

CONSULTANCY AGREEMENT

BETWEEN

MINISTRY OF EXTERNAL AFFAIRS

**GOVERNMENT OF
THE REPUBLIC OF INDIA**

AND

M/S.....

FOR

**RENOVATION OF CHANCERY / RESIDENCES FOR
INDIA BASED OFFICIALS,.....**

FOR

EMBASSY OF INDIA,.....

Consultancy Agreement for
Renovation works at for Embassy / High Commission of India,

This Agreement is made on thisday of, 2015 between **the President of India acting through the Ambassador / High Commissioner of India** hereinafter referred to as **“Employer”** having office at, of the one part and **M/s.**and Office hereinafter referred to as the **“Consultant”**, (which expression shall unless excluded by or repugnant to the context, be deemed to include their successors and assigns) of the other part.

Whereas the Employer is desirous of getting work done for the Renovations of including if any herein called the **“Project”** in accordance with the general requirements as set out in the enclosed conditions.

And whereas the Consultant has agreed to perform the services as set out in the enclosed clauses upon and subject to the terms and conditions set forth in the said clauses.

Now these present witnesseth and it is hereby agreed and delivered between the parties hereto as follows:-

CONDITIONS OF AGREEMENT

1. DEFINITIONS

- a) **‘Approved’** means approved by the Employer’s authorised representative in writing including subsequent confirmation of previous approval and **‘Approval’** means approval by the Employer’s authorised representative in writing as above said.
- b) **‘Employer’** means the President of India acting through the Ambassador / High Commissioner of India at
- c) **‘Employer’s Representative’** means the Ambassdor / High Commissioner of India....., or any other designated officer duly authorised by Ambssador of India, who would be in-charge of the work and would sign the Agreement on behalf of the President of India.
- d) **‘Consultant’** means **M/s.** or their permitted assigns.
- e) **‘Contractor/s’** means the person/s, firm/s and/or Companies whose tender/tenders for Renovation works of.....at is/are accepted by the Employer and includes the Contractors’ personal representatives, successors and permitted assigns.
- f) **‘Accepted Tender Cost’** means the cost at which the tender(s) is/are awarded to the Contractor/s and excludes the cost of reimbursable (clause 7.4) and the cost of other items listed in clauses 7.5
- g) **‘Project’** shall mean the Renovation of Chancery / Residences and / or any other building/s as per the Embassy / High Commission of India,.....

- h) **‘Estimated cost’** means the estimated project cost approved by the competent authority before call of tenders and excludes the cost of reimbursable, and other items listed in clauses 7.4 & 7.5 respectively.

2. SCOPE OF SERVICES

Scope of services to be rendered by the Consultant shall be in Stages from 3 to 6 as defined below;

3. CONCEPTUAL STAGE

The Consultant shall:

- a) Prepare & Submit, for the approval of the Employer, alternative design concepts fulfilling all the office space & other requirements as per the *Scope of Work* already provided by the Employer along with 3D sketches, if necessary.

4. PRELIMINARY STAGE

The Consultant shall:

- a) Prepare preliminary drawings (plans, elevations & sections) showing general layout of building/s, layout of interiors showing existing as well as proposed changes, existing physical features if any, existing and proposed services along with 3D visual if required, to explain the concept and its salient features.
- b) Prepare internal and external utility services like Electrical & Communication, Water Supply, Sewerage, Drainage, and Security requirements etc.
- c) Prepare and submit Specifications, Scope of services and Preliminary costs separately of all sub-heads to the Employer in respect of the above clauses at 4 a) to c).
- d) The Consultant shall assess and be fully responsible for technical feasibility of the proposals hence may visit project site and study all details like feasibility / structural assessment reports etc. provided by the employer before finalizing the preliminary design.
- e) The Consultant, if required, shall revise & re-submit all the Preliminary drawings & Estimates after discussion with the client for the approval works at Preliminary stage.

5. LOCAL BODY APPROVAL, WORKING DRAWING & TENDER STAGES

i) Local Body Approval Stage

The Consultant shall:

- a) Prepare and submit all necessary architectural drawings like Plans, Elevations & Sections, Structural details & Services Drawings (water supply, drainage, sewerage, electrical, HVAC,

fire-fighting) and all necessary documents required for submission and approval of the competent Local authority / Statutory bodies as necessary, according to the local Acts, Laws, Regulations etc.

- b) Assist the Employer to obtain construction permits, quota certificates, licenses, services connections etc. from the concerned local authorities/ agencies, as required.
- c) All statutory fees payable to Local Authorities for obtaining Approvals and Service Connections etc. shall be paid directly to the concerned authorities by the Employer.

ii) Working Drawings Stage

The Consultant shall:

- a) Prepare all necessary Working Drawings / Working details based on approved preliminary design incorporating changes as required by the local authorities while sanctioning of the proposal along with Services Drawings incorporating all services as required for proper execution of work on site.
- b) Obtain approval of the Employer for the above and modify them if considered necessary, after discussion with the Employer.

iii) Tender Stage

The Consultant shall:

- a) Prepare detailed Schedule of Rates, Specifications and Bill of Quantities as necessary and co-ordinate the same with architectural and other engineering drawings to describe the whole project adequately for Employer's approval for the purpose of Tendering.
- b) Prepare all Tender documents as per prescribed formats provided by the Employer for inviting Tenders from reputed contractors who have working experience of executing similar projects as defined in the Press Advertisement in the project City/Country. The tenders shall be invited in single stage two bids system which shall have; 1) Technical bid and 2) Financial Bid. The Tender documents shall include but not limited to *Press Advertisement, Notice for Inviting Tenders, Special Conditions of Contract, Instruction to Bidders etc.*
- c) Obtain approval of the Employer on these tenders documents and shall issue tender documents and drawings to all the probable bidders. The Consultant shall retain the amount realized from the sale. The Consultant shall satisfy himself on the quality and competitiveness of all the bidding agencies by scrutinizing the Technical documents of all the bidders before forwarding them to the Employer. If required, the process of tendering shall be repeated to select appropriate contractor/ construction agency.
- d) Perform scrutiny of the tenders in consultation with the Employer and submit the same along with recommendations and assist the Employer in the negotiation with contractors in the final selection of the contractor/s and facilitate in Award the Work to the successful bidder.

6. CONSTRUCTION STAGE, CONSTRUCTION MANAGEMENT & POST-CONSTRUCTION STAGE

i) Construction Stage

The Consultant shall:

- a) Prepare a time schedule in consultation with the Employer in respect of the various services to be rendered by the contractor/s. While preparing the time schedule the Consultant would take all necessary precautions, so that, there is no time and cost overrun on the project.
- b) Supply, the Contractor all working drawings, specifications and other details for proper execution of the work.
- c) The Consultant shall supervise and oversee the construction and certify the quality of all work done at site strictly in accordance with the terms of contract, approved design / drawings and specifications etc. The Consultant shall report regularly to the Employer regarding his findings and shortcomings on part of the contractor.
- d) Obtain prior approval of the Employer for any material deviation in design / drawings, schedules and specifications which have any cost implications on the project.
- e) To check & approve shop-drawings submitted by the Contractor under intimation to the Employer.
- f) To ensure progress and quality of the work by monitoring, co-ordinating with all the agencies on the site, and by having periodical quality checks during the execution.

ii) Post- Construction stage

The Consultant shall:

- a) Prepare completion (as-built) drawings, submit applications to local authorities for accord of service-connections, safety certificates. Apply for and obtain 'Temporary Occupation Permit (TOP), Certificate of Statutory completion (CSC) and endorsement of 'Final Completion' on plans from relevant authorities.
- b) To obtain the completion and occupation certificates/ permits, all utility /services connections as required from all the concerned Local Authorities/agencies after completion of work including certified copies of all guarantees, warranties, test certificates to the Employer.
- c) Hand-over the project along with necessary documentation operating manuals, test certificates, authenticated guarantee/ warranties etc.
- d) Monitor the functioning of the building and its operations systems during the 'Defect Liability Period' which shall be one year from the date of occupancy of the building by the employer.
- e) Inspect and identify the defects prior to the expiry of Defect Liability Period, warranty claim; to advise corrective measures and to direct the rectification thereof.

7. REMUNERATION

7.1 CONSULTANCY FEES

The Employer agrees to pay to the Consultant for the professional services to be rendered by him as herein above described at 3, 4, 5, & 6 and supply of drawings as stated in clause 7.4 the following fees;

- a) Fees to be paid to the Consultant shall be% (.....) / Lumpsum of the estimated cost or the approved tendered cost, (as defined in Clause 1 h) and 7.1 (e) for all items of works on which the consultant had rendered professional services), **whichever is lower**. The fees shall not be increased on account of cost escalation of the project on account of any change orders within the Scope of Work after award of the work. This shall be fixed as a lump sum amount once the tender/tenders are accepted and shall be frozen.
- b) The Consultant shall be paid **Euro 1000/-** (Euro one Thousand only) for clause 3. i.e. Submission of Concept Design of the Project and on the estimated project cost. This amount shall be adjusted against the fee payable to the Consultant once the preliminary estimates are approved by the Competent Authority.
- c) Payments for the services up to the stage of acceptance of tenders shall be on the basis of the estimated cost and these shall be treated as ‘on-account’ payments, which shall be adjusted against the fee, arrived at based on the estimated cost or approved tendered cost of the project, whichever is lower as stated above.
- d) The Payment to the Consultant will be made within 45 days of submission of clear and complete bills upon completion of relevant stage of payment of consultancy fees.
- e) The Consultancy fee of% (.....) / Lumpsum is inclusive of fees payable by the Consultant to any other Consultants / Local Associates/ Sub-Consultants and nothing extra shall be payable by the Employer.

7.2 STAGES OF PAYMENT OF CONSULTANCY FEES:

STAGES OF PAYMENT OF CONSULTANCY FEES

S.No.	Stages of payment	Percentage of Total Consultancy Fee
i	On submission of the Concept Design of the project [on completion of works as per clause 3]	Euro 1000/-
ii	On submission of Preliminary Design & Preliminary Estimates [On completion of works as per clause 4 a) to 4 d).	8% (subject to adjustment of USD 1000/- paid as per 7.2 a) i) above)
iii	On approval of Preliminary Design & Preliminary Estimates and Submission of Municipal drawings [On completion of work as per clause 4 e) & clause 5 i) a)]	12%

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iv	On completion of detailed Working Drawing Stage & Tender Stage (Part) incorporating all Services, Specification, Bill of quantities etc. for preparation, submission and approval of tender documents in all respect for call of tenders [On completion of work as per clause 5 ii) a) & b) and clause 5.	15%
v	On Selection of the contractor & Award of work on finalisation of all contracts and handing over the construction drawings to all Contractor/ Contractors. [On completion of work as per clause 5 iii) d) & clause 6 i) a) & b)]	15%
v	During Construction stage as per clauses 6 i) c) to 6 f) as under: <ul style="list-style-type: none"> • On certified completion of 25% of the work according to clauses 6 i) c) to 6 f) • On certified completion of 50% of the work according to clauses 6 i) c) to 6 f) • On certified completion of 75% of the work according to clauses 6 i) c) to 6 f) • On completion of 100% of the work with finalisation of all accounts, completion drawings and obtaining completion certificates from local bodies etc. on completion of clauses 6 ii) a) to 6 e) 	10% 10% 10% 10% (up to 90% of the total Consultancy Fee)
viii	One year from the certified date of completion of work in all respects [on completion of all clauses 6 ii) a) to 6 e)	10%

- a) Percentage payments in 7.2 ii) and onwards, as listed above, will be payable to the Consultants only after the financial approval to the Project is secured from the Competent authority.
- b) The apportionment of fees is a means of assessing interim payments and does not necessarily reflect the amount of work completed in any work stage. By Agreement an adjustment in the apportionment may be made. Progressive, on-account payments shall be made by the Employer to the Consultant against any of the above stages based on the quantum of work done during that stage.
- c) For stage payment of Consultancy Fee as Clause 7 the percentage of completion of work shall be calculated as the percentage of tendered cost and the certified completed work shall mean the executed work for which the contractor/s bills in terms of quantum and quality have been duly certified by the consultant for payment.

7.3 CURRENCY

The Consultancy Fee shall be paid in **Euro**

7.4 NUMBER OF DRAWING SETS, ETC. AND COPY RIGHT

- a) All the estimates, details of quantities, designs, reports and any other details envisaged under this Agreement including drawings - architectural, structural, interior, landscape, electrical, A.C. and all other services (inter-structural and external) would be supplied by the Consultant, as required in not less than 5 sets of prints including soft copy during construction and 3 sets of prints and one authenticated reproducible copy and soft copy of as-built construction drawings would be supplied by the Consultant to the Employer.
- b) All these drawings shall become the property of the Employer. The drawings cannot be issued to any other person, firm or authority or used by the Consultant for any other project without prior permission of the Employer. The Consultant shall at all times indemnify the Employer against all claims for infringement of any right protected by designs, copy right or other Intellectual Property Rights of any other Third Party, provided always that in the event of any claim in respect of alleged breach of designs, copyright or other Intellectual Property Rights made against the Employer, the Employer shall notify the Consultant of the same and the Consultant at his own expense either settle any such dispute or conduct the litigation that may arise therefrom.

7.5 PAYMENT OF REIMBURSIBLES

- a) In addition to consultancy fees specified above, the Consultant will be reimbursed actual expenses incurred by him on rendering the following services:-
 - i. Models / Laboratory tests / investigations
 - ii. Any other items of works, if deemed necessary.
 - iii. Any tax levied by law, as applicableThe payments shall be made directly to the agencies through which the services are organized and rendered.
- b) VAT, as applicable on the fees, shall also be reimbursed / paid by the Employer to the Consultant on production of receipt.

7.6 COST OF CONSTRUCTION

The cost of the following items shall not be included in the cost of construction for purpose of working out of consultancy fees;

- a) Fees payable to Local Authorities and / or statutory body by the Employer and VAT paid by the Employer.
- b) Any other services which are not designed or planned or supervised by the Consultant, such as ready-built furniture.
- c) Any in-fructuous expenditure as a result of demolition etc. ordered by the Consultant and cost of any rejected work.

- d) Cost of supervisory and other establishment employed on the work by the Consultant or the Employer.
- e) Other contingent expenditure like press advertisements, publicity, cost of foundation stone, inauguration ceremonies of buildings, etc.
- f) In computing the cost of work for computing Consultant's fees for Consultancy services, liquidated damages or deduction from the contractor's due on account of defective work or other reasons will be accounted for as deduction in cost.

8. ADDITIONS AND ALTERATIONS

- a) The Employer shall have the right to request changes, additions modifications or deletions in the design and drawing of any part of the work and to request additional work in connection therewith and the Consultant shall comply with such request.
- b) The Consultant shall not make any material deviations, alterations, additions to or omissions from the work shown and described in the Contract document except for structural safety and emergencies, without first obtaining the consent of the Embassy.

9. TIME SCHEDULE

The work shall be carried out by the Consultant with due expedition and in accordance with the time schedule. The time schedule so agreed upon shall be observed by the Consultant and shall be deemed to be the essence of the contract on the part of the Consultant.

10. COMPENSATION FOR DELAY/LIQUIDATED DAMAGES

In the event of failure of the Consultant to complete the assigned work within the stipulated time period and in case the work is delayed and the delay is attributed to the Consultant, the Consultant will pay to the employer the delay damage @ 0.5 percent of the consultancy fees of work for delay per week subject to maximum of 10 percent of the total consultancy charges.

11. ABANDONMENT OF WORK

If the Consultant abandons the work for any reasons whatsoever or becomes incapacitated from acting as Consultant, the Embassy may make full use of all or any of the drawings prepared by the Consultant. The Consultant shall be credited with all fees and expenses logically and reasonably payable up to the date of abandonment. In case of wilful abandonment of the project by the Consultant, the Embassy shall have the right to withhold all consultancy and management fees and claim damage flowing from such abandonment equitably assessed by the Embassy.

12. SUSPENSION

The Embassy may suspend all or part of the services by giving a notice to Consultant and consultant shall immediately make arrangement to stop the services and shall not make any further expenditure from his end. On suspension of the Consultant's appointment, the Consultant shall be entitled to fees for all completed stages of work at that time. On the resumption of suspended service within six months, previous payments shall be regarded solely as payments on account towards the fees.

13. TERMINATION, DETERMINATION OR RESCISSION OF AGREEMENT

- a) If the Consultant is without good reasons, not discharging his obligation, the Embassy may inform the Consultant by notice, stating the grounds for the notice. If a satisfactory response is not received within 21 days, the Embassy may by a further notice, terminate the agreement provided that further notice is given within 35 days of the Embassy's former notice. In the event of termination of the agreement by the Embassy, the Consultant shall have no claim to compensation for any loss sustained by reasons entered into any engagement or made any advance on account or with a view to perform the consultancy work and shall only be entitled to be paid the value so certified by the Embassy.

- b) The Employer without any prejudice to its right against the Consultant in respect of any delay by notice in writing may absolutely determine the contract in case if the Consultant being a company shall pass a resolution or the court shall make an order that the company shall be wound up or if a Receiver or a Liquidator on behalf of the creditors shall be appointed, or if circumstances shall arise which entitle the court or creditors to appoint a Receiver or a Liquidator or which entitles the court to pass a winding up order or If the Consultant commits breach of any of the terms of the Agreement or when the Consultant has made himself liable for action under any of the cases "aforesaid",

14. ARBITRATION

If any dispute, difference or question at any time arises between the Embassy and the Consultant in respect of the agreement signed which cannot be settled mutually or in case of termination as described in clause 12, shall be referred to arbitration. The arbitration proceedings will be conducted in accordance with and be subject to the UNCITRAL (United Nations commission on International Trade Laws) Arbitration Rules, as amended from time to time and the decision of the arbitrators as mentioned above shall be final and binding on the parties. The Arbitration will have its sittings at

15. RESPONSIBILITIES OF THE EMPLOYER

- a) The Employer shall give their approval/comments/decision on all matters placed before them by the Consultant, within the recommended time schedule.

- b) The Employer shall provide to the Consultant all legal documentation required for approvals and sign all papers for applications for obtaining approvals, service connections and placement of formal orders, etc. They shall also provide all assistance to the Consultant including providing interpreters when so required.
- c) The Employer shall extend all assistance to the Consultant in performing his responsibilities after receiving such requests sufficiently in advance to enable him to get permits, quota certificates, licenses and foreign exchange, if required.

16. GUARANTEE

- a) The Consultant shall agree to re-design at his cost any portion of his engineering and design work, which due to his failure to use a reasonable degree of design skill, proves defective within one year from the date of start of regular use of the portion of the work so affected. The Employer shall grant right to access to the Consultant to those portions of the work claimed to be defective, for inspection.
- b) Structural, Electrical, Mechanical and Plumbing consultants, if engaged by the principle consultant as per clause 17 (below) shall provide the certificates related to correctness and adequacy of all works related to their parts which are designed and executed under their supervision for renovation/ addition/ alteration work and shall conform and comply to structural stability, soundness and safety of the building, E&M systems (Lifts, Electrical substation, Diesel Generator set, Heating Ventilation Air-conditioning, IBMS, Firefighting and alarm system etc., water supply, drainage, sewerage, sewage treatment plant/soak pits, overhead tank, under ground tank, pump/sumps etc. vis-à-vis local site conditions and local safety standards/ norms.
- c) These certificates shall be given at the time of submission of drawings for local body approval. The overall responsibility for adequacy and correctness of the E&M design/drawings and plumbing design/drawings shall rest with the main consultant who shall indemnify the Employer.

17. GENERAL

- a) The Principal Consultant may engage and establish legally enforceable agreements with other consultants as may be needed for the proper discharge of his responsibilities but he/she shall be fully responsible for the technical soundness of the consultancy work including those of specialists engaged by him and the arrangements between the Consultant and other consultants will not take away or diminish Consultant's responsibilities under this Agreement including work executed on the site.
- b) The Employer may have the consultancy and construction work inspected at any time by any officer nominated by him who shall be at liberty to examine the records, check estimates, structural designs and verify measurements and the quality of construction.

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- c) The appointment of Employer's own supervisory staff, if any, does not absolve the Consultant of his responsibility of supervision. The Consultant shall remain solely responsible for the quality of material, workmanship, structural soundness, designs and construction, and for all provisions of the contract so as to satisfy the particular requirement of the specifications or drawings or other terms.
- d) The Consultant hereby agree that the fees to be paid as provided herein Clause 7.2 will be in full discharge of the functions to be performed by him and no claim whatsoever shall lie against the Employer in respect of any proprietary rights or copyrights on the part of any other party relating to the plans, models and drawings. The Consultants shall indemnify and keep indemnified the Employer against any such claims and against all cost and expenses paid by the Employer in defending himself against such claims.
- e) The Employer shall not be responsible for any damage, loss or injury caused to the Consultant or Employees of the Consultant employed.

19. FORCE MAJEURE

In the event of force majeure i.e. unforeseeable events such as war, floods, earthquake etc. beyond the reasonable control of the Parties to the contract which prevent either party from meeting their obligations under this Agreement, the contractual obligations as far as affected by such event shall be suspended for as long as the force majeure continues provided that the other party is notified within two weeks after occurrence of the force majeure. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder. In the event of force majeure either party shall be entitled to prolongation of this Agreement equal to the delay caused by such force majeure.

The Employer appoints the Consultant and the Consultant accepts the appointment on the terms and conditions set forth as stated in the foregoing, which conditions shall form part and parcel of the Agreement.

In witness whereof, the Parties hereunto have set their hands and seals on the day and year first above written.

For and on behalf of
The President of India
Govt. of India, through
The Ambassador of India,

For and on behalf of
M/s.
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WITNESS

WITNESS

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