive of the duly granted time extension, if any, OWWA shall have the right to terminate this Contract upon giving the CONTRACTOR written notice at least five (5) calendar days prior to the intended date of termination. In addition, OWWA shall have the right to procure/engage the services of another contractor to complete the services required of the CONTRACTOR under this Contract. Any and all expenses that OWWA may incur in connection thereto shall be for the sole account of the CONTRACTOR.

7.3 The CONTRACTOR hereby agrees that the remedies mentioned above shall be understood to be without prejudice to other rights and remedies that OWWA may exercise under this Contract, applicable laws, rules and regulations.

8. OTHER GROUNDS FOR TERMINATION

8.1 OWWA may terminate this Contract, after giving the CONTRACTOR written notice at least five (5) calendar days prior to the intended date of termination, whenever it is determined by OWWA that the CONTRACTOR has engaged, before or during the implementation of this Contract, in unlawful acts and behaviors relative to Contract acquisition and implementation. Unlawful acts shall include, but not necessarily limited to, the following:

8.1.1 Corrupt, fraudulent, and coercive practices as defined under R.A 9184 otherwise known as the "Government Procurement Reform Act;"

8.1.2 Drawing up or using forged document;

8.1.3 Violation in the enforcement of RA 10173 otherwise known as the "Data Privacy Act (DPA) of 2012" and

8.1.4 Any other act analogous to the foregoing.

8.2 The CONTRACTOR hereby agrees that the termination referred to herein shall be understood to be without prejudice to other rights and remedies available to OWWA under this Contract or the applicable laws.

9. INDEMNITY

9.1 The CONTRACTOR shall indemnify OWWA against any loss, injury or damage either to person or property which OWWA may suffer by reason of the willful, unlawful or negligent act or omission of the CONTRACTOR or any of its personnel or representative. The indemnity required herein shall be in addition to the forfeiture of the Performance Security.

10. RELATION OF THE PARTIES

10.1 The CONTRACTOR shall have no authority, express or implied, to assume or create any obligation or responsibility on behalf of or in the name of OWWA or bind OWWA in any manner whatsoever. The CONTRACTOR's personnel, representatives or staff shall not be construed as employees of OWWA. The CONTRACTOR is being engaged herein as an independent contractor. Nothing herein shall be construed as creating an employer/employee relationship between the CONTRACTOR's employees, representatives or staffs and OWWA.

11. NON-WAIVER OF RIGHTS

11.1 The failure of OWWA to insist upon the strict performance of any of the terms, conditions and covenants hereof shall not be deemed a relinquishment or waiver of any right or remedy that OWWA may have nor shall it be construed as a waiver of any subsequent breach or default of the terms, conditions and covenants hereof, which in turn, shall continue to be in full force and effect. No waiver by OWWA of any of its rights under this Contract shall be deemed to have been made unless expressed in writing and signed by OWWA.

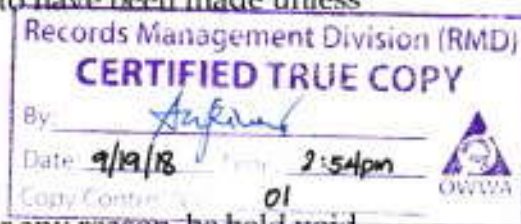
12. MISCELLANEOUS PROVISIONS

12.1 **Severability** - If any provision of this Contract should, for any reason, be held void or unenforceable, the legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired, and shall remain in full force and effect.

12.2 **Binding Effect/Assignment of Rights** - This Contract shall be binding upon the CONTRACTOR, its partners, successors-in-interest, its legal representatives and assigns. Foregoing notwithstanding, the CONTRACTOR shall not in any manner, directly or indirectly, assign, or transfer its rights and obligations under this Contract without the written approval of OWWA.

12.3 **Amendment** - This Contract may be amended or modified only in writing upon mutual agreement of the parties hereto.

12.4 **Governing Law and Language** - The rights and obligation of the parties hereto




- 12.5 **Documents Incorporated** - The provisions of this Contract shall be read in harmony with the Terms of Reference (TOR) for the "OWWA OFW E-Card for Membership and Benefits Project (Phase 1)" and other related bid documents. In case of conflict, the provisions of this Contract shall prevail.
- 12.6 **Venue of Action** - It is hereby agreed that any and all actions that shall arise from this Contract shall be instituted and tried before the proper court(s) of the City of Pasay only.
- 12.7 **Attorney's Fees** - In the event that OWWA is compelled to seek judicial relief to enforce the provisions of this Contract, it shall be entitled to attorney's fees and liquidated damages equivalent to ten percent (10%) and fifteen percent (15%), respectively, of the contract price or the amount claimed in the judicial action, whichever is higher, aside from the costs of litigation and other expenses incidental thereto.

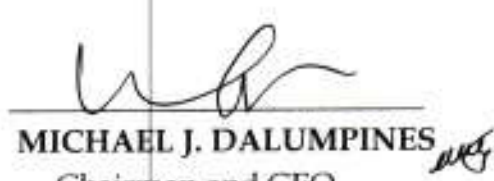
IN WITNESS WHEREOF, the parties hereunto set their hands on this SEP 19 2018 day of _____, 2018 at Pasay City, Philippines.

OWWA

CONTRACTOR



 HANS LEO J. CACDAC
 OWWA Administrator



 MICHAEL J. DALUMPINES
 Chairman and CEO
 APO Production Unit, Inc.

Signed in the presence of:



ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
PASAY CITY, METRO MANILA) S.S.

SEP 19 2018 BEFORE ME, a Notary Public for and in Pasay City, Metro Manila, this day of September, 2018, personally appeared before me, HANS LEO J. CACDAC, representing OWWA with Passport No. _____ issued at Manila valid until _____ and ^{MICHAEL J.}~~DALIMPINES~~ representing the CONTRACTOR, with passport number of S0010920A issued at DFA Manila valid until _____ both known to me to be the same persons who executed the foregoing Contract for the Printing of the OWWA OFW E-Card for Membership and Benefits (Phase 1), and they each acknowledged to me the same as their free and voluntary act and deed, and the act and deed of the agencies they respectively represent.

This instrument consists of eight pages, including the page whereon this acknowledgement is written, has been signed by the parties and their instrumental witnesses on each and every page hereof.


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

Doc. No. 401

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Book No. 124

Series of 2018.


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