



AGA KHAN CULTURAL SERVICES - AFGHANISTAN

MULTIPLE AWARD AGREEMENT

amongst

National Development Operations and Support Office of the Presidential Palace

and

Aga Khan Cultural Services, Afghanistan (AKCS-A)

for

**PROVISION OF ARCHITECTURAL, PLANNING AND LANDSCAPING DESIGN
CONSULTANCY SERVICES**

Agreement

This Multiple Award Agreement (the “**Agreement**”), dated this _____ by and between:

1. The National Development Operations and Support of the Presidential Palace (“**NDO**”);
- and
2. Aga Khan Cultural Services, Afghanistan, an NGO entitled to operate as an NGO in Afghanistan, whose registration number is 474 (“**AKCS-A**”)

(Hereinafter together referred to as the “**Parties**”, and individually as a “**Party**”)

WHEREAS:

1. An agreement of co-operation for development (the “**Agreement of Co-operation**”) was signed in Kabul on 24 March 2002 between the Government of the Islamic Republic of Afghanistan (the “**GoIRA**”) and the Ismaili Imam represented by His Highness the Aga Khan, the 49th hereditary Imam of the Shia Imami Ismaili Muslims to promote through the agencies and institutions of the Aga Khan Development Network (“**AKDN**”) a range of social, cultural and economic development initiatives in Afghanistan, including the promotion and support of local, regional and international collaboration in the field of culture, traditional music, arts and the built environment.
2. Pursuant to the Agreement of Co-operation, the GoIRA and the Aga Khan Trust for Culture (“**AKTC**”) have entered into a Memorandum of Understanding (“**MoU**”) dated 5 October 2016, for “The Preservation and Rehabilitation of Heritage and Cultural Sites in Kabul Province and the Capital Region”. The MoU included a “Description of Selected Heritage Zones and Potential Urban Redevelopment Initiatives”, which identified a series of initiatives and established the general framework of relationships/collaboration and key responsibilities of the respective parties.
3. NDO is responsible for the design and construction of high-quality large-scale state-funded projects that will have transformational impact on the economy and built environment of Afghanistan (hereinafter referred as the “**Overall Project**”). The Architectural Design Unit of NDO has recently been established to work closely with the ‘National Construction Company’ in supporting the restoration of key heritage sites and large-scale construction of new public and commercial buildings and landscapes.
4. The Overall Project will comprise different individual projects over the next few years that will require extensive knowledge and expertise in architectural design, planning and building works.
5. In nearly 20 years of working in Afghanistan, the AKDN has cemented its reputation as a key partner to the GoIRA in working to safeguard public heritage sites, develop contextual and inspiring architectural designs and create public gardens and landscapes that address critical social and economic challenges while embodying the countries rich built and landscaping traditions.
6. AKCS-A, an agency of the AKDN, is an NGO registered under the laws of Afghanistan and has developed in-house expertise in planning designing, and implementation of large-scale public architectural and conservation projects in Afghanistan.
7. NDO has requested that AKCS-A provide paid advisory services on key landmark projects in support of its Architectural Design Unit.

8. The formulation and execution of this Agreement will enable NDO to propose individual projects, at its discretion, for consideration by AKCS-A before agreement can be reached on AKCS-A's involvement.

NOW THE PARTIES HEREBY AGREE TO THE FOLLOWING:

**ARTICLE 1
DEFINITION**

Unless stated otherwise or the context otherwise requires, capitalized terms used in this Agreement (including the Recitals and the Exhibits) shall have the following meanings:

- 1.1. "Additional Services" shall mean any additional Services that were not originally included in Specific Terms & Conditions but that the Parties decided later to include by way of a written amendment to such Specific Terms & Conditions signed by both Parties.
- 1.2. "Agreement" shall have the meaning ascribed to it in the Recitals.
- 1.3. "Agreement of Co-operation" shall have the meaning ascribed to it in the Recitals.
- 1.4. "Architectural Design Unit" shall mean the architectural design unit within NDO.
- 1.5. "AKCS-A" shall have the meaning ascribed to it in the designation section above.
- 1.6. "Basis Services" shall mean the Services included in Specific Terms & Conditions.
- 1.7. "Effective Date" shall mean the date of signature on this agreement.
- 1.8. "Exhibit" shall mean an exhibit to this Agreement.
- 1.9. "Fees" shall mean the fees to be paid to AKCS-A in respect to Services rendered in regard to a Specific Project.
- 1.10. "Losses" shall have the meaning ascribed to it in article 13.1.
- 1.11. "MoU" shall have the meaning ascribed to it in the Recitals.
- 1.12. "NDO" shall have the meaning ascribed to it in the designation section above.
- 1.13. "Overall Project" shall have the meaning ascribed to it in the Recitals.
- 1.14. "Party" and "Parties" shall have the meaning ascribed to it in the designation section above.
- 1.15. "Project RFP" shall have the meaning ascribed to it in article 3.4.
- 1.16. "Project Proposal" shall have the meaning ascribed to it in article 3.5.
- 1.17. "Reimbursable Expenses" shall include actual out-of-pocket reasonable expenditures made by AKCS-A and AKCS-A's employees and consultants incurred solely and directly in connection with the performance of Services.
- 1.18. "Schedule of Billing Rates" shall have the meaning ascribed to it in article 6.2.
- 1.19. "Services" shall mean the services to be rendered by AKCS-A in regard to a Specific Project in accordance with this Agreement and the Specific Terms & Conditions related to such Specific Project. The services are of an advisory nature. AKCS-A shall not be providing technical services under this Agreement.
- 1.20. "Specific Project" shall mean a project of significant architectural value and programmatic impact that is part of the Overall Project and for which NDO requested the assistance of AKCS-A and for which AKCS-A accepted to provide Services.
- 1.21. "Specific Terms & Conditions" shall have the meaning ascribed to it in article 2.2.

ARTICLE 2
PURPOSE OF THE AGREEMENT

- 2.1. The purpose of this Agreement is to set out the general terms and conditions governing the contractual relationship between NDO and AKCS-A.
- 2.2. NDO will require, from time to time, Services from AKCS-A in respect to Specific Projects. For each Specific Project, the Parties shall sign a document describing the specific terms and conditions that shall apply to the Services rendered ("**Specific Terms & Conditions**").
- 2.3. This Agreement is for an Indefinite-Delivery, Indefinite-Quantity (IDIQ) provision of Architect-Engineer (A&E) Advisory Services supporting NDO's architectural design and construction activities.
- 2.4. Each Specific Project shall have specific aspects, such as delivery time, which cannot be predetermined in terms of scope and/or quantities of services required, as per NDO's projections.
- 2.5. The Services rendered pursuant to this Agreement and the Specific Terms & Conditions are of an Architectural and Engineering Advisory nature, in respect to Specific Projects with a defined scope, to be performed on a non-exclusive, indefinite quantity basis. AKCS-A represents that it has the institutional knowledge and human resources required to provide the Services in accordance with the terms and requirements of this Agreement and that of the Specific Terms & Conditions.
- 2.6. In the event that, on the occasion of a Specific Project, a conflict arises between this Agreement and the Specific Terms & Conditions agreed with respect to such Specific Project, the provisions of the Agreement shall prevail.

ARTICLE 3
SCOPE OF SERVICES

- 3.1. **In General:** AKCS-A agrees to provide the Services on a per-project basis in accordance with the terms of this Agreement and the Specific Terms & Conditions. The Services are generally described as advisory services in regard to, but are not limited to, Architectural Design, Engineering, Landscaping and Planning, which may include Structural Engineering and MEP.
- 3.2. Depending on the nature of the Specific Project, Services may include but will not necessarily be limited to:
 - 3.2.1. Architectural and Engineering advisory services which will be provided to the Architectural Design Unit, which bears overall responsibility for the preparation of all Specific Project documents.
 - 3.2.2. Architectural and Engineering advisory services that may range from the initial conceptual to the final detailed design stage, including support on construction supervision and the preparation of construction drawings, specifications and tender documents by the Architectural Design Unit;
 - 3.2.3. Architectural and Engineering design review and feedback on technical submissions prepared by others, including the work of other professionals working with or under the direction of AKCS-A or NDO;
 - 3.2.4. Identification of the need and recruitment of specialized external consultants, national or international, meeting the requirements of the Specific Project, under full management of AKCS-A and in coordination with NDO;
 - 3.2.5. Assessment of physical construction works at key project milestones in order to provide NDO with an evaluation of conformance with approved finalized plans and specifications;
 - 3.2.6. Evaluation and expert opinion on project management, studies and technical reports, testing or evaluation of materials for construction or other engineering uses as required;

- 3.2.7. Recommendation on construction or maintenance project delivery systems appropriate to the nature of the Specific Project;
- 3.2.8. Any other advisory service necessary for the planning, progress, or completion of any of the Architectural/Engineering services generally described above.
- 3.2.9. NDO retains the discretion to apply input and recommendations made by AKCS-A in its advisory capacity as it deems appropriate.
- 3.3. **Specific Project Services:** The Services in regard to each Specific Project shall be described in the corresponding Specific Terms & Conditions and shall refer to the Statement of Work attached as Exhibit A.
- 3.4. **Project RFP:** NDO will prepare a request for proposal (“**Project RFP**”) for each Specific Project identifying, in general, the intended scope and character of the Specific Project, the preliminary cost estimate (when appropriate and available), the schedule for the Specific Project and the advisory services to be provided by AKCS-A.
- 3.5. **Project Proposal:** In response to a Project RFP and following AKCS-A agreement to provide Services, AKCS-A shall provide NDO with a written project proposal (“**Project Proposal**”). The Project Proposal shall include the following:
 - 3.6.1. A narrative description of AKCS-A’s understanding of the required scope of services;
 - 3.6.2. A detailed statement of the Services to be provided by AKCS-A including, when appropriate a list of deliverables;
 - 3.6.3. A description of particular phases of the Services, if applicable;
 - 3.6.4. A fee proposal detailing the total fee for providing the Basic Services expressed as a “not-to-exceed” amount and the total estimated amount for Reimbursable Expenses;
 - 3.6.5. A proposed date to commence providing the Services;
 - 3.6.6. A list of all consultants, persons and firms that AKCS-A proposes to use in the performance of the Services;
 - 3.6.7. A schedule of hourly billing rates for any consultants that AKCS-A proposes to use in the performance of the Services;
 - 3.6.8. Any qualifications or conditions applicable to the Services; and
 - 3.6.9. A summary statement of the amount of all previous Projects initiated under this Agreement as of the date of the Project Proposal.
- 3.6. **Project Proposal Review:** NDO shall review AKCS-A’s Project Proposal and the Parties shall jointly negotiate final changes.
- 3.7. **Signature of the Specific Terms & Conditions:** Once the Parties have reached an agreement, they will sign Specific Terms & Conditions that will indicate, among other things, the date on which AKCS-A will start to render the Services.
- 3.8. **Refusal to submit a Project Proposal.** AKCS-A reserves the right to refuse to submit Project Proposals if the services requested by NDO are outside the Scope of Works of if AKCS-A considers, in its absolute discretion, that it is not able to render the services in accordance with this Agreement (for example due to human resources constraints).

ARTICLE 4
AKCS-A'S GENERAL SERVICES AND RESPONSIBILITIES

- 4.1. **Standard of Care:** AKCS-A agrees to use its best professional efforts, skill, judgment, and abilities to perform the Services in an expeditious and timely manner as is consistent with professional standards of care and the orderly progress of any Specific Project. AKCS-A shall at all times provide a sufficient number of qualified personnel to fulfill AKCS-A's obligation to provide Services within the time limits set forth in the Specific Terms & Conditions.
- 4.2. **Correction of Work:** The Services shall be reasonably accurate and free from material errors or omissions. Upon notice, AKCS-A shall promptly correct any known or discovered error, omission, or other defect without any additional cost or expense to NDO.
- 4.3. **Representative:** AKCS-A shall designate a representative primarily responsible for the Services. The designated representative shall act on behalf of AKCS-A with respect to all phases of the Services and shall be available as required for the benefit of any Specific Project and NDO.
- 4.4. **Documentation:** AKCS-A shall fully document all Specific Project activities, in drawings, meeting minutes, comment forms, reports or other methods as appropriate to the nature and scope of each Specific Project and as identified in the Specific Terms & Conditions.
- 4.5. In regard to each Specific Project, acceptance by NDO of final deliverables, as per Specific Terms & Conditions, shall constitute a full and complete release of AKCS-A from any and all claims, demands, and causes of action whatsoever that NDO have or may have against AKCS-A pursuant to the Specific Terms & Conditions and this Agreement except those claims specifically identified in writing by AKCS-A as unsettled at the time of the final acceptance of Services by NDO.
- 4.6. AKCS-A is not required or expected to start rendering the Services in regard to any Specific Project until Specific Terms & Conditions are signed by the Parties and transfer of the first project financial installment occurred.
- 4.7. AKCS-A has the sole discretion to identify, recruit and employ all personnel and consultants required to enable it to perform the Services .

ARTICLE 5
NDO'S RESPONSIBILITIES

- 5.1. **Project Scope Definition:** Generally, as provided above, for each Specific Project NDO will prepare and submit a Project RFP to AKCS-A.
- 5.2. **Representative in respect of a Specific Project:** In the Project RFP, NDO will designate an individual to serve on NDO's behalf as the administrator for the Specific Project.
- 5.3. **Representative in respect of the Agreement:** NDO designates and authorizes _____ (Name / Title), or her or his designee, as NDO's representative for the purpose of administering this Agreement.
- 5.4. **Special Information:** NDO shall furnish available property, boundary, easement, right-of-way, topographic and utility surveys; plans and specifications; and special data and conditions relevant to a given Specific Project. NDO shall furnish other special investigations of the Specific Project site as requested by AKCS-A and as reasonably necessary for preparing a Project Proposal. AKCS-A shall exercise reasonable care in relying upon this information in the performance of its Services.
- 5.5. **Entry on Land:** NDO shall assist AKCS-A in gaining entry to state owned or controlled property as necessary for AKCS-A to perform the Services.
- 5.6. **Administrative Services:** NDO shall furnish all legal, accounting, auditing and insurance counseling services required for each Specific Project and for the administration of this Agreement.
- 5.7. **Security:** NDO shall ensure the provision of security for personnel, materials, and equipment of AKCS-A, other AKDN entities or consultants involved in a Specific Project, at NDO's own cost

during the course of documentation and implementation of any and all Specific Projects in a manner that does not delay or hinder the performance of the Services. In particular NDO shall provide security for AKCS-A and other AKDN personnel travelling within Afghanistan for project related activities.

- 5.8. **Co-ordination with public agencies:** NDO shall facilitate co-ordination with all public agencies and Ministries within the GoIRA and provide as a matter of priority the requisite formal approvals, consents and permits for the preliminary studies, plans, designs and the implementation of advisory services.
- 5.9. NDO shall facilitate the issue of travel documents and visa clearances as required under any Specific Project.
- 5.10. **Review of Services:** NDO will review and endorse the documents prepared by AKCS-A (or its consultants) at the end of each stage of development as described in the Specific Terms & Conditions. NDO's comments or decisions regarding the documents will be furnished to AKCS-A in a reasonably prompt manner. NDO will notify AKCS-A in writing of any material error or omission or other defect in the Services or documents provided or any conflict in the documents of which NDO becomes aware;
- 5.11. NDO shall pay the Fees and Reimbursable Expenses to AKCS-A pursuant to each Specific Terms & Conditions.
- 5.12. **Time for Response:** NDO shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Services and of the work associated with a Specific Project.

ARTICLE 6

FEES

- 6.1 **Fees and Payment:** The amount of Fees and the payment schedule in regard to each Specific Project shall be set out in the corresponding Specific Terms & Conditions. NDO agrees to comply with any and all Specific Terms & Conditions in this respect.
- 6.2 **Billing Rates:** AKCS-A's schedule of billing rates ("**Schedule of Billing Rates**") that includes hourly billing rates and/or per service billing rates is attached in Exhibit B. The billing rates include costs for professional AKCS-A staff engaged on Specific Projects and the rates shall remain in full force and effect for the term of this Agreement, unless otherwise adjusted with the mutual agreement of the Parties.
- 6.3 **Basic Services:** For Basic Services, AKCS-A shall be compensated on an hourly rate basis or on a per-service fee basis in accordance with the Specific Terms & Conditions.
- 6.4. **Additional Services:** Additional Services shall be charged in accordance with the amendment to the Specific Terms & Conditions signed by both Parties.
- 6.4. The Parties agree that the National Technical Assistance (NTA) Salary Scale will not apply to the Services, which require expertise not generally available in Afghanistan, including on Fees and Reimbursable Expenses paid directly by NDO.

ARTICLE 7

REIMBURSABLE EXPENSES

- 7.1. **Reimbursable Expenses:** Reimbursable Expenses are in addition to Fees. Reimbursable Expenses recoverable by AKCS-A under this Agreement shall be specified in each Specific Terms & Conditions and shall be limited to the following:
 - 7.1.1. Expenses in connection with regional and international travel, including economy class air fare and reasonable living expenses;

- 7.1.2. Expenses in connection with in-country travel, including reasonable travel and living expenses, for AKCS-A's employees and consultants when a Specific Project site is located more than 20 kilometers from the head office of AKCS-A or one of its field offices, which ever one is closest to the Specific Project site;
 - 7.1.3. Expenses in connection with local travel, including reasonable travel for AKCS-A's employees and living expenses for consultants, when a Specific Project site is located within 20 kilometers from the head office of AKCS-A or one of its field offices, which ever one is closed to the Specific Project site;
 - 7.1.4. Expenses of reproductions, printing, collating, delivery and handling of drawings, specifications, reports and other documents or other Specific Project related work production;
 - 7.1.5. Communication expenses such as long distance telephone, facsimile transmissions, express delivery charges and postage that are directly attributable to a particular Specific Project;
 - 7.1.6. Reasonable costs for rental or use of special equipment, tools, and electronic data processing equipment required in connection with a Specific Project;
 - 7.1.7. Expense of any insurance coverage or limits as requested by NDO;
- 7.2. **Reimbursement of Reimbursable Expenses:** AKCS-A and its employees and consultants, shall be reimbursed for the Reimbursable Expenses specified in each Specific Terms & Conditions. AKCS-A shall submit receipts for all Reimbursable Expenses along with any reimbursement request. Unless expressly directed and approved in advance in writing by NDO, AKCS-A shall not invoice NDO for any Reimbursable Expenses which is not expressly listed in this Article.

ARTICLE 8

PAYMENTS

- 8.1. **Payment Method:** As AKCS-A does not retain working capital to be able to make payments in advance against fees to be received at a later date, NDO agrees to pay all or part of the Fees in advance at the time of signature of the Specific Terms & Conditions and according to the installments identified in the Specific Terms & Conditions for each Specific Project.
- 8.2. **Currency:** Fees and Reimbursable Expenses shall be paid in US Dollars and such amounts shall be freely transferrable outside of Afghanistan. Reimbursable costs incurred in Afghani's will be converted to US Dollars on the basis of up-to-date exchange rates provided by the Da Afghanistan Bank.
- 8.3. **Monthly Statements:** For each Specific Project, AKCS-A shall submit a monthly financial statement for Services rendered, identifying all Fees and Reimbursable Expenses incurred in the previous month, together with an updated balance of remaining funds. Monthly statements shall be submitted in a format approved by NDO.
- 8.4. **Fee Management:** It is the responsibility of AKCS-A under each Specific Project to provide Services and submit requests for payment that do not exceed the Fees mentioned in the Specific Terms & Conditions. Where the scope of Services provided by AKCS-A needs to be amended by mutual agreement of the Parties, the Parties shall sign an amendment to the Specific Terms & Conditions.
- 8.5. **Approval of Monthly Statements:** Monthly statements submitted by AKCS-A need to be reviewed and approved in writing by NDO within 10-days of submission. Upon NDO's written approval, AKCS-A will deduct Fees due for that period from the advance payment already made.
- 8.6. **Bank details:** Fees and Reimbursable Expenses due under any and all Specific Terms & Conditions shall be paid by bank transfer and shall be transferred to the following banking details:

Reference: (Unique Project Code/Number – Provided by AKCS-A for each Specific Project)
Account holder: Aga Khan Cultural Services, Afghanistan
Bank: First Micro Finance Bank, Kabul
Account number: 021104020000193
Swift/Bic code: FMFBAFKAXXX

- 8.7. **Partial Payment:** No partial payment by NDO shall constitute or be construed as final acceptance or approval of any Services or as a release of any of AKCS-A's obligations or liabilities with respect to such Services.
- 8.8. **Final Payment:** Upon the submission and acceptance of the final deliverable under each Specific Project, as outlined in the Specific Terms & Conditions, AKCS-A will submit completed financial documents showing the status of expenditure under advance payment received. Following the issue of a certificate of 'Completion of Advisory Services' by NDO, AKCS-A will return any funding unspent under the Specific Project to NDO.

ARTICLE 9 ACCOUNTING RECORDS

- 9.1. AKCS-A shall maintain records of costs, expenses and billings pertaining to Services performed on all Specific Projects and under this Agreement in accordance with generally accepted accounting principles. Such records shall be available to NDO or NDO's authorized representative at mutually convenient times for a period of at least ten (10) years after expiration or termination of a Specific Project.
- 9.2. NDO shall have the right to audit and verify the details set forth in AKCS-A's billings, certificates, and statements, either before or after payment of any Fees or Reimbursable Expenses but not later than ten (10) years after the expiration of a Specific Project.
- 9.3. The terms of this Article 9 shall survive any termination of the Agreement.

ARTICLE 10 OWNERSHIP AND USE OF DOCUMENTS

- 10.1. All documents prepared by AKCS-A shall remain the sole property of AKCS-A.
- 10.2. NDO shall be permitted to retain copies, including reproducible copies, of all documents prepared by AKCS-A for information and reference in connection with NDO's use and occupancy of each Specified Project.
- 10.3. Submission or distribution of documents to meet official regulatory requirements or for other purposes in connection with a Specific Project are authorized.

ARTICLE 11 TERM AND TERMINATION

11.1. Term

- 11.1.1. **Initial Term:** The initial term of this Agreement shall begin on the Effective Date and shall expire at the end of the thirty-sixth (36th) full month following the Effective Date unless renewed or terminated in accordance with the terms of this Agreement.
- 11.1.2. **Renewal Option:** Each Party may offer the other Party to renew this Agreement for a mutually acceptable duration. Such offer must be made prior to the expiration of the initial

term mentioned above, or prior the expiry of the then current renewal term, if any.

11.1.3. **Survival of this Agreement:** In the event the Specific Terms & Conditions, or any mutually amendment thereto, relating to any one or more Special Projects, provide for a date of completion of the said Special Projects that falls later than the date on which this Agreement shall end or if this Agreement is terminated pursuant to article 11.2 below, whatever maybe the cause therefor, then subject to any agreement to the contrary this Agreement and the said Specific Terms & Conditions shall survive for the purpose of the said Special Projects, but the said Special Projects only.

11.2. Termination

11.2.1. **Termination for Cause:** Each Party may terminate this Agreement or any Specific Terms & Conditions if the other Party materially breaches the Agreement or any Specific Terms & Conditions and fails to remedy the breach upon forty-five (45) days written notice.

11.2.2. **Termination for Convenience:** Each Party may terminate this Agreement or any Specific Terms & Conditions by giving the other Party at least ninety (90) days prior written notice.

11.2.3. If delays are prolonged and this result in AKCS-A's inability to honor programmatic or financial commitments, or have otherwise irrecoverable adverse impacts on one or more Specific Projects, AKCS-A may terminate this Agreement and the relevant Specific Terms & Conditions without thereby incurring any obligation.

11.2.4. AKCS-A may terminate this Agreement or any Specific Terms & Conditions at any time, and without thereby incurring any obligation, upon its reasonable determination that NDO is no longer in support of one or more Specific Projects.

11.3. Consequences of termination of Specific Terms & Conditions

1.3.1.1. **Compensation:** In the event of termination of Specific Terms & Conditions, AKCS-A shall be entitled to compensation for all actual costs related to Services fully or partially performed up to the termination date, together with Reimbursable Expenses, provided AKCS-A delivers to NDO statements, accounts, reports and other materials as required for payment along with all reports, documents and other materials prepared by AKCS-A prior to termination.

11.3.2. Termination of Specific Terms & Conditions shall only be given effect after funds hereunder have been made available to AKCS-A to any extent necessary to meet any contractual payment obligations to third parties undertaken by AKCS-A in respect of the relevant Specific Project prior to such termination.

11.4. **General provisions applicable to termination of the Agreement and termination of Specific Terms & Conditions:** Notwithstanding the termination of the Agreement or any Specific Terms & Conditions, the obligations undertaken in regard to articles 10 and 14.7 shall remain in full force and effect without any time limitation.

ARTICLE 12

APPLICABLE LAW, DIFFERENCES, DISPUTES AND CLAIMS

12.1. This Agreement shall be governed and construed by the laws of the Islamic Republic of Afghanistan and relevant international law.

12.2. In the event of any differences, dispute or claim between any of the Parties arising from this Agreement, the Parties shall act in the utmost good faith and seek an amicable settlement. If no resolution is reached between or amongst these Parties as to such differences, dispute or claim within (7) days of the same arising, the matter shall be escalated to a meeting between senior representatives of NDO and/or AKCS-A (AKDN) as the case may be. The meeting may be convened by any of the Parties upon issuing a written request to that effect.

12.3. Any dispute which is not resolved pursuant to article 12.2 above shall be referred to arbitration in Dubai, United Arab Emirates, pursuant to the rules of arbitration of the United Nations Commission

on International Trade Law (UNCITRAL), by three (3) arbitrators selected in accordance with such rules. The award shall be in writing and state the reasons and merits of the decision. Such award shall be final and binding upon the Parties, who shall give full effect thereto. Each Party will bear its own attorney's fees and costs arising out of or related to the arbitration.

ARTICLE 13 INDEMNIFICATION

- 13.1. NDO shall defend, indemnify, and shall hold harmless AKCS-A, any other AKDN agencies involved in Specific Projects, their affiliates and their respective directors, officers, employees, and agents from and against any and all third-party claims, liabilities, losses, expenses, and costs (including reasonable attorney's fees) (collectively "**Losses**") incurred by them that arise out of or relate to this Agreement or any Specific Terms & Conditions. NDO shall indemnify AKCS-A, any other AKDN agencies involved in Specific Projects, their affiliates and their respective directors, officers, employees, and agents for all Losses as they are incurred.
- 13.2. NDO shall waive any claim it may have against AKCS-A, or any other AKDN agencies involved in Specific Projects, for their conduct, unless resulting directly from intentional misconduct or gross negligence.
- 13.3. The aggregate liability of AKCS-A, its affiliates, and their respective officers, directors, partners, employees, and consultants resulting from or connected to this Agreement or any Specific Terms & Conditions, shall be limited in the aggregate to the Fees paid or payable by NDO under the relevant Specific Terms & Conditions. AKCS-A waives all liability for special, indirect, incidental, or consequential damages. This waiver includes all damages for lost profits, revenue, use, or data and applies. These limitations apply to the maximum extent permitted by law regardless of 1) the reason for or nature of the liability, 2) the number of claims, 3) the extent or nature of the damages, and 4) whether any other provisions of this Agreement or any Specific Terms & Conditions have been breached or proven ineffective.
- 13.4. Furthermore, as Services provided under this Agreement are advisory in nature, requiring NDO to decide whether and how to apply the recommendations at its discretion, NDO bears full responsibility for the consequences of all decisions resulting from the Services provided by AKCS-A.

ARTICLE 14 MISCELLANEOUS

- 14.1. The Agreement can be modified at any time by written agreement of the Parties.
- 14.2. **Force Majeure:** For the purpose of this Section, "Force Majeure Event" means any cause beyond a Party's reasonable control affecting the performance of its obligations, including, but not limited to, fire, flood, explosion, accident, war, acts of terrorism, strike, embargo, epidemic, pandemic, government requirement, civil or military authority, Act of God, changes to laws and regulations, inability to secure materials or services.

Notwithstanding anything herein to the contrary, neither Party shall be liable to the other for any delay or failure in performance of any part of the Agreement or any Specific Terms & Conditions to the extent such delay or failure is attributable to a Force Majeure Event. Any such delay or failure shall suspend this Agreement or any Specific Terms & Conditions, as the case may be, until the Force Majeure Event ceases and the duration of the impacted Specific Project shall be extended by the length of the suspension.

If a Force Majeure Event lasts more than Three (3) Months either Party can terminate this Agreement and/or the relevant Specific Terms & Conditions.

- 14.3. Although Services shall be primarily rendered by AKCS-A, any rights and obligations of AKCS-A under this Agreement or Specific Terms & Conditions may be delegated, assigned or transferred to other AKDN agencies as may be appropriate.

- 14.4. AKCS-A may choose not to commence providing any Services until it has received the first Fees installment pursuant to Specific Terms & Conditions. If any later installments is not paid according to Specific Terms & Conditions, AKCS-A reserves the right to suspend providing the Services including the services rendered by consultants. In such cases, NDO will held AKCS-A harmless and non-liaible for any damages or claims by AKCS-A 's service providers or contractors and NDO shall indemnify AKCS-A in respect of all such damages or claims.
- 14.5. Each Party shall promptly inform the other Party in writing of any condition which significantly interferes or threatens to interfere with the successful implementation of a Specific Project.
- 14.6. Each Party undertakes to ensure that it, nor any person acting on its behalf, shall take any action, or refrain from any action, that is likely to either directly or indirectly have the effect of contradicting or conflicting with any of the provisions of this Agreement, Specific Terms & Conditions or applicable law, including without limitation any anti-bribery or other such laws in respect of corrupt practices.
- 14.7. Any confidential information received in the framework of the implementation of this Agreement or any Specific Terms & Conditions shall remain confidential and shall be held in confidence by the recipient thereof using the same degree of care with which it would hold in confidence its own confidential information. The Parties acknowledge that the existence and content of this Agreement and any Specific Terms & Conditions (including the scope and nature of the Services and the Fees and Reimbursable Expenses described in such Specific Terms & Conditions) are to be considered confidential information.
- 14.8. All external communications, publicity or information regarding this Agreement or a Specific Project shall be released solely by or with the prior express mutual approval of all the Parties and not by any Party acting alone. The text, wording and timing of such communications, publicity or information shall be mutually agreed between the Parties in writing before being released.
- 14.9. This Agreement, which shall be binding upon the successors and assigns of the Parties hereto, is executed in three (3) original copies in English and Dari, with the understanding that only the English version shall be deemed authentic in the event of conflicting interpretation of this Agreement's provisions or disputes between the Parties.
- 14.10. This Agreement entered into as of the day and year first written above.

AKCS-A

NDO

Signature.....

Signature.....

Name: Mr. Ajmal Maiwandi

Name: Mr. Wafi Amin

Title: Chief Executive Officer

Title: Director

EXHIBITS

- Exhibit A - Statement of Work (SoW)
- Exhibit B - AKCS-A Schedule of Billing Rates

Exhibit A

STATEMENT OF WORK (SOW)

This Statement of Work describes the types of Specific Projects covered by this Agreement and the types of Services that AKCSA may render under the Agreement. Each Specific Terms & Conditions shall indicate the type of Specific Project and the Services to be rendered in relation to this Specific Project.

Project Types:

1. Architectural Design

- a. Design for one-off or replicable contemporary public buildings that require high-quality architectural and interior design services.

2. Conservation of Heritage

- a. Key public heritage buildings, monuments and historic landscapes that require conservation expertise and design services.

3. Landscape Design

- a. Public landscapes, civic spaces, and gardens that provide critical open green spaces with key facilities for visitors.

4. Urban Planning

- a. Large scale area based and community-level planning initiatives that enable a synthesis of built structures, landscaping, and infrastructure.

Project Services:

1. NDO will bear the overall responsibility of preparing all project designs, construction drawings, cost estimations, project schedules, and implementation of Specific Projects.
2. AKCS-A will provide advisory services to NDO and in particular its Architectural Design Unit towards the preparation of project designs and documentation as follows:

Working Process:

1. Identification of Project Types
 - a. NDO Role: Identify and assess the type and level of support required by AKCS-A.
 - b. AKCS-A Role: Engage NDO on a review of the Specific Project objectives, aims and assess the scope of its involvement in subsequent stages. Further consultation and advisory assistance can be provided at this stage on the viability of the Specific Project and conditions required to ensure successful design and implementation.

2. Project Brief and Scope of Works
 - a. NDO Role: Prepare a project brief and draft scope of works defining the overall intent and limitations of the Specific Project, including a basis for the overall architectural design direction for the Specific Project.
 - b. AKCS-A Role: Assess NDO project brief and scope of works, provide feedback and comment, and assist in the finalization of a clear brief defining the full extents of the Specific Project.

3. Building & Project Program
 - a. NDO Role: Define programmatic, infrastructure and service requirements for the Specific Project, including provision of sizes of spaces, general building envelope, materiality and other critical programmatic requirements.
 - b. AKCS-A Role: Support NDO on preparation and finalization of building program and services.

4. Project Budget and Schedule
 - a. NDO Role: Prepare draft budget for all aspects of the Specific Project, including design services & consultancies, building & landscaping costs, MEP, and operations and maintenance.
 - b. AKCS-A Role: Review preliminary budgets for accuracy and alignment with stated objectives of the Specific Project.

5. Documentation & Survey
 - a. NDO Role: Prepare accurate baseline surveys of proposed sites, including topography, existing buildings, underground infrastructure, surrounding context etc.
 - b. AKCS-A Role: Review drawings for alignment with established standards.

6. Conceptual Design
 - a. NDO Role: Prepare joint session(s) on focused discussions on the primary architectural concept for the Specific Project.
 - b. AKCS-A Role: Identify suitable personnel and participate in concept design session(s) towards finalization of concept design.

7. Schematic Design
 - a. NDO Role: Based on finalized concept designs, undertake to prepare schematic design for the Specific Project with multiple design review sessions with AKCS-A.
 - b. AKCS-A Role: Provide feedback and comment at key phases of the schematic design process through comments / notes on drawings, sharing of example, and attendance in joint review sessions.

8. Design Development & Project Work Plan

- a. NDO Role: Based on finalized schematic designs, prepare design development documents. Establish and finalize a preliminary workplan with key implementation dates for the Specific Project.
- b. AKCS-A Role: Provide feedback and comment at key phases of the design development stage through comments / notes on drawings, and attendance in joint review sessions. Provide feedback on project workplan.

9. Construction Drawings

- a. NDO Role: Based on finalized design development drawings, prepare construction drawings.
- b. AKCS-A Role: Provide feedback and comment at key phases of the construction drawing stage through comments, redline drawings, and attend joint review sessions.

10. Project Specifications & Bill of Quantity

- a. NDO Role: Based on design development and construction drawings, prepare detailed material specification and bill of quantity documents.
- b. AKCS-A Role: Review material specification and bill of quantity documents and provide feedback and comment.

11. Project Tender

- a. NDO Role: Prepare tender documents, contractor qualifications and apply established procurement processes.
- b. AKCS-A Role: Support preparation of tender documents and attend selection committees on technical qualification of bidders.

12. Construction Implementation

- a. NDO Role: Assign staff for day-to-day supervision of building works, prepare progress reports, rectify drawings and establish key milestones according to project work plan.
- b. AKCS-A Role: Assign staff to prepare assessments of physical construction works at key project milestones in order to provide NDO with an evaluation of conformance with approved finalized plans and specifications.

13. Commissioning and Handover

- a. NDO Role: Finalize and approve completion documents, prepare commissioning documents, and take handover of project from contractor.
- b. AKCS-A Role: Support the process by reviewing documents, commenting on completion of works, and offering advisory support on commissioning and handover.

Exhibit B

AKCS-A SCHEDULE OF BILLING RATES

	<u>TYPE I (Complexity)</u>	<u>TYPE II (Complexity)</u>	<u>TYPE III (Complexity)</u>
	Average	Above Average	Considerable
Typical Design Program	Storage Buildings Wholesale Buildings	Mercantile Buildings Educational Buildings Religious Buildings Institutional Buildings Assembly Buildings Mixed Use Buildings	Historic Structures

RATES AND COSTS:

Specific hourly rates for each team and various disciplines will be negotiated for each Specific Project. In general, based on the type of design project – ranging from less to more complex program - rates (including direct and indirect costs) are in the following range:

- a. Program Manager \$70 - \$90/hour
- b. Project Manager \$60 - \$70/hour
- c. Lead Architect \$45 - \$55/hour
- d. Historic Preservation Architect \$45 - \$55/hour
- e. Planner \$40 - \$50/hour
- f. Mechanical Engineer \$30 - \$40/hour
- g. Civil Engineer \$30 - \$40/hour
- h. Structural Engineer \$30 - \$40/hour
- i. Electrical Engineer \$30 - \$40/hour
- j. Construction Inspector \$30 - \$35/hour
- k. External Consultant \$TBC/Hour
- l. Junior Architects \$15 - \$20/hour
- m. Draftsmen \$15/hour
- n. Administrative \$20/hour

NOTES:

1. This fee schedule is to be used to determine AKCS-A’s Fees for Basic and Additional Services for Specific Projects.

PERSONNEL QUALIFICATIONS AND EXPERIENCE

The following list of qualifications generally reflects the minimum personnel requirements associated with the architectural and engineering activities in this Agreement. Other disciplines not listed will be required to have comparable qualifications in their field of expertise.

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work specified in Specific Projects shall be accomplished, reviewed and approved by architects or engineers. Registration as a professional engineer in the particular specialty will be considered equivalent to a bachelor’s degree. Experience may be substituted for only one educational degree for any one individual. Degrees may not be substituted for experience requirements.

1. **PROGRAM MANAGER** - AKCS-A’s Program Manager shall be responsible for the overall management of tasks performed under this Agreement and shall be the primary point-of- contact for overall contractual issues. The Program Manager shall be assigned by AKCS-A upon signature of Specific Terms & Conditions. He/she shall be responsible for ensuring that practical and effective systems are developed to meet the objectives. The Program Manager shall also ensure that quality work is completed on schedule in accordance with Specific Terms & Conditions. The Program Manager shall be responsible for assigning qualified personnel to each Specific Project. The Program Manager shall have, at least, the following qualifications:

- a. A Master’s level degree from an accredited school in an engineeringrelated technical field.*
- b. A minimum of 10 years program management experience, with a minimum of 5 years’ experience in public facility design program management.

*Engineering related technical field such as: architect and engineer (civil, structural, electrical, or mechanical).

2. **LEAD PERSONNEL** – The Lead Personnel shall provide program level quality control and oversight of Specific Projects. Lead personnel are required for the following disciplines for each pool:

Key Personnel – Primary Discipline	TYPE I	TYPE II	TYPE III
Lead Program Manager		X	X
Lead Project Manager	X	X	X
Lead Architect	X	X	X
Lead Historic Preservation Architect			X
Lead Mechanical Engineer	X	X	X
Lead Civil Engineer	X	X	X
Lead Structural Engineer	X	X	X
Lead Electrical Engineer	X	X	X
Lead Construction Inspector		X	X
Lead Planner	X	X	X
External/Int. Consultant		X	X

3. **PROJECT MANAGER** - The Project Manager shall be responsible for managing specific TOs issued under Specific Terms & Conditions. The Project Manager shall be the primary point of contact for an individual TO. The Project Manager shall ensure qualified personnel are assigned to individual TOs. The Project Manager shall have, at least, the following qualifications:

- a. A bachelor’s degree from an accredited school in an engineering related technical field.
- b. Professional Engineering (PE) registration or Registered Architect (RA) license.
- c. A minimum of 8 years project management experience, with a minimum of 5 years of experience managing public infrastructure design projects.

*Engineering related technical field such as: architect and engineer (civil, structural, electrical, or mechanical).

4. **ARCHITECT/ENGINEERING LABOR** - Depending on the nature of the Specific Project, a variety of professional labor personnel specialized in certain disciplines as specified in the Specific Terms & Conditions will be required. The professional labor disciplines are divided into 3 categories: Senior, Mid, and Junior. The minimum qualifications for each category are provided below:
 - a. **Junior Level:** must possess a bachelor's degree from an accredited school in an architectural or engineering related technical field* consistent with the required duties of the position and a minimum of two years of facility design experience since receiving degree required. Junior level personnel perform routine tasks such as preparing graphical or tabular presentations of data, simple data interpretation, preparation of supporting material, etc.
 - b. **Mid-Level:** must possess a bachelor's degree from an accredited school in an architectural or engineering related technical field* consistent with the required duties of the position and a minimum 5 years of directly applicable facility design experience required and must be a credentialed member of an architectural, science, and engineering professions. Mid-level personnel perform technical tasks such as calculations, layouts, evaluation of data, and preparation of portions of a design or report under the direction of a senior professional.
 - c. **Senior Level:** must possess a bachelor's degree from an accredited school in an architectural or engineering related technical field* consistent with the required duties of the position and a minimum 10 years of directly applicable facility design experience required and must be a credentialed member of an architectural, science, and engineering professions. Senior level professionals are responsible for performing complex or non-routine technical tasks or for supervision and oversight of a small group working on technical issues or specific elements of a project.

*Engineering related technical field such as: architect and engineer (civil, structural, electrical, or mechanical).

The following architect/engineering labor categories are required for the performance of this Agreement:

- a. ARCHITECT
 - b. HISTORIC PRESERVATION ARCHITECT
 - c. MECHANICAL ENGINEER
 - d. CIVIL ENGINEER
 - e. STRUCTURAL ENGINEER
 - f. ELECTRICAL ENGINEER
 - g. PLANNER
5. **TECHNICAL LABOR** - Depending on the nature of the Specific Project, a variety of technical labor personnel specialized in architectural and engineering technical activities as specified in the Specific Terms & Conditions will be required. Technical personnel perform in a support role for Specific Project requirements. There is one rate/level per technical labor category. The minimum qualifications for each category is at least two (2) years public facility repair / construction related experience in the labor discipline, or as otherwise stated below:

The following technical labor categories are required for the performance of this Agreement:

- a. ENGINEERING TECHNICIAN
 - b. DRAFTSMAN/CADD
 - c. CONSTRUCTION INSPECTOR
6. **ADMINISTRATIVE** - Administrative personnel responsibilities include procurement, subcontract management, accounting systems, schedule maintenance, filing, document reproduction, reports, and closeout activities. There is one rate/level per labor category.

The following administrative labor categories are required for the performance of this Agreement:

- a. CONTRACT ADMIN/FINANCE SPECIALIST
- b. CLERICAL