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This Agreement (hereinafter referred to as 'AGREEMENT') is drawn on \_\_\_\_\_, 2019  
at Embassy of India, Warsaw.

**By and Between**

**Embassy of India, Warsaw** (hereinafter referred to as 'Employer' which expression shall unless repugnant to the context on meaning thereof be deemed to include its successors and assigns) on the First Part

**AND**

**M/S .....** (hereinafter referred to as 'Project Management Consultant', a company registered in ..... and having its registered office at **No. ....**

**WHEREAS**

- A. **Embassy of India, Warsaw** intends to engage a Project Management Consultancy agency for **PROJECT MANAGEMENT** (hereinafter referred to as 'the Services') for **Renovation of Embassy Residence** (hereinafter referred to as 'the Project').
- B. It is agreed by each of the party that the Project Management Consultant will act as its representative to do or execute all acts and things, in connection with this AGREEMENT.
- C. **Embassy of India, Warsaw** agrees to engage Project Management Consultant for performing such services:

Now this AGREEMENT witnesses and it is hereby mutually agreed by and between the parties as follows:

**SECTION 1: DEFINITIONS:**

1. For the purpose of this AGREEMENT, unless otherwise specified or repugnant to or inconsistent with the subject, content or meaning thereof, the following terms shall be deemed to have the following meanings:

**1.1** 'AGREEMENT' shall mean this AGREEMENT including all sections, annexures and appendices hereto and all documents herein attached and amendments to be made to the 'AGREEMENT', if any, which the parties may hereafter mutually agreed in writing.

**1.2** 'Date of Acceptance' shall mean the date on which Employer confirms written acceptance to Consultant's SERVICES.

**1.3** 'Project Management Consultant' or 'PMC' shall mean **M/S .....** as company registered in **Krajowy Rejestr Sądowy KRS** having its registered office at .....

- 1.4 'Parties' shall mean **Embassy of India, Warsaw** and **M/S .....** collectively.
- 1.5 'Services' shall mean the responsibilities to be discharged by the Project Management Consultant for fulfilling its obligations under this AGREEMENT as defined under Section 4 'SCOPE OF SERVICES' of this AGREEMENT.
- 1.6 'Architect' shall mean **M/s .....**
- 1.7 'EOI' shall mean Expression of Interest document issued by the Employer.
- 1.8 'RFP' shall mean Request for Proposal document issued by the Employer.
- 1.9 'LOI' shall mean Letter of Intent issued by the Employer.
- 1.10 'Estimated cost of a package' would mean the cost estimate prepared for a package using the tender quantities given by the Architect/Consultant and approved by the Employer.
- 1.11 'Estimated Project Cost' would mean the estimated Construction cost as per the Detailed Project Report submitted by the Architect/Consultant and approved by the Employer.
- 1.12 'Executed cost of a package' shall mean the value of awarded contract adjusted for any revision in scope and any cost variations.

## **SECTION 2: AGREEMENT DOCUMENTS:**

2.1 The following documents are in accordance with the generally applicable Indian law and shall be deemed to form and be read and construed as an integral part of the AGREEMENT:

- a) RFP document issued by the Employer including (Annexure-1) (**including scope of services**)
- b) Project Management Consultant's proposal No.....dated..... (**To be indicated by the Embassy of India, Warsaw**) along with all the submissions and enclosures (Annexure – 2).
- c) Bank Guarantee for performance security at the rate of 5% of PMC fee to be deposited by PMC within 15 days of issue of Letter of Intent (Annexure – 3) (**To be enclosed by the Embassy of India, Warsaw (To be submitted by the Project Management Consultant at the time to signing the Agreement)**)
- d) Correspondence between Project Management Consultant and the Employer. (Annexure – 4) (**To be enclosed by the Embassy of India, Warsaw vide letter Nos. \_\_\_ dated \_\_\_, 2019 (Enclosed).**)
- e) LOI issued by the Employer vide letter No. \_\_\_ dated \_\_\_ 2019 (**To be indicated by the Embassy of India, Warsaw**) (Annexure – 5) (**Enclosed**).

2.2 The above documents combined together are enclosed to this AGREEMENT as Annexures. The aforesaid documents shall be taken as complementary and mutually exploratory of one another.

## **SECTION 3: EFFECTIVE DATE OF AGREEMENT:**

3.1 Notwithstanding the date of its execution, the AGREEMENT shall be deemed to have come into force with effect from \_\_\_ day \_\_\_ month \_\_\_ year.

**SECTION 4: SCOPE OF SERVICES:**

4.1 The Scope of Services shall be as per Section IV of RFP document referred to in Section 2 of this AGREEMENT.

**SECTION 5: REMUNERATION:**

5.1 For the scope of services identified under Section IV of RFP, the Employer shall pay the fees to the Project Management Consultant as follows:

Particulars	PMC Fee
PROJECT MANAGEMENT CONSULTANCY SERVICES FOR <i>Rehabilitation, Renovation and Interiors of Embassy Residence at Al. Róż 3, Warsaw</i>	<b>Lumpsum Project Management Consultancy Fee of PLN .....</b>

- Note:**
1. The said fee is exclusive of VAT / Service Tax.
  2. If the project duration extends beyond the time schedule as per Section 13 of the agreement, the Project Management Consultant agrees to provide services to the extended time schedule without any additional fees

5.2 The Project Management Consultant shall be jointly and severely responsible for the successful performance of the scope of services as per this contract.

**SECTION 6: TERMS OF PAYMENT:**

6.1 The Project Management Consultant shall be entitled for payment of fees (as quoted in the financial bid). This payment shall be including VAT, taxes, etc.

6.2 The fee to be Project Management Consultant, indicated in Section 5.1 of this AGREEMENT, shall be paid in stages as per para 6 of the RFP. Payments made to the Project Management Consultant for various stages shall be running account bills and shall be adjusted against the final fee payable. The payments will be made after successful realization of the objectives at each stage as detailed in RFP.

**(To be indicated by the Mission/Post as per final RFP document)**

6.3 i) **Retention Money** : 5% of contract amount from each bill is to be deducted. 50% of Retention Money shall be released after 180 days of practical completion of work. The entire balance retention money shall be released at

the end of defect liability period after satisfactory performance of work/workmanship of the work during defect liability period.

ii) **Performance Guarantee:** Performance security @ 5% of Project Management Consultancy fee in the form of Bank Guarantee shall be deposited within 15 days of issue of Letter of Intent. Letter of award of work shall be issued on receipt of Performance Guarantee. The Performance Guarantee shall be released after sixty (60) days on record of satisfactory practical completion of work.

iii) **Defect Liability Period :** The clause for defect liability period as 365 days from the date of practical completion of work is to be added.

iv) **Liquidated Damages :** The liquidated damages calculated @ 0.5% of the PMC fee per week subject to a maximum of 10% of the PMC fee will be deducted if the delay is attributable to the PMC.

v) No escalation of rates for delay in works shall be admissible.

#### **6.4 No other payments**

6.1.1 The Project Management Consultant would **not** be entitled for reimbursement of expenditure towards stationary, transport, incidental expenditures, communications (telephone, internet etc.), site office, equipments, etc. which are part and parcel of administration of the Consultant's services.

**6.5** As early as possible but not later than fifteen (15) working days of completion of a stage, the Project Management Consultant shall submit invoices along with appropriate supporting documents for claiming the fee due.

#### **SECTION 7: TAXES AND DUTIES:**

**7.1** The Remuneration indicated in Section 5 is exclusive of the VAT / Service Tax.

#### **SECTION 8: PERFORMANCE GUARANTEE AND LIMITATION OF LIABILITY:**

**8.1** Project Management Consultant shall carry out the Services in conformity with generally accepted norms and sound standards of engineering. Project Management Consultant shall be responsible for the technical soundness of the services rendered. In the event of any deficiencies in these services, the Project Management Consultant's liability shall be limited to promptly redoing such services. The Employer shall not be required to pay additional compensation to the PMC for such re-done services. The Project Management Consultant shall ensure that the renovations are in conformity with the norms and specifications acceptable to Conservator of Heritage Buildings, Warsaw and other local laws of the Warsaw City authorities / Mazovian Government.

**8.2** Project Management Consultant shall, in order to safeguard the interests of the Employer, endeavour to incorporate appropriate provisions in the specifications for purchase of equipment/appointment of contractors to ensure that the equipment suppliers/ contractors provide the necessary guarantees of performance. Project Management Consultant's obligations in this regard shall be limited to providing technical assistance to the Employer in procuring such guarantees.

**8.3** Without prejudice to the generality of the above person, the liability clause will be involved to ensure timely delivery of services by the Project Management Consultant, as per time schedule of the project that will be finalized by mutual agreement between Project Management Consultant and Employer , 0.5% per week of fee of Consultant will be deducted for per week delay of delivery of services as per time schedule, subject to a limit of 10% of total fee as provided in the clause provided it is conclusively proven that such delay is attributable to the Project Management Consultant within its responsibility in the scope of services as defined in Section 4 of the Agreement.

#### **SECTION 9: DOCUMENTS/INFORMATION TO BE PROVIDED:**

9.1 The scope of services, as detailed in the RFP document indicated in Section 2 of this AGREEMENT, is based on the understanding that Employer shall provide all necessary data/document/information to the Project Management Consultant, which shall be the base information/input, relied upon by the PMC for rendering the services.

#### **SECTION 10: FORCE MAJEURE:**

10.1 In the event that either party is prevented wholly or in part, by any force majeure cause, as defined hereinafter from performing or accepting performance by the other party, the parties will either agree to a fresh completion date by condoning the period of delay arising out of such non-performance or may by mutual consent, treat the contract as terminated. However, if the force majeure conditions persist for an unreasonably long time, the party not under force majeure conditions may, by giving a notice to the other party, terminate the contract. In either case of termination, both parties will have no claim for compensation against each other, but shall receive their dues as prevailing on the date of commencement of force majeure conditions. Force Majeure is herein defined as:

- a) Any cause which is beyond the reasonable control of the Project Management Consultant or Employer
- b) Natural phenomena including but not limited to weather conditions, fire, explosion, flood, drought, earthquake and epidemic.



- c) Acts of any Governmental authority, domestic or foreign, including but not limited to war declared or undeclared, priorities, guarantees, endangers, licensing controls or production or distribution restrictions;
- d) Disruption in communication;
- e) Strikes and lockouts;
- f) Sabotage, riot, civil commotion, invasion and insurrection.

#### **SECTION 11: ARBITRATION:**

11.1 In the event of any dispute or difference arising at any time between the parties relating to the construction; meaning or effect of this AGREEMENT or any other cause or any content of the rights and liabilities of the parties or other matters specified herein or with reference to anything arising out of or incidental to this AGREEMENT or otherwise in relation to the terms; whether during the continuance of this AGREEMENT or thereafter, such disputes or differences shall be endeavoured to be solved by mutual negotiations.

11.2 If, however, such negotiations are infructuous, Arbitration shall be carried out as per provisions of UNCITRAL. The venue of arbitration shall be **Warsaw**.

11.3 Any reference to arbitration shall not relieve either party from the due performance of its obligations under this AGREEMENT.

#### **SECTION 12: OWNERSHIP OF DOCUMENTS:**

All the drawings, reports and documents reviewed by the Project Management Consultant in the performance of the AGREEMENT shall at all stages be and remain the property of the Employer and while in the custody of Project Management Consultant shall be fully available to Employer and its duly authorized representatives. On completion of assignment, all the reviewed drawings etc. shall be delivered by the Project Management Consultant to the Employer.

#### **SECTION 13: TIME SCHEDULE:**

The time period for completion of the Services which shall be carried out by the Project Management Consultant with the due expedition and strictly in accordance with the time schedule, which is as per the contractor's work i.e upto **8 months** or till completion of the work whichever is later.

#### **SECTION 14: TERMINATION:**

Under overall circumstances, if the Employer terminates the Agreement either in whole or portion thereof, Project Management Consultant shall be compensated for the services carried out till the date of termination, less any disputed amount. The Employer shall discuss in detail with Project Management Consultant to exhaust all possibilities of

Project Management Consultant not being able to deliver its services before applying the termination clause.

**SECTION 15: INDEMNITY:**

Subject to Section 8.1, Project Management Consultant shall be liable for and shall defend indemnify and hold Employer, its officers, agents and employees free and harmless for all losses, injuries, claims, demands, liens and judgments of any description arising out of performance or non-performance of this Agreement to the extent that such losses, injuries, claims, demands, liens and judgments are the result of an actual or alleged error, omission or negligent act of the Project Management Consultant or any person employed or agent engaged by the Project Management Consultant, unless such injury / damages are caused by the Employer's personnel.

**SECTION 16: LANGUAGE AND MEASUREMENT:**

The English language will be used in all written communications, data drawings and documents exchanged between the Employer and Project Management Consultant with respect to the services to be performed. All reports, drawings, documents and other technical information procured or prepared by Consultant shall employ metric units of measurements. Gregorian calendar will be followed for the execution of the AGREEMENT.

**SECTION 17: ADDITIONAL SERVICES:**

Project Management Consultant shall make available on the Employer's request such services as may be mutually agreed between the Employer and Project Management Consultant in addition to those described in this AGREEMENT. The terms and conditions for such additional services shall be mutually agreed upon between the Employer and the Project Management Consultant.

**SECTION 18: MODIFICATIONS TO AGREEMENT:**

Should circumstances arise which call for modifications of the AGREEMENT, these may be made by mutual consent given in writing. Proposal in this respect from one Party shall be given due consideration by the other Party.

**SECTION 19: VALIDITY OF AGREEMENT:**

a) This AGREEMENT shall without prejudice to the provision of Section 11 (Force Majeure) and Section 14 (Termination) remains in force till the successful commissioning of the project which is expected as per the **contractor's work i.e. 8 months** or till completion of the work whichever is later.

b) If, however, due to some unavoidable reasons the successful commissioning of the project gets delayed, the validity of the agreement, may be suitably extended by way of an amended agreement duly executed by the parties' upto **6 months, or till completion of the work whichever is later.**

**SECTION 20: APPROVALS:**

Any approvals to be obtained by either party from the other under this AGREEMENT shall not be unreasonably denied or withheld.

**SECTION 21: CO-OPERATION BETWEEN PARTIES:**

The Employer shall nominate an officer to represent it for the purpose of this AGREEMENT and the name, designation and address of the officer so nominated shall be intimated to Project Management Consultant. Similarly, Project Management Consultant shall nominate and intimate in writing particulars of an officer to represent it.

The officer nominated by the Employer and by Project Management Consultant shall be fully authorized to give and receive instructions and decisions which shall be deemed to have been given by the Employer and Project Management Consultant respectively who shall be bound by such decisions and instructions given/received by their nominated officers. It is, however, understood and agreed to by and between the parties hereto that the parties shall work in close co-operation with each other at all times in order to ensure timely completion of the project.

**SECTION 22: ENTIRE AGREEMENT:**

This AGREEMENT constitutes the entire AGREEMENT by and between the parties. Each party to this Agreement by its execution acknowledges that the parties jointly prepared this Agreement hereto. There are no understandings, agreements or representations not specified in this Agreement.

All previous AGREEMENTS and communications relative hereto is superseded unless otherwise incorporated hereto.

**SECTION 23: CONFIDENTIALITY:**

This Agreement, all communications and information obtained by Project Management Consultant from the Employer relating to this Agreement, and all information developed by the Project Management Consultant under this Agreement are confidential. Except as provided by law or with prior written consent of the authorized representative of the Employer, the Project Management Consultant shall neither divulge to nor discuss with any third party either the work and service provided hereunder, or any communication or information in connection with such services or work.

Project Management Consultant shall not publish or cause to disseminate through any press / media release, public statement or marketing or selling effort any information which relates to this Agreement without the prior written approval of the Employer.

**SECTION 24: REPRESENTATIONS, WARRANTIES AND DISCLAIMERS:**

The Project Management Consultant represents and warrants to the EMPLOYER that:

- (A) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby.
- (B) This Agreement constitutes its legal valid and binding obligation enforceable against it in accordance with the terms hereof.
- (C) It is subject to Laws of **Poland** with respect to this Agreement and it is hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof.
- (D) There are no actions, suits, proceedings or investigations pending or to the Project Management Consultants knowledge, threatened against it at law or in equity before any court or other judicial, quasi-judicial or other authority the outcome of which may result in the breach of or constitutes a default of the Project Management Consultant under this Contract or materially affect the discharge by the Project Management Consultant or its obligations under the Agreement.
- (E) No representation or warranty by the Project Management Consultant contained herein or any other document furnished by the Employer contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make representation or warranty and misleading.

**SECTION 25: WAIVERS:**

No waiver of any condition, requirement or right expressed in this Agreement shall be implied by any forbearance of the Employer to declare a default or failure to perform or to take any other action on account of the violation of such condition if such violation be continued or repeated.

**SECTION 26: SEVERABILITY:**

If for any reason any provision of the Contract is, or becomes invalid, illegal or unenforceable or is declared by any Court of competent jurisdiction or any other instrumentation to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner and the

Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearby as possible. Failure to agree upon such provisions shall not be subject to dispute resolution under the Contract or otherwise.

**SECTION 27: SURVIVAL:**

The termination of this Agreement shall not

(A) Relieve the Project Management Consultant or the Employer of any obligations hereunder which expressly or by implication survive Termination hereof.

(B) Except as otherwise provided in any provision of the Contract expressly limiting the liability of either party shall not relieve either party of any obligations or liabilities for loss or damage to the other party arising out of or caused by acts of omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

**SECTION 28: NOTICES:**

All notices to be given by either Party to the other in connection with rights and obligations of both Parties under or pertaining to this AGREEMENT shall be sent by post, postage prepaid or by courier and if given by facsimile, e-mail, telephone or verbally, they shall be confirmed by registered letter or courier and addressed as follows :

***Embassy of India, Myśliwiecka 2, 00-459 Warsaw***

And

***M/S ..... (Full address of the Project Management Consultant).***

Either party may change individuals designated to receive Notices or addresses and in such an event, notices shall be given to the other Party by means of a written Notices of any such change.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first above written

*For Embassy of India,*

*For M/S (Name of the Project Management Consultant)*

(Signature)

(Signature)

Name:

Name:

Designation:

Designation:

**Witness:**

**Witness:**

**1.**

**1.**

(Signature)

(Signature)

Name:

Name:

Designation:

Designation:

**2.**

**2.**

(Signature)

(Signature)

Name:

Name:

Designation:

Design