

No.08/2016/TT-BXD

Hanoi, March 10, 2016

CIRCULAR

GUIDANCE ON A NUMBER OF TERMS OF CONSTRUCTION CONSULTING CONTRACTS

Pursuant to Law No. [50/2014/QH13](#) on Construction dated June 18, 2014;

Pursuant to the Government's Decree N. 37/2015/ND-CP on Construction contracts dated April 22, 2015;

Pursuant to the Government's Decree No. 62/2013/ND-CP defining functions, responsibilities, entitlements and organizational structure of the Ministry of Construction;

Pursuant to the Government's Decree N. 46/2015/ND-CP on quality control and maintenance of construction works dated May 12, 2015;

Pursuant to the Government's Decree No.59/2015/ND-CP on construction project management dated June 18, 2015;

At requests of the Director of the Department of Construction Economics; the Minister of Ministry of Construction hereby provides guidelines on a number of contents of construction consulting contracts as follows:

Article 1. Scope and regulated entities

1. This Circular provides guidelines on a number of contents of construction consulting contracts regarding construction surveying, feasibility study, project design and supervision (hereinafter referred to as "consulting contract"), (including constructions contracts between PPP project hirers and contractors of PPP projects) as follows:

a) Construction projects invested by regulatory authorities, political organizations, socio-political organizations, socio-political-professional organizations, socio-professional organizations, social organizations, affiliates of the People's armed forces and public service providers.

b) Construction projects invested by state-owned enterprises or enterprises funded with at least 30% State capital.

c) Construction projects other than those specified point a and b of this clause and the proportion of the State capital in which is at least 30% or exceeding 500 billion dong.

2. This Circular applies to organizations and individuals engaging in the conclusion and management of the contract performance in Vietnam prescribed in clause 1 of this Article. Organizations and individuals participating in consulting contracts for construction projects funded by other sources of finance should follow provisions hereof.

3. Where the provisions hereof regarding construction contracts of construction projects funded with ODA (hereinafter referred to as "ODA project") and international agreements to which Vietnam is a signatory conflict, the international agreement shall prevail.

Article 2. Consulting contract documents and their order of priority

1. The consulting contract documentation includes a consulting contract containing terms prescribed in Article 141 of the Law on Construction No. 50/2014/QH13 and its enclosed documents.

2. The following documents form an integral part of the consulting contract:

a) A notice of bid award or direct contracting

b) Specific terms or terms of reference of the consulting contract,

c) Miscellaneous terms of the consulting contract

d) Bidding documents or request for proposals of hirers.

dd) A bid or proposal of the contractor

e) An approved feasibility study report (for project design)

g) Minutes of negotiations, amendments or additions of the consulting contract

h) Annexes to the consulting contract

i) Other relevant documents.

3. The order of priority of the foregoing documents may be negotiable. Otherwise, the order of priority stipulated in clause 2 of this Article shall apply.

Article 3. Contract performance management

The consulting contract performance shall be managed in accordance with Article 7 of the Decree No. 37/2015/ND-CP and the following provisions:

1. Every complaint, request, proposal and response by either party shall contain name of the contract, date of complaint, required date of response, name of requesting party, name of responding party, contents, list of required documents (if any), additional costs (if any) and other contents, signature (seal, where necessary).

2. The contract schedule shall be controlled in accordance with Article 14 of the Decree No. 37/2015/ND-CP and clause 2, Article 12 hereof. Both parties shall decide the contract schedule, date of reporting and transfer of the work (the schedule shall be consistent with that in the bid).

3. The quality control shall follow the Article 13 of the Decree No. 37/2015/ND-CP The transferred work quality shall satisfy requirements for construction works quality. The contractor shall control the quality of construction works carried out by themselves or their subcontractors (if any).

4. The contract price and workload shall be managed in accordance with Articles 12 and 14 of the Decree No. 37/2015/ND-CP and clauses 1 and 3, Article 12 hereof. Both parties shall manage the workload and contract price according to the contract and enclosed documents.

5. HSE and fire safety measures shall be applied in accordance with Article 48 of the Decree No. 37/2015/ND-CP.

Regarding construction surveying, contractors shall propose and carry out protective methods to ensure the safety of human beings and surrounding environment.

6. Amendments to contracts and terms of contracts shall be made in accordance with Article 12 hereof.

Article 4. Scope of work, workloads and documents resulting from consulting contracts for construction surveying

1. Scope of work, workloads and documents specified in the consulting contract for construction surveying shall be conformable to the construction phase, construction surveying regulations and standards corresponding to the project type, level, construction surveying, technical plans, and requirements in bidding documents, bids and minutes of negotiations.

2. A construction surveying contract may cover, in part or in whole, the following tasks: surveying topography, construction geology, hydrogeology, hydrometeorology and construction status and other construction surveying tasks.

Job descriptions of construction surveying:

a) Preparing construction survey plans under Article 13 of the Decree No. 46/2015/ND-CP.

b) Collecting and analyzing data and documents.

c) Surveying the construction site

d) Setting up the geodetic framework and drawing detailed topographic maps.

dd) Drawing underground works

e) Setting up geodetic frameworks for linear infrastructure projects.

g) Carrying out hydrographic survey, site geological survey and hydrogeological survey

h) Conducting geophysical research

i) Drilling, collecting samples, testing and defining chemical and physical properties of soils, rocks and water.

k) Conducting meteorological, hydrogeological, geological and hydrological monitoring

l) Surveying the conditions of construction works

m) Processing figures of construction surveying and making construction surveying reports

n) Carrying out other construction surveying tasks

3. The workload shall be determined according to construction survey objectives, project phase, surveying regulations and standards, requirements and specific conditions of the construction surveying contract.

4. The contractor shall produce the following documents:

a) Construction survey reports under Article 15 of the Decree No. 46/2015/ND-CP.

b) Topographic maps, geological maps, geohydrographical maps, construction site drawings and geological cross-section drawings.

c) Annexes

Article 5. Scope of work, workloads and documents of consulting contracts for feasibility study reports

1. Every agreement on workloads, scope of work and documents specified in the consulting contract for construction surveying shall be conformable to provisions of laws on construction projects, investment policies or pre-feasibility study reports (if any) , bidding documents, bids and minutes of negotiations.

2. Job description:

a) Preparing the feasibility study report

b) Studying documents related to the feasibility study report

c) Surveying the construction site, conducting market research, collecting figures in terms of natural conditions, population, economy and environment for the feasibility study report

d) Making feasibility study reports under Article 54 of the Decree No. 2014.

dd) Amending and completing the feasibility study report after the receipt of responses from the authorities taking charge of appraising the project and basic design (if any).

3. The workload shall be determined according to the investment policies or pre-feasibility study report (if any), responsibilities for feasibility study reports, design standards and regulations, requirements and specific provisions of the contract of the feasibility study report .

4. The contractor shall produce the following documents:

a) Basic design

b) Contents of the feasibility study report in which the total investment shall be included.

Article 6. Scope of works, workloads and documents of consulting contract for project design

1. Every agreement on workloads, scope of work and consulting documents specified in the consulting contract on shall be conformable to the feasibility study report, design plan, design schedule, level of the construction project, applicable regulations and standards , bidding documents, bid and minutes of negotiations.

2. Key tasks included in a design consulting contract are as follows:

a) Studying the approved feasibility study report and construction survey report and design plan

b) Conducting field surveys.

c) Designing the construction project in accordance with Articles 78, 79 and 80 of the Law on Construction dated 2014.

d) Amending and completing the design at request of the appraisal authority (if any).

dd) Supervising the compliance with the design under Article 28 of the Decree No. 46/2015/ND-CP.

3. The workload shall be determined according to the design plans, standards and regulations, type and level of the construction project, requirements of the design contract.

4. The contractor shall produce the following documents:

a) Drawings, descriptions of design and design calculation worksheets.

b) Technical manuals

c) Cost estimates

d) Construction maintenance processes

Article 7. Scope of work, workloads and documents of consulting contracts for construction supervision

1. Every agreement on workloads, scope of work and documents specified in the consulting contract shall be made according to the construction supervision responsibilities, regulation of laws on

construction management, approved design plan, level of the construction project, applicable regulations and standards , bidding documents, bid applications and minutes of negotiations.

2. The construction supervision contract may include quality control, workloads and HSE during the construction. Construction supervision responsibilities shall be conformable to clause I, Article26 of the Decree No. 46/2015/ND-CP.

3. The workload shall be determined according to the design plan, design standards and regulations, type and level of the construction project, bidding documents, bids, and minutes of negotiations and requirements of the construction supervision contract.

4. The contractor shall produce the following documents:

a) Periodic reports: the contractor shall submit the hirer and construction contractor weekly on-site progress reports which specify completed tasks and approved works during the reported week, comments and evaluation of project quality, workloads, progress and HSE by supervision and management teams.

b) Reports on acceptance of project work items: the contractor shall have their completed works or work items undergone the acceptance procedure in terms of technique, quality and the completed work, and propose plans for next stages.

c) Irregular reports at requests of the hirer.

Article 8. Requirements for quality, acceptance and transfer

Every agreement by parties on the work quality, acceptance and transfer stipulated the consulting contract shall be made in a accordance with Article 13 of the Decree No. 37/2015/ND-CP and the following provisions:

1. The quality shall be conformable to that prescribed in the consulting contract and provisions of laws on construction projects and project quality management and other regulations and standards. Any defect at the contractor's fault shall be remedied in accordance with terms of the consulting contract.

2. Proofs of acceptance of works under the consulting contract are as follows:

a) The consulting contract signed by both parties

b) Approved construction surveying plans (for construction surveying); or approved feasibility study reports (for feasibility study reports); or approved design plans, drawings (for project design); or approved responsibilities and process of construction supervision (for construction supervision).

c) Construction survey reports (for construction surveying); or feasibility study reports (for feasibility study reports); or construction drawings (for project design); or approved construction supervision documentation (for construction supervision).

d) Applicable laws, regulation and standards.

3. Acceptance records shall specify works qualified for being approved and works needing accomplishing (if any).

Article 9. Contract schedule and progress

Every agreement by parties on the schedule and progress of consulting contract execution shall conform to clauses 1, 2 and 3, Article 14 of the Decree No. 37/2015/ND-CP and the following provisions:

1. The contract progress shall specify the order of work, milestones, schedule and date of acceptance (for both acceptance by stage or final acceptance) and transfer date.

2. The parties shall draw up execution plans to ensure the contract progress as agreed.

3. Adjustments to contract schedule shall be made in accordance with clause 2, Article 12 hereof.

Article 10. Contract prices

The consulting contract prices and applicable provisions shall conform to Article 15 of the Decree No. 37/2015/ND-CP and the following provisions:

1. The contract price may include costs of materials, labour, construction vehicles, temporary works, common costs, costs of construction surveying proposals and reports, surveyors' travel expenses, estimated taxable income and VAT

2. The contract price of consulting contracts for feasibility study reports or project design or construction supervision may include:

a) Consultancy fees (consultant salary and additional costs), costs of materials and machine/equipment, management fees, estimated taxable income professional and VAT.

b) Costs of products accomplishing after meetings, reports and appraisals

c) Expenses for field researches

d) Traveling expenses during the acceptance at requests of the hirer.

dd) Expenses for supervision of building works' conformity to designs (for project design consulting contracts)

c) Other relevant expenses.

3. The contract price excludes:

a) Expenses for meetings by the hirer.

b) Fees for documents assessment and approval

c) Other negotiable expenses not included in the contract prices.

Article 11. Payment

The payment, payment documents, currency and methods of payment shall be conformable to Articles 19, 20 and 21 of the Decree No. 37/2015/ND-CP and the following provisions:

1. There may be lump-sum contract or other types of contracts.
2. The contract shall be paid by period of time (month, quarter, etc.) or by stage or by work item.
3. The due date is decided in the contract by the parties.

Article 12. Adjustments to consulting contracts

The workloads shall be adjusted in accordance with Article 37 of the Decree No. 37/2015/ND-CP, Article 16 hereof and the following provisions:

- a) Any force majeure event causing changes in workloads shall be dealt with in accordance with Article 16 hereof.
- b) For lump-sum contracts: the workload shall be reasonably adjusted as the basis for adjusting contract value at the hirer's requests (whether increase or decrease) under clause 3 of this Article.
- c) Fixed-price contracts and adjustable price contracts shall conform to Article 14 of the Decree No. 37/2015/ND-CP and clause 2, Article 12 hereof.
- d) The parties shall negotiate the price of workload whose cost is not included in the contract price prior to the execution.
- dd) The workload price shall be calculated according to terms of the contract and provisions of laws on construction cost management. The contract Annexes as the basis of contract settlement shall be signed by the parties.

Where the parties fail to reach an agreement on the additional workload price, the additional workload shall be included in a new contract and contractor selection for carrying out the new contract shall be made in accordance with current provisions of laws.

2. The contract schedule shall be adjusted in accordance with Article 39 of the Decree No. 37/2015/ND-CP, Article 16 hereof and the following provisions:

- a) Where the contract is finished behind schedule by the contractor's fault, the contractor shall propose remedies to stick to the schedule. If there is no remedy, the contractor shall request the hirer to grant and extension. All additional expenses or damage to the hirer shall be paid by the contractor.
 - b) Where the contract is finished behind the schedule by the hirer's fault, the hirer to grant the contractor an extension. Any damage to the contractor shall be reimbursed by the hirer.
3. The contract price shall be adjusted in accordance with the Circular guiding the adjustments to contract prices issued by the Ministry of Construction.

4. Other adjustments: Any adjustment other than those specified in clauses 1, 2 and 3 of this Article shall be made in accordance with terms of the contract and relevant provisions of laws.

Article 13. Rights and obligations of hirers

1. Every hirer has rights prescribed in clause 1, article 25 of the Decree No. 37/2015/ND-CP and shall be entitled to:

a) Request amendments and addition to consulting services that fails to meet the agreed quality stipulated in the contract.

b) Request the contractor to replace unqualified consultants.

2. Every hirer has obligations prescribed in clause 2, article 25 of the Decree No. 37/2015/ND-CP and shall:

a) Provide contractors with information related to the project and bidding documents; facilitate the field researches or the construction site access by the contractor.

b) Send qualified staff to work with the contractor

c) Facilitate the consultation on construction and customs clearance (if any).

d) Be responsible for the completion and accuracy of their given documents. Reimburse the contractor's damage if the hirer provides inaccurate and incomplete information.

Article 14. Rights and obligations of contractors

1. Every contractor has rights specified in clause 1, Article 26 of the Decree No. 37/2015/ND-CP and shall be entitled to:

a) Request the hirer to pay for consulting services on due date and late payment interests of loans under provisions of laws.

b) For construction supervision: request the hirer to suspend the construction if the quality fails to meet technical requirements or the construction technique is unsafe.

2. Every contractor has obligations prescribed in clause 2, article 26 of the Decree No. 37/2015/ND-CP and shall:

a) Collect necessary information for the contract execution as follows:

The contractor shall collect information that may affect the projects schedule, contract prices or their responsibilities, or potential risks during the consultation.

The contractor shall be totally liable for errors occur at their faults that affect the consultation.

b) Comply with applicable laws, regulations and standards; and guarantee the compliance with provisions of laws by sub-consultants (if any) and prime consultants.

c) Submit reports and documents to the hirer at a required quantity within a certain period of time. The contractor shall promptly report all information related to their consultation that may hinder or affect the project schedule and proposal solutions.

d) Present and defend their consultation viewpoints in meetings between competent authorities hold by the hirer.

dd) Have their consulting works or documents created by qualified specialists under provisions of laws. The contractor shall allocate their staff or sub-contractor's experienced staff specified on the list of staff approved by the hirer to perform consulting services.

e) Appoint competent and qualified representatives to deal with issues at any time the hirer requests up to the date of acceptance (for feasibility study reports) or up to the completion date or transfer date (for design consultation).

g) Provide documents required for meetings, appraisals or reporting, etc. at a quantity agreed in the contract.

h) Comply with instructions and requirements of the hirer if such instructions and requirements are in accordance with provisions of laws.

i) Participate in acceptance of works by stage, acceptance of work items or the project, and equipment testing, if the hirer requests.

k) Compensate for damage occurred by their faults.

Article 15. Contractor's personnel

1. The contractor's staff must satisfy all requirements for qualifications and experiences under provisions of laws on construction.

2. Expected staff's title, qualifications, and working duration shall be specified in the contract. In the event of staff replacement, the contractor shall submit the hirer an explanation about reasons for replacement, and the new staff's profile. The new staff must be at least as qualified as the displaced staff.

Article 16. Risks and force majeure

Risks and force majeure events shall be dealt with in accordance with Article 51 of the Decree No. 37/2015/ND-CP and the following provisions:

1. Force majeure events include karst topography, antiquities, archeological sites or sludge bag, etc. both parties may not anticipate as the time of contract conclusion.

2. Responsibilities for risks:

a) Where any risk estimated in the contract price occurs, the damage shall be reimbursed at the contractor's account.

b) Where any risk covered by the insurance occurs, the damage shall be reimbursed by the insurer and shall not be included in the contract price.

c) The contractor shall compensate for damage, losses or costs (including legal costs and charges) incurred in connection with the contractor's fault.

d) The hirer shall reimburse all damage, losses and expenses (including legal fees and charges) incurred in connection with their fault.

3. Notification of force majeure:

a) Either party encountering force majeure events shall send a notification of the force majeure event to another party in which the consequences shall be specified.

b) The party encountering force majeure events is entitled to delay the performance of contract during the time of force majeure.

4. Responsibilities for force majeure:

a) If the performance of contract is delayed or any expense is incurred due to any force majeure event that is notified to the hirer under terms of contract, the contractor is entitled to:

- Grant an extension of completion time under terms of the contract

- Have additional expenses covered under terms of contract.

b) The hirer shall consider approving the contractor's requests.

c) The payment obligations of the parties shall not be affected by force majeure event consequences.

5. Contract termination due to force majeure events, settlement or obligations fulfillment.

a) If the period of delay due to force majeure is longer than that in the notification, either party has the right to terminate the contract.

b) In this case, the hirer shall pay for:

- Every work has been done at the price included in the contract.

- Costs of equipment or materials sent to the contractor or items that the contractor is deemed to deliver (as the time of payment by the hirer, such equipment and materials are the hirer's assets (and liabilities) and shall be used by the hirer).

Article 17. Guidelines for the application of model consulting contracts

1. The model consulting contract is enclosed herewith.

2. The model consulting contracts herewith applies to consulting contracts between hirers and contractors; and EPC contract.

3. The parties using model consulting contracts shall comply with provisions of the Decree No. 37/2015/ND-CP and the following guidelines:

a) The payment schedule, duration of contract performance guarantee, time limits for responses, contract termination and similar circumstances shall be specified in the contract.

b) Any inconsistency between scope of work and job requirements in the contract and that in the model consulting contract enclosed hereof shall be adjusted.

b) Any inconsistency between scope of acceptance in the detailed contract and that in the model consulting contract enclosed hereof shall be adjusted.

d) For consortiums of contractors, the contact performance guarantee and advance payment guarantee shall be made in accordance with provisions of laws.

dd) The advance shall be negotiable according to the construction contract requirements.

e) The currency of payment and payment methods in the contract shall not contravene that in the Bidding documents and provisions of laws on foreign currencies.

Both parties shall select one of types of contracts specified Article 15 of the Decree No. 37/2015/ND-CP according to the nature, properties and requirements of the construction project.

Article 18. Enter into force

1. Transitional provisions

a) Every consulting contract that has been signed and takes effect before the effective date of this Circular shall conform to regulations on construction contracts dated before the effective date of this Circular.

b) Any consulting contract that are in process of negotiation and has not concluded containing terms inconsistent with provisions hereof shall be reported to the investment decision-maker to adjust on the principle of assurance of project quality, schedule and effectiveness for mutual benefits.

c) Any inconsistency between provisions of consulting contract in the approved bidding documents that has not published and that in this Circular shall be adjusted. The bidding documents related to adjustment shall be published in accordance with provision hereof and shall be announced to every bidder. Where the bid is closed, clause b shall apply.

2. Terms of consulting contracts that are not governed by this Circular shall apply provisions of the Decree No. 37/2015/ND-CP.

3. This Circular enters into force from May 01, 2016 and replaces the Circular No.08/2011/TT-BXD on model consulting contract by the Ministry of Construction.

PP.THE MINISTER
DEPUTY MINISTER

Bui Pham Khanh

MODEL CONSULTING CONTRACT

(Issued together with the Circular No. 08/2016/TT-BXD on a number of guidelines on consulting contracts dated March 10, 2016 by the Ministry of Construction)

THE SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

..... [location and date].....

CONSULTING CONTRACT

For construction surveying, feasibility study, construction design and supervision

No. :...../(year/..... (Contract symbols)

-

Project/construction works/contract No..... of [name of project]

-

Between

(Hirer's business name)

and

(Business name of the consultancy firm)

SECTION I – LEGAL BASIS

The Law on Construction No.50/2014/QH13 dated June 18, 2014;

Pursuant to the Government's Decree No.37/2015/ND-CP on detailed construction contracts dated April 22, 2015;

Pursuant to the Government's Decree No.46/2015/ND-CP on quality control and maintenance of construction works dated May 12, 2015;

Pursuant to the Government's Decree No.59/2015/ND-CP on construction investment project management dated June 18, 2015;

Pursuant to the Circular No. 08/2016/TT-BXD on guidance on construction consulting contract dated March 10, 2016.

Pursuant to (relevant laws)

Pursuant to the bidding result announced in the Document No.....

SECTION 2- TEMRS AND CONDITIONS OF CONSULTING CONTRACTS

This contract is made as of..... [date] in..... [location] between:

The hirer (representative(s) of the hirer)

Business name.....

Representative(s) (or authorized persons): Position:
.....

Address:

Account No:

TIN:

Business Registration Certificate (if any):

Tel: Fax: E-mail:

-

And:

The contractor

Business name.....

Representative(s) (or authorized person(s)): Position:
.....

Address:

Account No.....

TIN:

Business Registration Certificate (if any):

Tel: Fax:

E-mail:

Attorney of Power No.....dated..... (where it is authorized)

(For consortiums of contractors, the consulting contract shall specify information of all members in the consortium and the consortium's representative).

Both parties hereby agree to sign the consulting contract as follows:

Article 1. Definition and interpretation

For the purpose of this contract, terms herein shall be construed as follows:

1. The hirer refers to..... (the hirer's business name).
2. The contractor refers to..... (name of contractor).
3. Project refers to..... (project name)
4. Construction works refers to..... (name of works on which the contractor shall perform the consulting service consult under this contract).
5. Contract refers to..... (name of contract of which the contractor is selected as a consultancy firm of the project under this contract).
6. Hirer's representative refers to a person who is named in the contract or authorized to execute the project on behalf of the hirer.
7. Contractor's representative refers to a person who is named in the contract or authorized by the contractor to perform the service on behalf of the contractor.
8. Subcontractor refers to any organization or individual who will directly perform a service under the contract signed with the contractor.
9. Contract refers to all consulting contract documents specified in Article 2 [Consulting Contract Documents and their Order of Priority].

10. Hirer's bidding document (or request for proposals) includes all documents specified in the Annex No..... [Hirer's Bidding documents (or requests for proposals)].

11. Contractor's bid (or proposal) includes all documents specified in the Annex No..... [Contractor's Bid].

12. Bid form refers to the contractor's proposal in which the bidding price for the work required in the bidding document (or request for proposals) is specified.

13. Party refers to either the hirer or contractor according to the context.

14. Day or month is expressed as "calendar day/month".

15. Working day refers to calendar days, excluding days-off, holidays and Tet holidays under provisions of laws.

16. Force majeure event is defined in Article 21 [Risks and force majeure].

17. Law refers to laws of the Socialist Republic of Vietnam.

Article 2. Consulting contract documentats and their order of priority

1. The contract documentation includes the consulting contract and documents specified in clause 2 hereof.

2. Documents hereunder form an integral part of the consulting contract and are presented in the order as follows:

a) Notice of bid award or direct contracting;

b) Specific terms or terms of reference of the consulting contract;

c) General terms of the contract

d) Bidding documents or request for proposals by hirers.

dd) Drawings and technical manuals;

e) A bid or proposal of the contractor;

g) Minutes of negotiations, amendments or additions of the contract;

h) Annexes to the contract;

Other relevant documents.

3. The order of priority of the foregoing documents shall follow that prescribed in clause 2 of this Article.

Article 3. Information exchange

1. All notifications, approvals, certificates, decisions, etc. shall be submitted in writing to either party by post or via fax or email at the address specified in the contract.

2. Any change in contact address shall be notified to another party. Any party refuses to notify their new address shall be completely responsible for outcomes causing by such action.

Article 4. Applicable laws and languages in contract

1. This contract is governed by the Laws of the Socialist Republic of Vietnam.

2. This contract shall be made in Vietnamese.

(Where foreign elements are involved, the contract shall be made in both Vietnamese and a foreign language mutually agreed by both parties; if both parties fail to select a foreign language, English shall be used (the language and order of priority of languages (if any) for dispute settlement shall be negotiated during the conclusion of the contract).

Article 5. Scope of work, workloads and documents of consulting contracts for construction surveying

1. Scope of work and workloads of the contractor shall be specified in the Annex No..... [Hirer's Bidding Documents (or requests for proposals] and other agreements included in minutes of negotiations, including the following main tasks:

a) Preparing construction survey plans under Article 13 of the Decree No. 46/2015/ND-CP.

b) Collecting and analyzing figures and documents.

c) Conducting site survey

d) Setting up the geodetic framework and drawing detailed topographic maps.

dd) Drawing underground works

e) Setting up geodetic frameworks for linear infrastructure projects.

g) Carrying out hydrographic survey, site geological survey and hydrogeological survey

h) Conducting geophysical researches

i) Drilling, collecting samples, testing and defining chemical and physical properties of soils, rocks and water.

k) Carrying out meteorological, hydrogeological, geological and hydrological monitoring

l) Surveying the current status of construction works

m) Processing figures of construction surveying and making construction surveying reports

n) Other surveying tasks

2. The contractor shall produce the following documents:

a) Construction survey reports under Article 15 of the Decree No. 46/2015/ND-CP.

b) Topographic maps, geological maps of the construction site, geohydrographical maps, construction site drawings, geological cross-section drawings.

c) Annexes

Article 6. Scope of work, workloads and documents of consulting contracts for feasibility study reports

1. The scope of work, workload and documents of the contract shall be specified in the Annex No..... [Hirer's Bidding Documents (or request for proposal)] and other agreements specified in minutes of negotiations, including:

a) Preparing the feasibility study report

b) Studying documents related to the feasibility study report

c) Surveying the construction site, conducting market researches, collecting figures in terms of natural conditions, population, economy and environment for the feasibility study report

d) Making the feasibility study report under Article 54 of the Decree No. 2014.

dd) Amending and completing the feasibility study report after the receipt of responses from the authorities taking charge of appraising the project and basic design (if any).

2. The contractor shall produce the following documents:

a) Basic design

b) Contents of the feasibility study report including the total investment.

Article 7. Scope of work, workloads and documents of consulting contracts for project design

1. The contractor's workloads and main tasks shall be specified in the Annex No..... [Hirer's Bidding Documents (or requests for proposals)] and other agreements specified in minutes of negotiations, including

a) Studying the approved feasibility study report, construction survey report and design plan

b) Conducting field surveys.

c) Designing in accordance with Articles 78, 79 and 80 of the Law on Construction dated 2014.

d) Amending and completing the design at request of the appraisal authority (if any).

dd) Supervising the compliance with the design under Article 28 of the Decree No. 46/2015/ND-CP.

2. The contractor shall produce the following documents:

Drawings, design descriptions and design calculation worksheets.

b) Technical manuals

c) Cost estimates

d) Construction maintenance processes

Article 8. Scope of work, workloads and documents of consulting contracts for construction supervision

1. The contractor's workloads and main tasks shall be specified in the Annex No..... [Hirer's Bidding documents (or requests for proposals)] and other agreements specified in negotiation minutes.

The contract may include the supervision of quality, schedule, workloads and HSE during the construction. Construction supervision responsibilities shall be conformable to clause I, Article 26 of the Decree No. 46/2015/ND-CP.

2. The contractor shall produce the following documents:

a) Periodic reports: the contractor shall submit weekly on-site progress reports which specify completed tasks and approved works during the reported week, comments and evaluation of project quality, workloads, progress and HSE by supervision and management teams to the hirer and construction contractor.

b) Report on acceptance of project work items: the contractor shall have their completed works or work items undergone the acceptance procedure in terms of technique, quality and completed workloads, and propose plans for next stages.

c) Irregular reports at requests of the hirer.

Article 9. Requirements for project quality and quantity

1. The project quality shall be conformable to that prescribed in the consulting contract and provisions of laws on construction projects and project quality management and other regulations and standards. Any defect at the contractor's fault shall be remedied in accordance with terms of consulting contract.

2. Consulting documents shall be made in 10 sets.

Article 10. Acceptance of works

1. Proofs of acceptance of works under consulting contracts are as follows:

a) The consulting contract signed by both parties

b) Construction survey reports (for construction surveying); or feasibility study reports (for feasibility study reports); or construction drawings (for design); or construction supervision documents (for construction supervision and management).

c) Approved survey technical plans (for construction surveying); or approved feasibility study reports (for feasibility study reports); approved design plans, drawings (for design); or responsibilities and process of construction supervision and management (for construction supervision).

d) Applicable laws, regulation and standards.

2. The acceptance shall be carried out in.....times

The first time: After the completion of.....

The second time: After the completion of.....

The last time: After the receipt of all consulting documents from the contractor, the hirer shall approve such documents according to the contract, regulations and standards. All errors shall be corrected in accordance with terms of the contract.

The acceptance record is a document on the approval for works quality (under provisions of laws on construction quality control) in which the workload is specified.

Article 11. Consulting contract schedule and progress

1. The contract schedule shall be specified in the Annex No..... [Contract Schedule] with the duration of..... From the effective date of the contract including holidays and days off (the duration is exclusive of duration for appraisal, approval and force majeure).

2. Detailed schedule:

..... [name of the work] shall be completed by..... [date]

..... [name of the work] shall be completed by..... [date]

3. Either party encountering difficulties causing delay in project progress shall send a notification to the party in which the expected extension and reasons for extension shall be specified. If the contract duration is extended, the parties shall conclude an additional Annex.

4. The extension of contract duration due to delay by the contractor's fault shall not make the contract price increase.

Article 12. Contract prices, advances and settlement

1. Contract prices

a) The contract value isdong (.....in letters).

b) Adjustments to contract prices shall be made in accordance with Article 13 [Contract Adjustments].

2. Elements included in the contract price:

a) Elements included in the contract prices of consulting contract for construction surveying: costs of materials, labour, construction vehicles, temporary works, common costs, costs of survey reporting, travel expenses, estimated taxable income and VAT.

b) The consulting contract for feasibility study reports or project design or construction supervision includes:

- Consultancy fees (consultant salary and additional costs), costs of materials and machine/equipment, management fees, estimated taxable income, professional liability insurance premiums and VAT.

- Costs of products completion after meetings, reports and appraisals

- Field research costs

- Travel expenses during the acceptance at requests of the hirer.

- Expenses for supervision of building works' conformity to designs

- Other relevant expenses.

c) The contract price excludes:

- Expenses for meetings by the hirer.

- Fees for assessment and approval

- Other expenses not included in the contract prices.

3. Advances:

The advance shall be made within....days from the effective date of this contract; the hirer shall pay the contractor....% of the contract value, equal to..... (in numbers)

In letters.....

4. Payment schedule

The payment shall be made in..... [number] installments (negotiable).

The first installment:% of the contract value after the contractor completes the works

The second installment:.....% of the contract value after the contractor completes the works

The last installment: after the contractor fulfills his/her obligations stipulated in the contract.

The hirer shall make payment to the contractor within...days from the date of receipt of the valid application for payment.

5. An application for payment includes:

a) For lump-sum contracts:

- Acceptance record of the completed work under the Annex..... [Acceptance Records]

(The acceptance record is a document on approval for the works quality (under provisions of laws on construction quality control) in which the workload is specified).

- Additional workload price calculation sheets (if any) under the Annex..... [Additional workload price calculation sheets]

- A request for payment including contract prices, additional expenses (if any), advance deduction (if any), final prices according to the Annex..... [Request for Payment]

b) With regard to fixed-price contracts (for construction surveying):

- Acceptance record of the completed work using the Annex..... [Acceptance Records].

- Additional workload price calculation sheets (if any) in the Annex..... [Additional workload price calculation sheets].

- Request for payment including: contract prices, additional expenses (if any), advance deduction (if any), final prices according to the Annex..... [Request for Payment].

c) With regard to adjustable price contracts (for construction surveying):

- Acceptance record of the completed work under the Annex..... [acceptance records].

- Cost escalation calculation worksheets (settlement prices) under the Annex.....

- Additional workload price calculation sheets (if any) in the Annex..... [Additional workload price calculation sheets].

Request for payment including: contract prices, additional expenses (if any), advance deduction (if any), final prices according to the Annex..... [Request for Payment].

6. The currency of payment is Vietnam dong.

(Where foreign entities are involved, the currencies of payment may be Vietnam dong and a foreign currency or shall be negotiable in accordance with bidding documents and provisions of laws).

Article 13. Adjustments to consulting contracts

1. Workload adjustments

a) For lump-sum contracts: where the hirer requests to adjust the scope of work (whether increase or decrease) specified in the contract, the parties shall negotiate to reasonably adjust the workload.

b) For fixed-price contracts and adjustable price contracts: any additional work whose cost is not included in the contract price shall be priced prior to execution; the workload priced in the contract shall be determined according to the actual approved work (increase or decrease in comparison to that in the contract).

c) The additional work whose cost is not included in the contract shall be priced under the contract and provisions of laws on construction cost management. The Annexes as the basis for contract settlement shall be signed by both parties.

2. Contract schedule adjustment

a) If the contract is finished behind schedule due to the contractor's faults, the contractor shall propose remedies to stick to the schedule. If there is no remedy, the contractor shall request the hirer to grant an extension. All additional expenses and damage to the hirer shall be paid by the contractor.

b) Where the contract is finished behind the schedule due to the hirer's fault, the hirer shall grant an extension. Any damage to the contractor shall be reimbursed by the hirer.

3. Adjustments to the contract price shall be made in accordance with the Circular guiding the adjustment to construction contract prices issued by the Ministry of Construction.

4. Other adjustments shall be negotiable in accordance with terms of the contract and relevant laws.

Article 14. Contract performance guarantees (if any) and advance payment guarantee (where advance payment guarantee is mutually agreed)

1. The contractor shall pay.....% of the contract value as a guarantee for contract performance.

2. The contractor shall not receive the contract performance guarantee back if he/she refuses to execute the contract.

3. The contract performance guarantee shall be returned to the contractor if he/she fulfils his/her obligations stipulated in the contract.

4. The contractor shall submit the hirer an advance payment guarantee that equals the amount of advance before receiving the advance from the hirer. (For consortiums of contractors, each member of the consortium shall submit their advance payment guarantee that equals the amount of advance).

The advance payment guarantee shall be deducted in proportion to the deduction of advance.

Article 15. Rights and obligations of contractors

1. The contractor shall have the rights to:

a) Request the hirer to provide information and documents related to the consulting service as agreed (if any) in the contract.

b) Propose to adjust the conditions of provision of consulting services for their own interests or if any element affects the consulting service quality.

c) Refuse tasks out of the scope of work stipulated in the contract or illegal requirements by the hirer.

d) Have the copyright reserved under provisions of laws (for copyrighted works).

dd) Request the hirer to pay for consulting services and late payment interests of loans on due date under provisions of laws.

e) For construction supervision: request the hirer to suspend the construction if the construction quality fails to meet technical requirements or the construction technique is unsafe.

2. The contractor shall:

a) Complete his/her work on schedule and meet the agreed quality.

b) For design consultants: participate in the acceptance of works under laws on construction quality control , supervise the conformity to design and drawings and present his/her design documents at requests of the hirer.

c) Store and return documents or other necessary items provided by the hirer to the hirer after the completion of the contract (if any).

d) Notify the hirer of the absence of documents or information or any poor quality items in writing.

dd) Ensure the confidentiality of the consulting service under terms of contract and provisions of laws.

e) Collect necessary information for the contract execution as follows:

The contractor shall collect information that may affect the project schedule, contract value or their responsibilities, or potential risks during the consultation.

The contractor shall be totally liable for errors at their faults that affect the contract performance.

g) Comply with applicable laws, regulations and standards; and guarantee of the compliance with provisions of laws by sub-consultant (if any), consultant and sub-consultant's staff.

h) Submit reports and documents to the hirer at a required quantity and within a certain period of time. The contractor shall promptly report all information related to their consultation that may hinder or affect the project progress and propose solutions.

i) Present and defend their viewpoints in the meetings with competent authorities hold by the hirer.

k) Have their consulting works or documents made by qualified specialists qualified under provisions of laws. The contractor shall allocate their staff or sub-contractor specified on the list of staff approved by the hirer to perform the consulting service.

l) Appoint competent and qualified representatives to deal with issues at any time the hirer requests up to the date of acceptance (for feasibility study reports) or up to the completion date or transfer date (for design consultation).

m) Provide documents required for meetings, appraisals or reporting, etc. at a quantity agreed in the contract.

n) Comply with instructions and requirements of the hirer, if such instructions and requirements are conformable to provisions of laws.

q) Participate in acceptance procedures by stage, equipment test, work items and project acceptance if the hirer requests.

s) Reimburse all damage occurred at their faults.

Article 16. Rights and obligations of hirers

1. The hirer has the rights to:

a) Own and use documents and works resulting from the consulting contract.

b) Refuse to approve consulting works that fails to meet the quality stated in the contract.

c) Inspect the contractor's work quality but do not hinder their operation.

d) Request amendments and addition to works that fails to meet the agreed quality stipulated in the contract

dd) Request the contractor to replace unqualified consultants.

2. The hirer has the rights to:

a) Give the contractor documents, job descriptions, payment guarantees or necessary items for the service performance (if any).

b) Have the copyright reserved for copyrighted works.

c) Dealt with contractor's complaints, within their competence, during the execution of the contract within the period of time stipulated in the contract.

d) Fulfill payment obligations on schedule as agreed.

dd) Provide the contractor with instructions on the project and bidding documents; facilitate the field researches or the construction site access by the contractor.

e) Send qualified staff to work with the contractor

g) Facilitate the consultation and customs clearance (if any).

h) Be responsible for the completion and accuracy of their given documents. Reimburse the contractor's damage if the hirer provides inaccurate and incomplete information.

Article 17. Subcontractors (if any)

1. The contractor shall submit a list of subcontractors not included in the contract, their profiles, experience and scope of work to the hirer before signing the contract with them.

2. The contractor shall be totally responsible for subcontractor's mistakes in schedule and quality.

3. The contractor shall commit to fully pay all costs and expenses to the subcontractor on due date under terms of the contract.

Article 18. Contractor's personnel

1. The subcontractor and contractor's staff must satisfy requirements for qualifications and experiences under provisions of laws on construction.2. The staff's title, job description, qualifications and expected working duration shall be presented in the Annex No..... [Contractor's Personnel]. In the event of staff replacement, the contractor shall submit an explanation and new staff's profile to the hirer. The new one must acquire the same or higher qualifications than the displaced person does. If the hirer does not give any feedback on the replacement within....days, the replacement is deemed to be approved.

3. The hirer has the right to request the contractor to replace his/her staff if such staff fails to meet the hirer's requirements or their profile does not match that in the contract. In the case, the contractor shall submit a notification of staff replacement to the hirer within...days from the date of receipt of hirer's request for replacement. Unless otherwise agreed, all additional expenses shall be paid by the contractor. The new staff shall not be paid higher than the displaced person was.

4. The contractor may adjust the working time, where necessary, but shall not increase the contract price. Other adjustments shall be applied into practice only if the hirer approved.

5. In case of increase in working hours or addition of staff due to the workload increase as agreed by the parties, the necessary additional expenses shall be paid in accordance with the Annex No..... [Contractor's Personnel].

6. The contractor shall carry out their work according to the planned schedule. Working hours, overtime, working days, days off, etc shall be conformable to the Labor Code. The overtime shall not be paid (it is included in the contract price).

Article 19. Document copyrights and use rights

The contractor shall keep the copyrights of his/her consulting documents that may be used by the hirer without the contractor's permission.

The contractor shall commit that his/her documents does not infringe any other's copyright or intellectual property right.

The hirer shall not be liable for any infringement of copyrights or intellectual property rights.

Article 20. Insurances

The contractor must buy professional liability insurances under provisions of laws.

Article 21. Risks and force majeure

1. Force majeure events include karst topography, antiquities, archaeological sites or sludge bag, etc. that the parties may not anticipate at the time of contract conclusion.

2. Responsibilities for risks:

a) Where any risk estimated in the contract price occurs, the damage shall be paid at the contractor's account.

b) Where any risk under the coverage of insurances occurs, the damage shall be covered by the insurer and shall not be included in the contract price.

c) The contractor shall reimburse damage, losses and costs (including legal fees and charges) suffered by the hirer incurred in connection with his/her fault.

d) The hirer shall compensate the contractor for damage, losses or costs (including legal costs and charges) incurred in connection with his/her fault.

3. Notice of force majeure:

a) Either party encountering force majeure events shall send a written notice of the force majeure event to another party in which the consequences shall be specified.

b) The party encountering force majeure events is entitled to delay the performance of contract during the time of force majeure.

4. Responsibilities for force majeure:

a) If the performance of contract is delayed or any expense is incurred due to the force majeure event that is notified to the hirer under terms of contract, the contractor is entitled to:

- Be granted an extension of payment due date under terms of the contract

- Have additional expenses covered under terms of contract.

b) The hirer shall consider approving requests by the contractor.

c) The payment obligations by both parties shall not be affected by force majeure event consequences.

5. Contract termination due to force majeure events, settlement or obligation fulfillment.

a) If the period of delay due to force majeure is longer than that in the notice, either party has the right to terminate the contract.

b) In this case, the hirer shall pay for:

- Every work that has been done at the price specified in the contract.

- Costs of equipment or materials sent to the contractor or items that the contractor shall be deliver (as the time of payment by the hirer, such equipment and materials shall be the hirer's assets (and liabilities) and may be used by the hirer):.

Article22. Contract suspension

1. The contract is suspended by the hirer

Where the contractor fails to fulfill his/her obligations, the hirer may suspend the contractor's work, in part or in whole. The hirer shall specify the contractor's faults and request him/her to correct such faults within an acceptable period of time and compensate for damage due to the suspension.

2. The contract is suspended by the contractor

a) Where the hirer fails to fulfill his/her obligations or fails to settle payment under terms of contract exceeding 28 days from the due date, the contractor, after notifying the hirer, may stop his/her work (in part or in whole).

b) After the hirer fulfills his/her obligations, the contractor shall carry out his/her work as soon as possible...

c) Where any expense incurs due to the suspension (or reduction), the contractor shall notify the hirer of that fact. After the receipt of the notification, the hirer shall consider and respond to the foregoing issue.

3. Either party shall submit another Party a prior notice of suspension in which reasons for suspension shall be specified.

Article 23. Contract termination

1. The contract shall be terminated by the hirer afterdays from the date of submission of contract termination notice to the contractor. The hirer has the right to terminate the contract if the contractor:

a) Disobey requirements for contract performance guarantee stipulated in Article 14 (if the parties have an agreement on contract performance guarantee).

b) Fail to correct their errors withindays from the date of receipt of the notice from the hirer.

c) Stop the work without persuasive explanations under Article 11 [Time Limit and Contract Schedule], or stop the work for 45 consecutive days.

d) Transfer the contract without prior consent of the hirer.

dd) Go bankrupt, insolvent, shut down or suffer asset restrictions or operate under asset restrictions or face similar events (under applicable laws).

e) Refuse to comply with the final decision by the arbitration as stipulated in Article 25[Disputes and Settlement of Disputes].

g) Intentionally submit inaccurate documents that affect the hirer's benefits, rights and obligations

h) Encounter force majeure events defined in Article 21 [Risks and Force Majeure].

After the contract is terminated, the hirer can hire other contractors. The hirer and new contractors can use any existing document.

2. The contract terminated by the contractor:

The contractor, after submitting a prior notice to the hirer in writing at least.....days in advance, may terminate the contract in the following cases:

a) Any work is suspended for 45 consecutive days by the hirer's fault.

b) The hirer does not fulfill his/her payment obligation as stipulated in the contract and is not included in Article 25 [Disputes and Settlement of Disputes] after 45 days from the date of receipt of the valid payment documentation.

c) The hirer disobeys the final decision by the arbitration as stipulated in Article 25[Disputes and settlement of disputes].

d) The hirer fails to fulfill their obligations for at leastdays due to force majeure events.

dd) The hirer goes bankrupt, insolvent, shuts down or suffers asset restrictions or operates under asset restrictions or faces similar events (under applicable laws)

3. All rights and obligations of the parties shall be terminated at the time of terminating the contract, excluding the dispute settlement.

4. After the receipt of written notice of contract termination, the contractor shall carry out the procedures for termination of the consulting service at the optimum costs.

5. Every work executed before the date of termination shall be paid in accordance with Article 12 [Contract Price, Payment in Advance and Settlement] (including consultancy fees, costs of equipment and other expenses).

Article 24. Rewards and Penalties

1. Rewards: If the contractor fulfills his/her obligations on schedule prescribed in the contract or brings benefits to the hirer, the contractor may be granted an award of.....% of the contract value for every.... month(s) (negotiable *between both parties*) and not exceeding.....% of the benefit.

2. Penalties

For contractors: If the contract completion falls days behind the schedule, the contractor shall be subject to a penalty of.....% of the contract price but not exceeding % of the damage.

For the hirer: If the hirer delays to make payment to the contractor under Article 12 [Contract Prices, Advances and Settlement], the hirer shall reimburse the overdue interests calculated from the first day of late payment to the date of full payment.

Article 25. Disputes and settlement of disputes

1. If either party is found not fulfilling their obligations, the party has the right to request the faulting party to comply with the obligations stipulated in the signed contract and may lodge a complaint against the fault. The faulting party shall give explanations enclosed with proofs or evidences within.....days and shall admit that the complaint is true and correct if their explanation is unreasonable.

Within 30 days from the date on which the inconsistency is found, the another party shall notify and file complaints against such inconsistency. If no complaint is lodged after 30 days, the parties shall comply with terms of the contract.

Within 30 days from the date on which the complaint is lodged, the faulting party may either agrees with such complains or demonstrate that such complaint is incorrect. After 30 days, if the faulting party has no idea, the complaint shall deem to be correct.

2. Any dispute arising in connection with the performance of the contract shall be amicably settled.

If the parties fail to reach an amicable agreement within.....days from the date of dispute, the dispute shall be settled by the attribution under laws of Vietnam (*or the People's Court*). The Arbitration's decision (*or the People's Court*) shall be the final decision and bind both parties.

3. This Article shall not be affected even if the contract is invalid or terminated.

Article 26. Contract settlement and finalization

1. Contract settlement

Within.....days from the date of acceptance, after receipt of the acceptance record and contractor's certificate of obligation fulfillment, the contractor shall submit sets of application for contract settlement to the hirer, the application includes:

a) Acceptance records of consulting services

b) Additional workload price calculation sheets (if any)

c) Settlement price calculation sheets in which specify paid elements and receivables.

The contractor shall submit all additional documents or information as the basis for project settlement to the hirer, if it is legally requested. The contractor shall request the hirer to settle the contract as agreed. After reaching an agreement on payment documents, the hirer shall settle the payable to the contractor.

2. The contract shall be finalized within.....days from the date on which the parties fulfill their obligations under the contract or the contract is terminated under Article 23 [Contract Termination].

Article 27. Miscellaneous terms

Both parties agree with all terms, provisions and conditions hereof. Neither authority nor representative of the parties is entitled to state, declare, promise or make deals that are not specified in the contract; neither party shall be bound or liable for such declarations , promises, statements or deals.

The parties hereto commit to fairly and honestly execute the contract to achieve the contract objectives.

This contract takes effect from.....

This contract includes.....pages, and its Annexes are made in Vietnamese (*and English (if any)*) copies and have the same legal value. The hirer and contractor shall keep....and.....copies, respectively.

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HIRER OR REPRESENTATIVE OF HIRER
(Full name, title. signature and seal)

CONTRACTOR OR REPRESENTATIVE OF CONTRACTOR
(Full name, title. signature and seal)

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