

[This translation is provided for guidance. The governing text is the Arabic text.]

**Form of Consultancy
Engineering Services Contract
(Design)**

Article (1): Purpose of the Contract

The purpose of this contract is to perform the following:

This shall include provision of services, individuals, employees, materials, and all items necessary for the performance and completion of the works stated in the contract documents, together with any temporary, additional, or complementary services and amendments which the Work Owner requests the Consultant to perform in accordance with the contract terms and documents.

Article (2): Contract Documents

- 2.1 This contract comprises the following documents:
- (a) Contract - basic document;
 - (b) Special conditions, if any;
 - (c) General conditions;
 - (d) A statement of the required engineering services;
 - (e) Remuneration schedules and price categories;
 - (f) Letter of award or acceptance of the offer.
- 2.2 These documents form an integral unit, and each document is considered part of the contract so that the above-mentioned documents shall explain and supplement each other.
- 2.3 In the event of a conflict among the provisions of the contract documents, the documents mentioned first in the listing given in Paragraph One of this Article shall prevail over subsequent documents.

Article (3): Contract Term

- 3.1 The Consultant undertakes to perform and complete all the works and services specified in this Contract and its annexes, during the period of

(the contract term shall be written in days, in both numbers and words)
to start running as of the date of notification of commencement of work.

- 3.2 If the Consultant delays performing the works and services subject of the contract it shall be subject to the delay penalty specified in Article (11) of the Contract General Conditions.

Article (4): Liability and Warranty of Works

The Consultant fully warrants the works and services subject of this Contract and shall be liable for any damage resulting because of its design fault in accordance with the provisions of Articles (9) and (10) of the General Conditions.

Article (5): Contract Value

1. The total value of this contract is

_____ *(to be stated both in numbers and in words, and given in Saudi riyals)*

against its performance, pursuant to the documents of the contract.

2. Subject to the provisions of Article (13) of the General Conditions of the Contract, this total value shall be subject to increase or decrease according to changes in the actual works performed by the Consultant pursuant to the Contract and to additional and complementary works and amendments which it undertakes at the request of the Work Owner, within the limits stipulated in the General Conditions of the Contract.

Article (6): Method of Payment

The Work Owner shall pay the contract value in the manner and at the times specified in Article (12) of the General Conditions of the Contract against the Consultant's performing and completing the works agreed upon.

Article (7): Consultant's Undertakings

1. Subject to the provisions of the laws, the Consultant shall acknowledge the following:
 - a Not to pay, grant or promise any amount of money, or any other benefit to anyone of the same, in order to secure the award of this competition and win this contract.
 - b Not to make reference to the type, description or number stated in producers' lists.
 - c Not to require or use materials, equipment or devices with specific name or brand.
2. The Consultant shall, before signing this contract, undertake to show and inform the Work Owner of, the works or services it is performing or intending to perform which may violate or negatively affect its Contract.
3. The Consultant acknowledges that in the event of discovery of incorrectness of any of the previous undertakings, or failure to conform to its undertakings, or in the event of concealing of information it undertook to disclose, it will be subject to the provisions of laws in force in the Kingdom such as Anti-Bribery Law, Anti Forgery Law, the Law of Combating Commercial Fraud and other laws and instructions.

Article (8): Governing Law

This Contract shall be subject to the laws in force in the Kingdom of Saudi Arabia and shall be interpreted, executed and disputes relating thereto shall be adjudicated in accordance therewith. In witness thereof, the two parties have executed this document.

Consultant
Name: _____

Work Owner
Name: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

Stamp:

Stamp:

Section Two ***General Conditions***

Article (1): Definitions

1. The following terms and expressions shall have the meanings stated next to each of them, unless the text or context requires otherwise.
 - (a) The Work Owner (The First Party): The ministry or the administrative body which calls for tenders to perform the works or services specified in the tender documents. This term shall include the Work Owner successors or assignees.
 - (b) The Consultant (The Second Party): The natural or legal person(s) whose tender has been accepted by the Work Owner. This includes their representatives, successors and substitutes, upon approval of the Work Owner.
 - (c) The Services: All the services which the Consultant shall perform and provide under this contract.
 - (d) The Works: Shall mean all the works to be carried out or performed under this contract.
 - (e) Approval: The written approval including written confirmations subsequent to any oral approvals.
2. Words mentioned in singular forms shall have the same meaning of the plural forms and vice versa if the text so requires.
3. Headings and margins mentioned in the Contract shall not be considered in the interpretation of the Contract.

Article (2): Responsibility of the Consultant towards Claims

This Contract is a contract of consultancy services, whereby performance of services by the Consultant is accordingly in its capacity as an independent contractor working for its own account. The Work Owner shall not be in a position superior or principal, despite its right to supervise and direct, whether in connection with the relationship between the two parties or with other parties. Accordingly, the Consultant shall be fully responsible for all the services it is performing and any results or claims arising therefrom.

Article (3): Performance of the Works or Services

The Consultant shall perform the services according to the following:

- (a) The Consultant shall perform all professional works necessary for the project and their performance according to the highest standards, and in the manner and method recognized by the profession.
- (b) The Consultant shall study the project and size of its elements in consistence with the requirements of the Work Owner, and taking into consideration the fulfillment of these requirements within the limits of economic cost appropriate to the nature of the project. It shall also set a clear vision of the suitable means for the works of operation and maintenance, together with studying the anticipated cost rates for these works upon completion of the project provided that it shall submit its views as to the most appropriate materials, equipment and devices that it thinks may be usable in order to achieve the minimum costs in the operation and maintenance works.

Article (4): Assignment to Others

The Consultant may not assign wholly or in part the Contract, without prior written consent from the Work Owner. Nevertheless, the Consultant and the assignee shall remain jointly liable to the Work Owner for the performance of the Contract or part of it.

Article (5): Subcontracting

The Consultant may not subcontract the performance of all the works and services subject of this Contract. Also, the Consultant may not subcontract part of the works and services without the written consent of the Work Owner unless the contract stipulates otherwise.

Such consent shall not release the Consultant from the liability and obligations imposed on it by this contract, and it shall remain responsible for any act, error or negligence made by any subcontracting consultant, its agents, employees or workers.

Article (6): Compliance with the Laws and Instructions

1. The Consultant shall comply with the provisions of the Law of Government Procurement and Execution of Projects and Works and all other laws, orders, decisions, rules and regulations in force and shall specify this in its contracts approved by the Work Owner with any assignee, subcontracting parties or its personnel. Upon facing any difficulty in this regard, it shall revert to the Work Owner before taking any action or applying any procedure.
2. The foreign Consultant shall allocate to a Saudi consultant not less than 30% (thirty percent) of the works contracted. The Work Owner may totally or partially exempt the foreign consultant from implementing this percentage, if the absence of any works that can be performed by a Saudi consultant is established or the work available is less than 30% (thirty percent).
3. The Consultant shall ensure, upon setting the specifications, that the materials used, whether local or imported, shall be consistent with the Saudi standard specifications issued by the Saudi Arabian Standards Organization (SASO). If these are not available, international standard specifications shall be specified and the designing Consultant shall submit with the specifications it prepares a memorandum including its undertaking that the specifications set and equipment or machinery it specified are not restricted to a style of a certain company, country, or group of countries.
4. The Consultant shall give priority to national commodities and products and shall observe this priority not only for the commodities and products it purchases itself, but also through specific mention of these commodities and products in any specifications it prepares during performance of the works.
5. The Consultant shall use Saudi Arabian Airlines or its agency in all transport of its employees and workers and anything related to the performance of the Contract of the type transportable by air.
6. The Consultant shall commit to use Saudi marine transport means in transporting equipment and materials necessary for the performance of the contract, whenever feasible.

Article (7): Laws and Provisions of Import

The Second Party (the Consultant) acknowledges its awareness that import and customs laws and provisions of the Kingdom of Saudi Arabia shall govern the supply and shipment of any products or parts thereof, to or from the Kingdom, including import prohibitions.

Article (8): Consultant Personnel

1. In performing its services, the Consultant shall use specialists and technicians, and provide at its offices and work sites adequate numbers thereof and shall give priority to qualified Saudis.
2. The Consultant shall appoint one of its technical staff as director of the project following the approval of the Work Owner, provided that he is appropriately qualified and shall be present at the Consultant's office throughout the Contract term. The Consultant pursuant to the directives of the Work Owner, shall replace its project director by another qualified member after being approved by the Work Owner.
3. The Consultant shall be fully responsible to pay dues to its workers involved in the performance of the Contract. If the Consultant fails to pay after the lapse of one month following its notification of the matter in writing, the Work Owner may directly pay said dues and deduct the same from any amounts due to the Consultant or deduct it from any amounts due to the Consultant with other government agencies through the competent authorities.
4. The Consultant shall ensure that its Saudi and non-Saudi personnel are legally employed, and shall submit proof thereof to the Work Owner.

Article (9): Liability of the Consultant for its Works

1. The Consultant shall be liable for any damages resulting from any faults in the designs or specifications it performs. The approval of the Work Owner thereof shall not release the Consultant from such responsibility.
2. The Consultant shall bear all consequences resulting from claims made by others, due to its infringement of any right concession, design or trade mark.
3. The Consultant shall bear any consequences of damages occurring to others as a result of performing the obligations under the contract.

Article (10): Term of Consultant Warranty of its Works

The Consultant shall be liable for total or partial collapse of fixed construction works resulting from a defect in the studies and designs it prepared for the project or soil tests it made at the site, even if the Work Owner had approved construction for a period of fifteen years as of the date of the preliminary handover or ten years as of the date of the final handover.

Article (11): Penalties and Deductions

If the Consultant delays the performance of its obligations, it shall be subject to a fine of one percent of the value of the delayed item for every month's delay, provided that the fine shall not exceed ten percent of the contract value, unless the delay is the result of a

force majeure or an unforeseeable event or for a reason not attributable to the Contractor or the Government.

Article (12): Method of Payment

1. The Work Owner may pay to the Consultant on account, an advance payment not exceeding ten percent of the contract value after signing it against a bank guarantee for the same amount. Such amount shall be deducted from the Consultant's dues at the same percentage.
2. The Consultant dues shall be paid in accordance with the works or services performed, in proportion to the size of the work accomplished or the elements of the specific phase and in accordance with fee schedules, price categories and work programs agreed.
3. The final amount which is not less than five percent of the contract value or the value of services actually executed, shall be paid after the Consultant has discharged all its obligations and presented a certificate from the Department of Zakat and Income Tax (DZIT) evidencing its payment of the zakat and income tax dues and a certificate from the General Organization for Social Insurance (GOSI) evidencing payment of dues according to the law.

Article (13): Increase or Decrease of Consultant Obligations

The Work Owner may increase the Consultant's obligations by a percentage not exceeding ten percent of the contract value, and may decrease it by a percentage not exceeding twenty percent of the contract value at the same contracted prices.

Article (14): Obligations and Responsibility of the Work Owner to Assist the Consultant

1. The Work Owner shall provide the Consultant in addition to the statement of the approved requirements, with the information available therewith for preparing the designs within _____ *[in both words and figures]* working days from the commencement date of the Contract and the Work Owner shall decide within _____ *[in both words and figures]* working days with regard to the options related to design basics and subsequent phases within _____ *[in both words and figures]* working days from the date of submission of written notification by the Work Owner. When designs are submitted to the Work Owner, it shall decide thereon or express its views with respect to modifications within _____ *[in both words and figures]* working days of the date of submission.
2. The Work Owner may assist the Consultant within the limits of applicable laws, instructions and orders to obtain the following:
 - a) Visas, work and residence permits for the Consultant employees and their families, as permitted by applicable laws, orders, rules and regulations in the Kingdom of Saudi Arabia.
 - b) Customs clearance for equipment and tools necessary for the work of the Consultant or the use of its employees, provided that the Consultant pays the legal charges.

- c) Access to places and sites where services are performed, provided that instructions such as prohibition of entry for non-Muslims to Makkah Al Mukaramah or Al Madinah Al Munawara are observed. The responsibility of the Work Owner pursuant to this article shall be limited to assisting the Consultant in the manner indicated above and the Consultant shall itself be principally responsible for handling these matters.

Article (15): Responsibility of the Consultant to Provide Support Services

The Consultant shall secure for itself and its employees all equipment, transport facilities and services that may enable it to perform its obligations under the contract.

Article(16): Termination of the Contract by the Work Owner

The Work Owner may terminate the Consultant's Contract at any time before completing the services, provided that the Consultant is informed fifteen days prior to the date of termination according to the following:

- (a) The Consultant shall be paid the balance of its total remunerations due under this Contract in an amount equivalent to the percentage of services performed prior to the termination of its services.
- (b) The Consultant shall be compensated for actual expenses incurred, provided that official documents are submitted as proof.

Article (17): Settlement of the Consultant's Dues upon Contract Dissolution

The disappearance of the Consultant's corporate personality, or upon failure, for a reason not attributable to it, to deliver its services, or its bankruptcy or appointment of a receiver of its assets, shall result in dissolution of this Contract. In this case, the Work Owner shall pay the value of performed services within the limits of the benefit it has received from these services against handing over the available drawings or documents to the Work Owner.

Article (18): Rescission or Withdrawal of Contract and Consequences thereof

If the Consultant stops its services for an invalid reason or it is proven during the progress of work that it is performing the work in a manner that is defective or inconsistent with the Contract or if the Consultant fails to comply with conditions binding upon it under this Contract the Work Owner may notify it to remedy the situation within fifteen days, by a written notice sent by registered mail. If the period elapses before the Consultant cures the defect, the Work Owner may rescind the Contract or perform the services at the expense of the Consultant with recourse for compensation against the Consultant in either case.

Article (19): Rights of the Consultant upon the Work Owner's Failure to Fulfill its Obligations

If the Work Owner violates any of its obligations under this Contract, the Consultant may neither stop the performance of the Contract nor terminate it. However, the Consultant may claim compensation for any losses or damages incurred.

Article (20): Ownership and Confidentiality of Plans, Drawings, and other Documents

1. All information, data, drawings and documents prepared by the Consultant for performing the services and works subject of the contract shall be deemed as the exclusive property of the Work Owner, copyrights included. The Consultant may not use them, except in connection with performance of services and works. All information, data, drawings and documents of the Work Owner that may be in the possession of the Consultant or with which it is acquainted, shall remain the exclusive property of the Work Owner. The Consultant may not use them except for performing services and works subject of the Contract.
2. With the exception of the prior written approval of the Work Owner, the Consultant shall include in the contracts with its subcontractors a provision stating that they have to do their best themselves, their workers and agents at any time whether before or after performing the services and works, or after termination of the contract, not to use or disclose to anyone any data, drawings, documents or any other information of any kind and in any manner, whether written or oral that may be in their possession or to which they are privy, or whatever is related to the Contract or services or to the works or work secrets, transactions, deals or affairs of the Work Owner. This condition shall not be applicable, if this use or disclosure is necessary for the Consultant's performance of its obligations under this Contract or for performance of the obligations of the subcontracting consultants or any of the parties working with it, pursuant to the contracts concluded with each of them.
3. The Consultant may not take pictures of the project or part thereof, or permit the parties working with it or its subcontractors to do the same, without the prior written consent of the Work Owner. No pictures of the project shall be used for the purpose of advertisement and publicity without the prior written consent of the Work Owner.

Article (21): Damages Caused to Persons and Property

Subject to Article (9), the Consultant shall be fully liable, and shall pay to the Work Owner and the parties working with it full compensation for all losses, damages or injuries (including death) which it causes to persons (including but not limited to the parties working with the Work Owner) or properties (including but not limited to the properties of the Work Owner or any of the parties working with it) which may totally or partially arise or occur in connection with the performance of services by the Consultant under this Contract, or the execution or performance thereof, and its failure to execute or perform its other obligations under this Contract or which the Consultant or any of its workers contributed to their occurrence.

The Consultant shall pay to the Work Owner and the parties working with it compensation including all losses, obligations, costs, allegations, acts or claims which may arise as a result of said or related losses and damages, but the aforementioned compensation shall not be applicable to those cases where the losses, damages or injuries are the result of any act or negligence made by the Work Owner, its workers or its agents.

Article (22): Licenses, Registration Documents and Permits

The Consultant, during the Contract period, shall obtain all permits and registration documents necessary for the performance of its work and for execution of services at its own expense, and shall maintain their validity. This shall include but is not limited to the commercial register, license for practicing the profession, and other necessary documents and licenses. The Consultant shall deliver to the Work Owner copies of these licenses, registration documents and permits or proof of their issuance or renewal or the obtaining of a duplicate or replacement thereof.

Article (23): Contract Language

- (a) Arabic is the language of interpretation and execution of this Contract. Nevertheless, the two parties may use a foreign language besides Arabic to write the Contract or part of it. In case of any inconsistency between the Arabic and the foreign language texts, the Arabic text shall prevail. Arabic shall be the basis of specifications.
- (b) Correspondence related to this contract shall be in Arabic. Nevertheless, the Consultant may use a foreign language with its translation into Arabic at its own expense. The Arabic text shall prevail in the event of a dispute.
- (c) The Consultant shall keep its records and all its accounts and documents pertaining to this contract in Arabic and under its responsibility, confirmed by a certificate from a certified auditor licensed to practice in the Kingdom.

Article (24): Settlement of Disputes

The Board of Grievances in the Kingdom of Saudi Arabia shall have jurisdiction to decide all disputes and claims, resulting from or relating to this contract.

Article (25): Notices

All notices, claims and data pertaining to this Contract shall be in writing in Arabic and shall be delivered to the other party at its place of business specified in this Contract against signed acknowledgment of receipt, or sent to it to this place by registered mail, fax, cable or telex, as the case may be, with proof of receipt. The Consultant's change of its local place of business as specified in this Contract shall not be acceptable, unless the new place of business is located in the Kingdom of Saudi Arabia and the Work Owner is informed accordingly at least fifteen days prior to the change.

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