



**SOCIALIST REPUBLIC OF VIETNAM**

Independence – Freedom – Happiness  
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*Ho Chi Minh city, day.....month.....,2011*

**CONTRACT ON DESIGN CONSULTANCY SERVICE**

**(No.....)**

**Ref: Design consultancy service for construction works**

PROJECT : BA SANG ISLAND ECOLOGICAL TOURISM AREA

LOCATION: CU LAO ISLAND, LONG BINH WARD, DISTRICT 9

PACKAGE :.....

Between

**DUC KHAI CORPORATION**

And

.....

## **Part 1**

### **BASICS FOR SIGNING THE CONTRACT**

- *Pursuant to Construction Law No. 16/2003/QH11 dated 26/11/2003 by the XIth National Assembly at 4<sup>th</sup> meeting;*
- *Pursuant to Procurement Law No. 61/2005/QH11 dated 29/11/2005 by the XIth National Assembly;*
- *Pursuant to Decree No. 85/2009/ND-CP dated 15/10/2009 by the Government on instructing the implementation of procurement law and selection of constructors in accordance with construction law;*
- *Pursuant to Decree No. 112/2009/ND-CP dated 14/12/2009 by the Government on managing the investment cost for construction works;*
- *Pursuant to Decree No. 12/2009/ND-CP dated 10/2/2009 by the Government on management of investment projects of construction works; Decree No. 83/2009/ND-CP dated 15/10/2009 on amending and supplementing some articles of Decree No. 12/2009/ND-CP dated 10/2/2009;*
- *Pursuant to Decree No. 209/2004/ND-CP dated 16/12/2004 by the Government on quality management of construction works; Decree No. 49/2008/ND-CP dated 18/4/2008 on amending and supplementing some articles of Decree No. 209/2004/ND-CP dated 16/12/2004;*
- *Pursuant to agreements between parties;*

## **Part 2**

### **TERMS AND CONDITIOSN OF THE CONTRACT**

*Today, on day.....month....., 2011, at office of Duc Khai Corporation, we are:*

#### **1. The Client (hereinafter called Party A):**

- Name : DUC KHAI CORPORATION
- Business Registration Certificate : 0302192499 issued by Department of Planning and Investment of HCMC on 17/03/2005
- Represented by: Mr. PHAM NGOC LAM
- Position: Chairman of Board of Directors
- Address: 271/7B An Duong Vuong, Ward 3, District 5, HCMC
- Tel: 08. 3830 6868 Fax: 08.3830 6969
- Account No. 6280 000 30231
- At Bank for Agricultural and Rural Development of Vietnam, Eastern Sai Gon Branch
- Tax code: 0302192499

#### **2. Design Consultant (Hereinafter called Party B)**

- Name :
- Business Registration Certificate :
- Represented by:
- Position:
- Address:
- Tel: Fax:
- Account No.
- At
- Tax code:

Party A, party B are called **Party** or **Parties**

**TWO PARTIES AGREE TO SIGN THIS CONTRACT WITH THE  
FOLLOWING TERMS AND CONDITIONS:**

**ARTICLE 1: CONTRACT DOCUMENTS AND PRIORITY ORDERS**

1.1 The contract documents are integral parts of the contract including the basics for signing the contract, terms and conditions of the contract and the following documents:

1.1.1 Particular conditions: Appendix 01 [Schedule of the design consultancy service];

1.1.2 Written amendments and supplements of the contract

1.2 Priority orders of the documents

Principally, the documents forming the contract have the explanatory and supporting relations, however, if there are any differences, two parties shall discuss and agree. In case, two parties fail to solve any difference, then the priority orders of the documents shall be used to deal with such difference as follows: (or as agreed otherwise by two parties).

1.2.1 Particular conditions: Appendix 01 [Schedule of the design consultancy service];

1.2.2 Terms and conditions and appendices of the contract;

1.2.3 Written amendments and supplements of the contract;

**ARTICLE 2: DEFINITIONS AND EXAPLAINATIONS**

The following terms and phases (defined and interpreted) shall have the meanings as follows and applied for this contract, otherwise required in other context:

2.1 “Client” means Duc Khai Corporation (Transaction name of Party A) as mentioned in the preface and legal successors of Party A but not any person authorized by such persons.

2.2 “Design consultant” means.....(Party B) as mentioned in the preface and legal successors of Party B but not any person authorized by such persons.

2.3 “Project” means “Ba Sang Island Ecological Tourism Area”

2.4 “Works” means the whole works under Ba Sang Island Ecological Tourism Area Project.

2.5 “Component of the works” means a particular works as indicated in the contract.

2.6 “Representative of Party A” means Mr. Pham Ngoc Lam, the person named in this contract by Party A and in charge of directing the works on behalf of Party A.

2.7 “Representative of party B” means..... the person named in this design consultancy service contract by Party B and in charge of directing the works on behalf of Party B.

- 2.8 “Contract” means this contract and documents attached to the contract (as regulated in Clause 1.1 [Contract documents]).
- 2.9 “Party” means Party A or Party B depending on actual context.
- 2.10 “Day” means the calendar day and month means the calendar month except otherwise indicated.
- 2.11 “Force majeure” as defined in Article 14 [Force majeure]
- 2.12 “Law” means the whole law system of the Socialist Republic of Vietnam and relevant instruction documents
- 2.13 “Letter of acceptance” means the official acceptance of Party A on any memorandum or agreement between two parties during the contract implementation period
- 2.14 “Contract appendix” means the complete pages to clarify one or more contents of the contract or added during the contract implementation period which is call the appendix to the contract and becomes an integral part of the contract.
- 2.15 “Works” means the services implemented by party B in accordance with regulations at Article 5 [Scope of works].

### **ARTICLE 3: INFORMATION EXCHANGE**

- 3.1 Notices, acceptance, certificates, decisions....are made in writing and sent to the receiver by courier, fax, email to the address registered in this contract;
- 3.2 In case any party changes the contact address, then that party must inform other party to ensure the exchange of information. If any party changes the address without informing to other party, then that party shall bear all consequences from this change without notice;

### **ARTICLE 4: LAW AND LANGUAGE USED IN THE CONTRACT**

- 4.1 This contract shall be governed by the law system of Vietnam;
- 4.2 Language of this contract is Vietnamese;

### **ARTICLE 5: DESCRIPTION OF THE WORKS**

- Project Name: Ba Sang Island Ecological Tourism area project
- Address: Cu Lao hamlet, Long Binh ward, district 9, HCMC

General information about the project	Unit	According to the design
Area	Ha	39.74
Density	%	15
Number of storeys		

Land use coefficient		
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## **ARTICLE 6: SCOPE OF WORKS**

Party A agrees to assign and Party B agrees to receive the design service in accordance with the plan for the whole project “Planning design for Ba Sang Island Ecological Tourism Area”.

6.1 Party B shall implement the following tasks:

- Survey the existing conditions in accordance with the survey map provided by party A
- Designing the ideas for planning
- Designing for backfilling works
- Designing for basic technical infrastructure such as traffic, electricity system, water supply and drainage system for the whole area
- Drawing the general perspective for the area
- Illustration images for the style, shape of the construction works

6.2 Designing the construction drawings and providing relevant documents to serve for the construction of the works of Party A;

6.3 Designing and providing technical document serving for bidding process of the project;

6.4 Cooperating with party A to participate in explaining and clarifying the design with the competent authority in charge of approving the design documents and project documents when required;

6.5 Modifying and receiving the comments from the Client and competent authority;

6.6 Carrying out the author’s supervision in accordance with regulations of the law on construction

## **ARTICLE 7: SCHEDULE AND PROGRESS OF THE CONTRACT**

7.1 Design progress for the scope of works as mentioned in Article 5 is as follows:

No.	Item	Duration
1.	Phase 1: Concept design	45 days
2.	Phase 2: design development	60 days
3.	Phase 3: engineering design	60 days

7.2 The contract duration excludes the time waiting for approval from the competent authority and approval from Party A. In case the design is delayed as required by Party A, then Party A shall inform officially in writing. The delayed time shall exclude from the contract duration.

## **ARTICLE 8: CONTRACT VALUE**

8.1 Contract value (excluding from VAT) is .....VND

*(In words:.....only)*

- In which:

- The value of concept design is.....;
- Value of 1/500 planning design is:
- The value of basic design and project preparation is:.....;
- The value for design of underground parts is:.....;
- The value for design of the body is:.....;
- The value for designing and providing technical documents serving for bidding of the project is:.....;
- The value for author's supervision is:.....

The above mentioned contract value as indicated in 10.1 is lump sum without variations from the scope of works as indicated in Article 5 (except variations as mentioned in Article 12) since the date party B receives the request for implementing the works until completing the design.

8.2 The contract value mentioned above already includes VAT and other fees in accordance with current regulations of the state;

8.3 The method of the contract: Lump sum contract for the whole quantity of the design works.

## **ARTICLE 9: METHOD AND PAYMENT SCHEDULE**

9.1 the payment currency: Vietnamese Dongs

9.2 Method of payment: bank transfer

9.3 Advance payment:

Within 10 (ten) working days since the date Party A receives the request for advance payment from Party B, Party A shall make the advance payment to party B with the amount of:.....VND (In words.....), equaling to 15% of contract value.

The request for advance payment includes:

- the request for advance payment
- VAT invoice;
- Professional Liability Insurance
- Decision on personnel mobilization for implementing the contract;
- Certificates of the key personnel participated in the contract

9.4 Payment schedule

The payments shall be divided into 5 (five) phases (excluding advance payment) as follows:

Phase 1	After signing the contract	
Phase 2	After accepting the documents of phase 1	
Phase 3	After accepting the documents of phase 2	
Phase 4	After accepting the documents of phase 3	
Phase 5 (final phase)	After the project is completed and Party B completes the author's supervision obligation, Party A shall make payment for the remained value of the Contract (10% of the contract value), the defect liability period equals to the construction period of the whole contract (estimated 36 months), Party A shall make payment to Party B the whole amount for author's supervision within 10 days since the date all cost estimates and design documents prepared by Party B are accepted by Party A and Party A receives the letter of guarantee of the bank.	10% of contract value

#### 9.5 Payment documents include:

- The request for payment from Party B in which clearly indicates the payment value in accordance with the contract: 03sets
- The appraisal result (for each payment period);
- The minutes of handing over the documents and the minutes of documents acceptance (depending on each payment phase) of each payment period as accepted by two parties;
- The VAT invoice for the payment period;
- Other relevant documents as regulated.

#### 9.6 Payment period

Party A shall make payment to Party B within 10 (ten) working days since the date Party A receive sufficiently legal payment documents from party B.

### **ARTICLE 10. RAISED COSTS**

10.1 the raised costs shall be paid for raised quantity of works of Party B due to considerable changes as instructed by Party A or changes as required by Party A in the following cases:

- Change on construction location of the project;
- Considerable change on design after approved by party A or the competent authority (*considerable changes are changes requiring the redesigning of exceeding 20% of the main load bearing system of the whole works approved by the competent authority*)



- 10.2 If above mentioned cases occur or tend to occur, Party B shall inform Party A before starting the works. No raised cost shall be paid except those prior approved by Party A in advance before starting the raised works.
- 10.3 The raised cost shall be agreed and paid between Party A and Party B. the calculation of raised cost shall be based on the Contract price and shall be made into an appendix of the contract to be the basic for Party A to pay Party B and considered as an integral party of the Contract.

#### **ARTICLE 11: PERFORMANCE GUARANTEE**

- 11.1 Party B shall be required to submit an performance guarantee equaling to 10% (ten percent) of the contract value;
- 11.2 Party B shall not be refunded with this Performance Guarantee if Party B refuses to perform the signed contract;
- 11.3 The Performance Guarantee shall be refunded when Party B already completes the works as agreed in the contract.

#### **ARTICLE 12: RESULTS AND QUALITY OF THE WORKS**

- 12.1 Party B shall implement the scope of works as indicated in Article 5 of this contract meeting requirements of Party A and conforming to current regulations of the state and other professional procedures and standards.
- 12.2 Contents and quality of the design works must ensure the conformity to the contract, regulations of Decree No. 12/2009/ND-CP dated 10/2/2009 by the Government on management of investment projects of construction works; Decree No. 83/2009/ND-CP dated 15/10/2009 on amending and supplementing some articles to Decree No. 12/2009/ND-CP dated 10/2/2009; Decree No. 209/2004/ND-CP dated 16/12/2004 by the Government on quality management of construction works; Decree No. 49/2008/ND-CP dated 18/4/2008 on amending and supplementing some articles to Decree No. 209/2004/ND-CP dated 16/12/2004 on 16/12/2004.
- 12.3 Deliverables to Party A
- **Phase 1 (HS1):** The concept design includes:
    - √ Layout
    - √ Descriptions of the design
    - √ Illustration pictures
  - **Phase 2 (HS2):** Design development documents include:
    - √ Layouts based on the design approved in HS1
    - √ Perspective of the works
  - **Phase 3 (HS3):** Engineering design documents include
    - √ Layouts, vertical sections, cross sections
    - √ Technical document for backfilling works
    - √ Description table of the construction materials

- √ Water system technical documents
- √ Electricity system technical documents
- √ Perspective of the works
- Design documents : 08 sets
- 02 CD rom with contents of the design documents, description of the design, cost estimates (*the data provided to Party A must be original files in Acad and excel software*)

### **ARTICLE 13: ACCEPTANCE OF THE DELIVERABLES**

#### **13.1 Basics for accepting the deliverables**

- Contract on design service
- Design tasks and designs approved
- Design documents including descriptions, design drawings and cost estimates of the construction works;

#### **13.2 Acceptance of the deliverables is carried out in 4 periods**

- 1<sup>st</sup> period: After Party B completes the concept design;
- 2<sup>nd</sup> period: after Party B completes the design development phase
- 3<sup>rd</sup> period: after party B completes the engineering design phase
- 4<sup>th</sup> period: after party B hands over sufficiently documents and party A receives sufficiently these documents, Party A shall base on this contract, regulations and standards to organize the acceptance of the deliverables. Defects in these deliverables shall be timely corrected by Party A in accordance with terms and conditions of this contract.

### **ARTICLE 14: AUTHOR'S SUPERVISION**

Party B must assign the qualified person to be in charge of author's supervision during the construction of the works, in particular as follows:

- 14.1 Explaining and clarifying the design documents of the works when required by Party A, the contractor, construction supervision consultant;
- 14.2 Cooperating with Party A when required to solve problems and variations in design during the construction, modifying the design to be suitable with the actual situations of the construction works and requirements of the client when required;
- 14.3 When finding out the construction fails to conform to the design, Party B must note in the supervision dairy and request the contractor to conform to the design. In case it fails to require the contractor to do so, it is required to send written notice to Party A.
- 14.4 Participating in accepting the works, part of the works, construction phase, component of the works and the works when required by Party A.
- 14.5 Carrying out the author's supervision, if finding any component of the works, the construction works fails to meet conditions for acceptance, then the contractor

must send the written notice to Party A to clearly indicate the reasons for refusing the acceptance.

- 14.6 During the construction period, if the design is unsuitable, then it is required to modify the original design, Party B shall be responsible for cooperating with other consultant and Party A to modify the design.

#### **ARTICLE 15: PERSONNEL OF PARTY B**

- 15.1 Party B shall assign the qualified person to be the representative and direct the works on behalf of Party B.
- 15.2 The design team leader of Party B must have the practical design certificate, qualifications, skills and experience suitable and accepted by Party A.
- 15.3 Key personnel of Party B must implement the assigned tasks within the necessary time to meet the progress of the project. Party B is not permitted to change any key personnel without prior approval from Party A;
- 15.4 Party A has the right to request Party B to change any personnel if that person is considered as incapable and lack of care in the assigned job;
- 15.5 Before changing the personnel, Party B must send the written request to party A 07 days in advance for review and approval from Party A. Party B must clearly indicate the reasons and provide the CV of the proposed person and the proposed person must has the equivalent or higher qualifications than the replaced person.
- 15.6 Personnel of Party B shall be provided with benefits as regulated in the Labor Code of Vietnam and paid in Party B.

#### **ARTICLE 16: REPORTING REGIME OF PARTY B TO PARTY A**

- 16.1 Party B shall be responsible for reporting Party A on the design progress for the works for the scope of works of parties as regulated in Article 6 of this contract;
- 16.2 Weekly meeting and report of Party B will include the contents of the completed works within the week and proposed works for the next week and the proposed execution method for the next week;
- 16.3 Monthly report of Party B;
- 16.4 In case of urgent situation, Party B must report immediately to Party A through telephone, fax or email in accordance with contact information regulated in the contract for timely treatment.

#### **ARTICLE 17: RIGHTS AND OBLIGATIONS OF PARTY A**

- 17.1 Party A shall have the right to own and use the consulting deliverables in accordance with the contract;
- 17.2 Have the right to refuse the acceptance of unqualified deliverables
- 17.3 Monitoring, checking and speeding up Party B to perform the contract; giving comments, requests for amending and supplementing to the consulting deliverables if necessary within the scope of the contract, however, the inspection and monitoring of Party A shall not release any obligation of Party B in accordance with this contract.
- 17.4 Timely dealing with proposals or recommendations from party B;

- 17.5 Timely approving the design and proposed variations (if any); the time waiting for approval of design and proposals shall exclude from the contract implementation period of Party B.
- 17.6 Accepting and paying Party B sufficiently and timely as regulated in Article 9 of this contract;
- 17.7 Cooperating with relevant parties in works implementation;
- 17.8 Supporting and creating favorable conditions for Party B to complete the scope of works of the contract;

#### **ARTICLE 18: RIGHTS AND OBLIGATIONS OF PARTY B**

- 18.1 Party B shall be responsible for buy professional liability insurance in accordance with current regulations of the law. Party B must submit Party A copies of the insurance policies before implementing the works in accordance with the contract and must ensure the validity of these insurance policies during the validity of this contract;
- 18.2 Immediately after the contract is valid, Party B must update and submit Party A a schedule or detailed and comprehensive plan for implementing the works to meet the progress of the signed contract. During the contract implementation period. Party B must continuously update and modify this schedule to ensure the final schedule. In case there is any delay in progress, Party B must immediately implement the necessary methods, procedures to manage and speed up the progress to reach the progress as agreed in the contract;
- 18.3 Implementing the works immediately after the contract is valid in accordance with the contract progress;
- 18.4 Being responsible for completing the works in accordance with the progress and submitting the consulting products to party A timely and sufficiently. Party B shall inform timely and sufficiently all relevant information to the consulting service which may delay or prevent the completion of the works in accordance with the contract progress and propose the solutions for solving;
- 18.5 Party B is not permitted to transfer this contract under any manner to other organization and individual. If party A finds out that Party B hires any other organization, individual to implement the contract, Party A shall terminate the contract and will not pay for any unfinished works of Party B;
- 18.6 Party B is not permitted to sign subcontract to implement any part of this contract without prior written approval from Party A. Any written acceptance from Party A shall not release the legal obligations or contract obligations of Party B. Party B shall be responsible for consequences cause by action, mistake, carelessness, insufficient experience of any subcontractor, agent or personnel during the implementation of the works;
- 18.7 Timely informing in writing to Party A when finding out an information provided by Party A is insufficient or inaccurate for Party B to implement the works and carry out amendments, supplements and modifications (if necessary) for the implementation of the works;

- 18.8 During the contract implementation period, Party B shall ensure to arrange sufficiently personnel with qualifications, capacity and experience as indication of the decision on personnel mobilization sent to Party A;
- 18.9 Party B commits to send the authorized representative to solve the problems raised at any time as required by Party A (including off-day) until the completion and handover of the design documents. Party B shall be responsible before Party A and the law on all actions carried out by their personnel;
- 18.10 Participating in all meetings with the inspection agency or with the agency in charge of approving the project documents, design documents as required by Party A;
- 18.11 Being responsible for providing documents serving for the meetings, reports and inspections....with the quantity as required by Party A;
- 18.12 Presenting and protecting the construction technical design documents and cost estimates with party A, inspection agency and agency in charge of approving the documents;
- 18.13 Being responsible for the contents, data and quality of the documents. Party B must ensure that all works of Party B carried out in accordance with this contract are suitable with the requirements of party A and conform to current regulations and standards and regulations of the Socialist Republic of Vietnam;
- 18.14 Implementing and bearing all responsibilities to the quality of the consulting products. The consulting products must be carried out the qualified experts in accordance with current regulations of the law to bring about effectiveness and suitable with the requirements of Party A to complete the project;
- 18.15 Party B commits to protect the legal rights and benefits of Party A during the implementation of the works in accordance with this contract;
- 18.16 Party B shall be responsible for assigning the qualified person to cooperate with Party A to prove and protect sufficiently and accurately documents relating to the quality of the design of the works before the relevant agencies during the implementation of this contract;
- 18.17 Party B consults and implements professionally the works as mentioned in this contract with all suitable skills, care, diligence to meet requirements of Party A to complete the works, component of the works, package. Party B will sufficiently and timely report all information relating the design works in accordance with this contract to Party A;
- 18.18 Party B shall be responsible for implement the works as regulated in this contract with all qualifications and experience to ensure the quality, technical standards, arts and economic effectiveness to the Client. In case the design documents are issued but there are comments from Party A or the third party to perfect the design documents, then Party B must receive these comments and modify the design documents accordingly.
- 18.19 Party B shall arrange the vehicles and accommodations when working far away from their office;

- 18.20 Conforming to regulations on labor safety, environment and regulations of the site during the period of implementing author's supervision.
- 18.21 During the contract implementation period, if there is any changes or variations due to design mistakes, Party B shall be responsible for preparing the documents to help Party A to approve the additional contents.
- 18.22 Party B shall be responsible for correcting mistakes, defects ....., completing the design documents within 20 days at the latest in accordance with the regulated progress for each kind of documents from the date of receiving the comments, inspection report from the inspection consultant or Party A. If exceeding the time mentioned above, Party B fails to implement, then Party B shall be penalized in accordance with regulations at Article 21 of this contract.
- 18.23 Party B shall be responsible for completing the basic design documents to submit to the Department of Construction for appraising. In case there are requirements on amending or supplementing the basic design documents (due to mistakes of Party B), then party B shall be responsible for completing the basic design documents within 7 days since the date receiving the comments from the Department of Construction; the modification of the Party B shall not exceed 3 times, if the revised documents are not approved by Department of Construction after exceeding 3 times of revising, party A shall have the right to unilaterally terminate the contract and request Party B to refund the amount received and bear the penalty as regulated.
- 18.24 Party B shall be responsible for modifying the engineering design and cost estimate to be suitable with actual situations to ensure the arts, technical and economic effectiveness or defects during the design period without any payment from Party A;
- 18.25 Specialists assigned for the works shall not be changed by party B during the implementation of the works, except the case of being sick which presents any specialist from working or as required by Party A, then Party B can change the specialist with written notice to Party A and prove that the proposed specialist has professional qualifications equivalent or higher then the replaced specialist;
- 18.26 Party B must commit that all data provided by party B is accurate, clear, objective and frank. In case Party B violates this regulation, Party A can consider to terminate the contract without any explanation;
- 18.27 Being responsible for technical, arts and quality issues and ensuring the technical and economic criteria in accordance with current regulations, criteria issued by the competent authority and requirements of Party A;
- 18.28 In necessary case, providing the sample of materials....to Party B to get the basic for design, then party B must ensure that the sample of these materials...is approved by Party A or an agency as nominated by Party A;
- 18.29 Closely cooperating with Party A to create favorable conditions in completing the scope of works of the contract soonest;
- 18.30 Consulting and providing Party A with technical design documents relating to the construction of the components relating to project introduction to serve for the purposes of Party A;

## **ARTICLE 19. SUSPENSION AND TERMINATION OF THE CONTRACT**

### **19.1 Suspension of the contract:**

19.1.1 In the following cases, the contract shall be suspended:

- Party B fails to meet requirements on quality and progress of the works in accordance with the contract;
- Party A fails to make payments to Party B exceeding 28 days since the expired date of the payment as regulated in Article 9 of this contract;
- In force majeure events
- In other cases as agreed by two parties.

19.1.2 One party has the right to suspend the contract due to mistakes of other party with written notice to other party 07 days in advance. Two parties must discuss to continue the contract performance; In case any party suspends the contract without prior notice and cause damages to other party, then that party shall be responsible for compensating for these damages caused to other party;

19.1.3 The time and compensation amount due to contract suspension shall be agreed by two parties to overcome the damages.

### **19.2 Contract termination**

19.2.1 Contract termination by party A

- Party A has the right to terminate the contract at any time convenient to Party A by sending notice to Party A on contract termination. This termination shall be valid after 10 days since the date Party B receives the notice from Party A.
- Party A shall have the right to terminate the contract if Party B:
  - a) fails to conform to the regulations on Performance Guarantee as indicated in Article 11.
  - b) fails to correct the defect within 30 (Thirty) days since the date of receiving the notice from the Client on that defect.
  - c) stops the works or expresses the intention to stop the contract obligations;
  - d) suspends the implementation of the works in accordance with agreed schedule without reasonable reasons;
  - e) delays form more than 30 (thirty) days comparing to regulated progress;
  - f) transfers the contract with prior consent from Party A;
  - g) goes bankrupt, insolvent, closed, having assets managed or negotiates with the creditors or continues the business under the supervision of the assets administrators, authorized person or the manager for the benefits of the creditors or has any action or event happened (in accordance with the applicable law) having similar impacts as these actions or events;
  - h) fails to overcome the force majeure event exceeding 30 days.

- If one of the above cases happened, Party A may, by sending written notice to Party B 10 days in advance, terminate the contract. However, in case f) and h), party A can terminate the contract immediately.
- The contract termination by Party A in above cases shall not impact on other rights of Party A in accordance with the contract.
- After terminating the contract, Party A may continue completing the works and/or hire other organization to complete the works. Party A and such organization can use any documents provided by Party B or representative of Party B during the contract implementation period.

#### 19.2.2 Contract termination by Party B:

- Party B can terminate the contract with prior written notice to Party A at least 30 days in the following cases:
  - a) Party A fails to pay for any due payment to party B in accordance with this contract without reasonable reasons within 15 after receiving the written notice from Party B on overdue payment;
  - b) Party A goes bankrupt, insolvent, closed, having assets managed or negotiates with the creditors or continues the business under the supervision of the assets administrators, authorized person or the manager for the benefits of the creditors or has any action or event happened (in accordance with the applicable law) having similar impacts as these actions or events. In this case, Party B can terminate the contract immediately'
  - c) Force majeure event happens for more than 30 days and can not be overcome;
- The termination of the contract by Party B in above mentioned cases shall not have impacts on other rights of Party B in accordance with this contract.

### 19.3 Consequences of the contract termination

19.3.1 Party B shall be required to transfer the documents prepared by them at the period of contract termination to Party A.

19.3.2 After terminating the contract, Party A may continue completing the works and/or hire other organization to complete the works. Party A and such organization can use any documents provided by Party B or representative of Party B during the contract implementation period.

19.3.3 Soonest as possible after informing on the contract termination and not later than 30 days, Party A and Party B can discuss and define the value of the works and documents completed by Party B in accordance with this contract (the contract value at the period of contract termination). Within 30 days after defining the contract value at the contract termination period, Party A shall make payment to Party B this amount totally.

## ARTICLE 20: FORCE MAJEURE



- 20.1 “Force majeure” means any following events which prevent any party or **three Parties** from performing their contract obligations such as: riot, war, disturbance, fire, flood, earthquake, tsunami or other natural disasters.
- 20.2 No party shall be responsible before other party on damages, accidents, delay, defects that that party shall bear in “force majeure” and the failing or delaying in performing any contract obligation of any party due to “Force majeure” shall not be considered as a contract violation.
- 20.3 In case of force majeure event happened, the party declares “force majeure event” must quickly send the written notice to the other party and the performance of contract obligations of the **Three parties** shall be delayed in this case. However, the party declaring the force majeure must pay the best effort to shorten the delayed time or the violation.
- 20.4 In case the force majeure event prevents the performance of the contract of one party within continuous 30 (thirty) days, then **Three parties** shall agree to solve for the best benefits of three parties and in accordance with regulations of the law and the time for three parties discuss and solve is 14 (fourteen) working days. If exceeding this period, three parties fail to solve the issue, than the party declaring the force majeure shall have the right to terminate the contract.

## **ARTICLE 21: CONTRACT VIOLATION TREATMENT**

### **21.1 Progress and mistakes of the documents**

- In case Party B delays the implementation of the works comparing to agreed progress, then Party B shall be penalized at 0.1% of the contract value/day;
- In case Party B delays the implementation of the contract for more than 30 days without reasonable reasons (*approved in writing by Party A*), then Party A shall have the right to terminate the contract and request Party B to Party A for the raised costs (*including the fees for Party A to hire other agency to implement the unfinished works at the period of contract termination*) and bear an penalty of 12% of contract value.
- In case party B has mistakes during the design which leads to the technical design fails to conform to standards and Party A must remove, destroy the constructed quantity; then all damages in this case shall be paid totally by Party B to Party A.

### **21.2 Penalty for delayed payment**

- If Party A fails to make payment timely to Party B without reasonable reasons, then Party A shall be penalized at 0.1% of the contract value/day.

### **21.3 Penalty for unilateral contract termination violating the contract regulations**

- During the contract performance period, if any party unilaterally terminates the contract violating the contract regulations, then that party shall be penalized at 100% of contract value and compensate for all damages caused to other party (if any)

## **ARTICLE 22. COPTY RIGHTS AND RIGHTS FOR USING DOCUMENTS**

- 22.1 Party A shall reserve the rights for all reports and other documents prepared by personnel of Party B. Party A shall have the right to use these documents, make copy to serve for the jobs of party A without asking for permission from Party B.
- 22.2 Party B must commit that all design documents and other documents prepared by Party B and provided to Party A shall not violate the copyright or the intellectual property right of any individual or the third party.
- 22.3 Party S shall not be responsible for consequences from the complaints on any report or other documents in accordance with this contract for violating the copyright or the intellectual property rights from any individual or the third party.

## **ARTICLE 23. CONFIDENTIALITY**

Except for the assignments required by Party A, Party B is not permitted to disclose to any third party on their tasks or any information relating to the project, works, component of the works implemented by Party B in accordance with this contract without prior written approval from Party A.

## **ARTICLE 24. FINAL ACCOUNTS OF THE CONTRACT AND CONTRACT LIQUIDATION**

- 24.1 Final accounts of the contract
- Within 07 (seven) days since the date of acceptance of the whole consulting service in accordance with this contract and after receiving the minutes of acceptance and certification from Party A to certify that party B completes all contract obligations, Party B shall submit the client 08 final accounts documents and the final account document shall include:
    - a. the minutes of acceptance for the whole consulting service
    - b. the certificate of the quantity of the raised works (if any)
    - c. the final value of the contract clearly indicates the paid amount and the remained amount that the client shall pay to the consultant.
  - If Party A does not agree or thinks that Party B has not yet provided enough basics for verifying any part of final account documents of the contract, Party B shall provide more information as reasonably required by Party A and make modifications as agreed by two parties. Party B shall prepare and submit the final accounts documents to Party A as agreed by two parties.
  - After the final account documents are agreed by two parties, Party A shall make payment for the whole remained amount of the contract to the consultant.
- 24.2 The contract liquidation shall be completed within 14 (fourteen) days since the date two parties complete the contract obligations or the contract is terminated in accordance with Article 19.2 of this contract.
- 24.3 After finalizing the signed contract by Parties, Party A shall not be responsible before Party B on any issues relating to the contract.

## **ARTICLE 25. COMMITMENTS AND GUARNATEE OF PARTIES**

- 25.1 Having enough conditions, capacity, legal basics for signing and implementing the contents, quantity of the works of this contract;

- 25.2 Strictly and sufficiently performing the obligations as regulated in this contract;
- 25.3 Supporting and creating favorable conditions for each other to perform their obligations in the most effective way;
- 25.4 Each party shall keep any and all information relating to the contract and shall not disclose or announce any information to other external party without prior approval from the remained party. This article shall still be valid for three parties after this contract is terminated, and liquidated;
- 25.5 Parties commit that if any party violates their contract obligations, then that party shall be responsible before other party in accordance with regulations of the law and this contract;
- 25.6 Any content of this contract shall be totally independent with any other debts and financial liability of parties.
- 25.7 Parties commit to not unilaterally terminate this contract, if any party unilaterally terminates this contract, then that party shall be responsible for compensating for other party as regulated at Article 21 of this contract.

#### **ARTICLE 26. DISPUTE SETTLEMENT**

- 26.1 All disputes raised from this contract shall be solved firstly through negotiation and reconciliation to ensure the legal benefits of parties;
- 26.2 In case any dispute fails to be solved through negotiation within 30 (thirty days) since the date of raising, that dispute shall be submitted to the competent People's Court;
- 26.3 The current law of Vietnam shall be the basic for solving all disputes of the contract, if any;
- 26.4 Within the time of dispute waiting for solving, parties shall be responsible for continuing their contract obligations, except the issue relating to the dispute.

#### **ARTICLE 27. GENERAL PROVISIONS**

- 27.1 Party A shall have the right to nominate an independent inspection organization to inspect the design works of Party B in accordance with the contents and scope as mentioned in Article 6 of this contract and party B must cooperate with this agency to gain the best effectiveness;
- 27.2 Any notice or documents in accordance with this contract shall be made in writing;
- 27.3 In case each party decides on splitting, merging or having any changes relating to the ownership, management and operation of each party, then the provisions in accordance of this contract shall not be governed and this contract shall be effective for the successor(s).
- 27.4 Related issues which are not modified by this contract shall be applied in accordance with current regulations of the law.
- 27.5 Any amendment, supplement and document delivery of parties shall be effective only when they are made in writing and approved by party A;

- 27.6 Two parties commit to strictly conform to provisions of this contract, no party is permitted to violate the contract, during the contract implementation period, if there is any problem, parties shall discuss and negotiate to solve on the cooperative spirit.
- 27.7 This contract is made into 10 (ten) sets of the same legal value; party A keeps 06 (six) sets, Party B keeps 04 (four) sets. This contract is valid since the date of signing.

**PARTY A**

**PARTY B**