

**ARCHITECTURAL AND ENGINEERING DESIGN  
CONSULTANCY AGREEMENT**

**FOR**

**[INSERT NAME OF THE PROJECT]**

**BY**

**AND**

**BETWEEN**

**[INSERT NAME OF THE CLIENT]**

**AND**

**[INSERT NAME OF THE CONSULTING FIRM] Pvt. Ltd.**

**[INSERT ADDRESS OF THE CONSULTING FIRM]**

**Dated [INSERT DATE OF SIGNING THIS AGREEMENT]**

# 1 ARCHITECTURAL AND ENGINEERING DESIGN CONSULTANCY AGREEMENT

This Architectural and Engineering Design Consultancy Agreement (hereinafter referred to as the "Agreement") is made on the \_\_\_ day of [INSERT MONTH] in the year 202\_ in Kathmandu.

By and Between

[INSERT NAME OF THE CLIENT], a Nepali citizen bearing citizenship number ....., residing at ....., (Hereinafter referred to as the "Client", which term unless it be repugnant to the context or meaning thereof mean and include its successors and permitted assigns).

and

[INSERT NAME OF THE CONSULTING FIRM], a limited liability company duly incorporated pursuant to Companies Act, 2063 of Nepal (hereinafter referred to as the "Firm" or, "Consultant", which term unless it be repugnant to the context or meaning thereof mean and include its successors and permitted assigns) duly represented by Mrs./Ms./Mr. [IINSERT NAME OF REPRESENTATIVE OF CONSULTING FIRM].

*The Client and the Firm shall individually be referred to a "Party" and collectively as the "Parties".*

## RECITALS:

WHEREAS, the Client is desirous of developing a property, and therefore is looking for a professional designing and/or construction supervision service in order to plan, estimate, design, and supervise construction;

WHEREAS, the Firm is an expert in the field of planning, designing and supervising construction projects consisting of and employing experienced architect/s;

WHEREAS, the Client has approached the Firm for providing quality services as agreed herein this Agreement, for performing and completing designing and/or construction supervision services as mentioned herein this Agreement. And the Firm therefore accepts such request/s after reviewing the conditions of contract and in consideration to the service fee as agreed herewith;

NOW THEREFORE, the Parties agree to be bound by the terms and conditions of this Agreement:

## **ARTICLE I – DEFINITIONS**

- (1) In this Agreement, the following words and expressions shall have the meanings assigned to them hereunder:
- a. **"Bill of Quantities"** shall include the itemization of materials, cost and labor used in development of the Project and costs thereof.
  - b. **"Designer"** shall mean the Architect who is responsible for making the drawings required, for the Project.
  - c. **"Drawings"** means the drawings referred to in the specifications and any modification of such drawings mutually agreed upon and approved in writing by the Parties.
  - d. **"Force Majeure Events"** shall mean the events which are not under the control of the Parties or any other cause beyond the reasonable control of each Party, including but not limited to Acts of God, acts of nature, acts of governments, war, fire, et al.
  - e. **"Project Data"** shall mean all data and documents developed or created by or on behalf of the Firm for the development of the project such as design, drawings and 2D or 3D animations.
  - f. **"Retention Amount"** shall mean the amount to be deducted by the Client during each payment as a deposit to be refunded to the Consultant after completion of the Project pursuant to this Agreement.
  - g. **"Site"** means the lands and other places on, under, in or through which the Works are to be executed or carried out.
  - h. **"Specifications"** means the description and details of materials and workmanship to be used in Project completion; including the quality of materials, workmanship and responsibilities of the Firm as provided in the Bill of Quantities (BOQ).
  - i. **"Works"** or **"Project"** means the services to be provided and executed in accordance with this Agreement, Drawings and Bill of Quantities.

**ARTICLE II - SCOPE OF WORK**

The Firm shall render services to the Client in two different phases. Such Phases shall include Designing Phase, and Construction Phase.

**2.1 Design Phase:**

- (a) Designing Phase is the preliminary phase that begins after effectuation of this Agreement. Under this phase, the Firm shall prepare a design for the development of the Project including architectural, structural, electrical, HVAC, sanitary and firefighting details.
- (b) Under this phase, the Firm shall also complete all documents including bill of quantities, specifications and other necessary documents as deemed necessary by the Firm.
- (c) The above-mentioned services shall be provided by the Firm in the following stages, for the ease of clarity of this Agreement:

**2.1.1 Conceptual Design**

This stage shall include the following services:

- (i) Finalize the conceptual design and provide tentative cost estimates.
- (ii) Conference with the Client to review site, site conditions and project scheduling.
- (iii) Study locally available materials, labor skills, construction systems in use, and implications on the proposed project.
- (iv) Submission of Conceptual Design Drawings to the Client for approval.

**2.1.2 Working Drawings**

Based on the approved Conceptual Drawings and Documents, the Firm shall prepare Working Drawings, which shall include

- (i) Architectural / Structural Design and Drawings (Municipality or submission format if required)
- (ii) Electrical / HVAC/ Sanitary and Fire Fighting Design and Drawings
- (iii) Detailed/ “Good for Construction” Drawings including site development drawings

**2.1.3 Bill of Quantities, Specifications**

The Firm shall prepare all necessary Bid documents including Bill of Quantities and Specifications along with a list of approved materials.

- (d) For the purpose of this Article, the working drawings and other necessary documents shall be prepared in two sets each, one of which shall be provided to the Client and another shall remain secure with the Firm.

## **2.2 Construction Phase**

This phase can be carried out under one of the following options:

### **2.2.1 Basic Site Supervision:**

Under this option, it is assumed that the Client will have a construction management setup and the Firm will only fulfill the basic site supervision requirement. The following lists out the services for this option:

- (i) The principal designers (architect, structural, electrical, HVAC and sanitary Firms/Consultants) shall visit the site as required by the Client in the form of a written request for visit.
- (ii) Changes in the drawing required due to site conditions to be prepared on request from the Client and is billable.

### **2.2.2 Complete Project Management**

Refer Annex III

**ARTICLE III – TERMS OF PAYMENT**

- (2) The Client shall make the necessary payments to the Firm as provisioned in the sub-articles below:
  - 3.1. The Client is responsible to make necessary payments to the Firm in phases as provided for in Annex – I (*Schedule of Payments*).
  - 3.2. The payments as provided in Annexes of this Agreement is exclusive of applicable VAT (as per prevailing VAT Act, 2052 of Nepal), and shall be charged extra and levied on each payment.
  - 3.3. In case of construction supervision, purchase of items or equipment from vendors, required for the project as projected in BoQ shall solely be borne by the Client. VAT applicable in making such purchases from vendors must also be borne by the Client.
  - 3.4. Payment must be made within fourteen (14) working days after submission of invoice by the Firm. Tax invoice (VAT bill) shall be issued by the Firm within two (2) working days of receiving payment from the Client.
  - 3.5. Retention amount at the rate of five percent (5%) each payment amount may be deducted by the Client as deemed reasonable. In case if such retention is deducted, the Client shall provide a receipt to the Firm, stating the purpose of such deduction pursuant to this sub-article.
  - 3.6. The Client must return/release the said retention amount within twelve (12) months of the submission of the design documents.
  - 3.7. Changes in BoQ or specification resulting in more than ten percent (10%) increase or decrease in estimation provided shall be adjusted accordingly in the total fee based on the calculation parameters as per the attached areas and cost sheet, with mutual consent between the Parties.
  - 3.8. In case if the Changes in the estimated amount is less than ten percent (10%) of the total fee, the Firm reserves the right to make such alterations on its own discretion.
  - 3.9. The Consultant shall levy fees as provided for in Annex – III (*Supervision Fees*) for necessary supervision of the Construction of the Project. Such payments shall also be made in the terms in accordance to the provisions provided for in this Article.

**ARTICLE IV - WORK TIME SCHEDULE**

- (3) The time schedule for the completion of the Project shall be as provided for in Annex – II (*Work Time Schedule*).

**ARTICLE V - GENERAL TERMS AND CONDITIONS**

- (4) This Agreement shall be interpreted and be binding upon the Parties as per the general terms as provisioned within this Article as below:

5.1. Services

5.1.1. The Firm shall exercise all reasonable skill and diligence in the performance of the services performed under this Agreement and act as a faithful advisor to the Client in all professional matter.

5.1.2. The Client *prima facie* acknowledges the expertise of the Firm to render services to the Client.

5.2. Variations to Design

The Firm shall not make any material alteration, addition, or cause omission to the approved design without the consent of the Client, except in case of urgency during construction, in which case, the Client must be notified promptly. Maintaining records of such notification is the sole liability of the Firm.

5.3. Appointment of Specialized Firms

5.3.1. If the Firm has to outsource works those are highly specialized and which requires the services of specialists except the employ of the Firm, prior approval must be obtained in writing from the Client before such outsourcing can be executed.

5.3.2. The fee of specialized Firms shall be separately payable as per mutual understanding of the Parties.

5.4. Amendment of the Agreement

Any alterations/modifications on the term/s of this Agreement can only be made through a separate written amendment or addendum agreement as mutually agreed by the Parties in writing.

5.5. Additional Services Compensation

If the Firm is required to revise or repeat any services already performed for any reason beyond the scope of this Agreement, such services involving extra work shall be fairly remunerated as mutually agreed by the Parties.

5.6. Language and Standards

- 5.6.1. All the designs shall be based on the standard national building code or other relevant and recognized standards where code is not applicable.
- 5.6.2. All documents, drawings, instruction etc. shall be in English language, all weights and measurements shall be expressed in either imperial or metric systems.
- 5.6.3 All interpretations to any clause of this Agreement shall strictly be in the Language used in this Agreement.

5.7. Copyright and ownership of documents and project data

- 5.7.1. The Firm retains the copyright of designs and details provided for in the project and the Client agrees that it shall not use such designs and details for development of other projects.

However, the Project Data including and limited to images, drawings, and 3D animations created by or on behalf of the Firm may be used by Client for the purpose of promotion and advertisement of their property.

- 5.7.2. The Firm holds absolute and unaltered authority on/upon the economic rights over the intellectual property included but not limited to Copyright, corresponding to the Project.
- 5.7.3. The Client acknowledges and agrees that it shall not sell or modify such Project Data without the prior consent of the Firm.
- 5.7.4. The Client understands that the Firm is an independent Firm and the contractual relationship between the Parties must not be construed as work-for-hire.

5.8. Indemnity and Liability

The Client shall indemnify the Firm against the adverse effects of all claims including such claims by third parties which arise out of or in connection with this Agreement. The Firm's liability to the Client will not exceed the amount of retention and shall only be applicable up to the retention period.

5.9. Abandonment/Termination of Project

- 5.9.1. Should for any reason the Client wish to abandon the said project or terminate the work under the contract the Client shall notify the Firm in writing and clear all dues to the Firms for the works already completed or in progress, in a pro-rata basis.
- 5.9.2. The Firm shall immediately refund to the Client, any excess payment made by the Client to the Firm.



5.9.3. The Firm shall submit all completed or partially completed plans or drawings, information and other property which the Client is entitled to under the terms of this Agreement.

5.9.4. In case, for any reason, the Firm wishes to abandon the assignment under this agreement and the Client has to engage a third party to carry out the remaining works by paying extra cost to such third party, the Firm shall be liable to compensate the Client to the extent of such extra cost together with damages for the delayed period at a reasonable rate. However, the total compensation by the Firm to the Client under this contract shall not exceed the retention amount.

5.10. Notices

Any notice or instructions required to be given under this Contract shall be in writing and sent by post, cable, telex, fax, courier, or email. The notice shall be served in the following address and shall be deemed to have been duly received by the concerned party upon delivery of the mail or courier or if delivered by fax upon receipt of confirmation of transmission.

If to the Firm:	If to the Client
Address:	Address:
Attn: [            ]	Attn: [            ]
Phone no.: [            ]	Phone no.: [            ]
Email: [            ]	Email: [            ]
Fax: [            ]	Fax: [            ]

5.11. Force Majeure

5.11.1. In case the performance of this Agreement is delayed due to Force majeure events, the defaulting party shall immediately notify the other Party in written form providing detailed information about the event and the impact of such event on the Project. In case one of the Parties serves a Force Majeure notification to the other Party, a reasonable extension of time shall be granted to the Party affected from such event in order to fulfill its obligations. Neither party shall be liable for default or delay under this Agreement for Force Majeure events.

5.11.2. In case the delay caused by a Force Majeure event continues for more than one month, both parties shall have the right to terminate this Agreement and/or related Work immediately following a written notification.

5.12. Governing Law and Settlement of Disputes:

- 5.12.1. This Agreement shall be governed by the prevailing laws of Nepal.
- 5.12.2. Any dispute arising out of or in relation to this Agreement shall be tried and settled amicably through mutual discussions within fifteen (15) days from the date of dispute.
- 5.12.3. Failing to resolve the dispute amicably, any Party to this Agreement may submit their claims at the relevant court of Nepal.

**OR**

Failing to resolve the dispute amicably, any Party to this Agreement may submit their claim in either Nepal International Arbitration Center or Nepal Council of Arbitration, and form a tribunal of three arbitrators pursuant to the prevailing Arbitration Act, 2055 of Nepal. The Arbitration shall be conducted in accordance with the UNCITRAL arbitration rules. The venue of Arbitration shall be in Bagmati Province, Nepal.

- 5.12.4. In addition to any other relief awarded, the prevailing party in any action arising out of this Agreement shall be entitled to its reasonable attorneys' fees and costs.

5.13. Severability

In the event that any one or more of the provisions contained in this Agreement or its Annexes shall, for any reason, be illegal and null and void, such nullity shall not affect any other provisions thereof, but this Agreement and its Annexes shall be construed as if such invalid provision had never been contained herein and in such event the Parties hereto shall endeavor to substitute forthwith such other enforceable provision *mutatis mutandis* of the said illegal and void provision/s.

5.14. Validity and Entire Agreement

This Agreement is complete and supersedes any and all other written or tacit understandings, written notices or documents with respect to the project. In the event of any discrepancy or inconsistency, this Agreement shall prevail and supersede all others.

5.15. Non-Waiver

No failure of delay by any party to exercise any right, power or remedy shall be construed as a waiver, nor will any partial exercise preclude any further exercise of the same, or some other right, power or remedy.

5.16. Non-Liability

The Consultant shall hold no liability on any alterations to the design made by the Client without any prior-written acknowledgement of the Consultant which might or might not cause any loss to the Client.

5.17. Independent Firm

The parties are independent Firms under this Agreement and no other relationship is intended, including a partnership, franchise, joint venture, agency, employer/employee, fiduciary, master/servant relationship, or other special relationship. Neither party shall act in a manner which expresses or implies a relationship other than that of independent Firm, nor bind the other party.

5.18. Counterparts

This Agreement may be executed in two counterparts, each of which shall be an original and together which shall constitute one and the same instrument.

In witness whereof, the Parties hereto have caused this contract to be signed in their respective names as of \_\_\_\_\_ 202\_ in Kathmandu, Bagmati Province, Nepal.

*Please note that signature is compulsory in every top and bottom page of each page except the first and the last. Please sign on the bottom of first page and on the top of last page. In case if the signatory is a company, please compulsorily affix stamp wherever the signatures are affixed. Two witnesses are mandatory in case of all contracts.*

\_\_\_\_\_  
Signature of Client

\_\_\_\_\_  
On behalf of [Consulting Firm Name ]

Attn:

Name:

Name:

Address:

Address: Naxal, Kathmandu

Contact No:

Contact No: 4423165

Email Address:

Email Address:

**Witnesses:**

Witness on behalf of the Client:

1. Mrs./Ms./Mr....., aged ....., residing at .....

Witness on behalf of the Firm:

1. Mrs./Ms./Mr....., aged ....., residing at .....

**ANNEX – I**

**SCHEDULE OF PAYMENTS**

Estimated Cost of Construction NRs. \_\_\_\_\_

Design Fee @ 2.5 to 4 percent depending on the project NRs \_\_\_\_\_

One may refer to the Minimum consulting fee document endorsed by SONA 14<sup>th</sup> EC for the reference.

The Client shall authorize each stage separately and the fees shall be disbursed as follows:

<b>Stages</b>	<b>Description</b>	<b>Percentage of fee</b>	<b>Amount</b>
<b>1</b>	<b>Conceptual Design</b>	30%	
	<i>Upon Authorization (Upon Signing) (50% of 1)</i>		
	<i>Upon Submission of Design (50% of 1)</i>		
<b>2</b>	<b>Working Drawings</b>		
<b>a</b>	<b>Architectural and Structural</b> (Municipal or other submissions)	40%	
	<i>Upon Authorization (50% of 2a)</i>		
	<i>Upon Submission of Drawings (50% of 2a)</i>		
<b>b</b>	<b>Electrical / HVAC/Sanitary</b>	15%	
	<i>Upon Authorization (50% of 2b)</i>		
	<i>Upon Submission of Drawings (50% of 2b)</i>		
<b>c</b>	<b>BOQ / Contract Documents &amp; Site Development</b>	15%	
	<i>Upon Authorization (50% of 2c)</i>		
	<i>Upon Submission of Drawings BOQ (50% of 2c)</i>		

	<b>Total</b>	<b>100%</b>	

ANNEX – II

**WORK TIME SCHEDULE**

1.	Conceptual Design	4 weeks from the date of agreement and work authorization.
2a.	Architectural & structural drawing	6 weeks from approval of Conceptual drawing and work authorization
2b.	Electrical, HVAC and Sanitary drawings	4 weeks from the date of approval of Architectural drawing and work authorization
2c.	Detail drawings and Site development	4 weeks from approval of Architectural drawing and work authorization.
3.	BoQ and Contract Document	4 weeks from the date of approval of all drawings and work authorization

*Consulting firm may change the schedule as deemed necessary*

**ANNEX – III**

**SUPERVISION FEES**

The Firm may be involved in the construction phase in one of the following capacities as per the choice of the Client:

**BASIC SITE SUPERVISION (Pursuant to sub-article 2.2.1)**

Site Visit Charges by principal Firms i.e.

Architects, Civil/Sanitary/Electrical Per visit per head NRs. 8,000.00

(Air Tickets, lodging and boarding to be provided by the client).

*Remove entire non-applicable section in case if only the other is applicable.*

**OR**

**COMPLETE PROJECT MANAGEMENT (Pursuant to sub-article 2.2.2)**

The supervision fee shall be paid in monthly installments at NRs. \_\_\_\_\_ per month for the period of \_\_\_\_\_ months. Beyond the sanctioned project timeline, office overheads shall not be provided to the Firm.

S.NO.	SITE PERSONNEL	TOTAL NO.	SALARY / MONTHS	TOTAL
			(NRS)	SALARY /MONTHS
1				
2				
			Total salary	
	<b>Office overheads / profit / social benefits etc. additionally factored by 1.75 times</b>			
			<b>Total Monthly Fee</b>	

NOTA BENE:

The Firm shall be paid in full for all months of supervision required at site except when the Firm has unauthorized delays wherein the Firm shall not be paid the office overheads and fees during the construction-overrun period. The estimated time of completion may vary if the building design scope is changed and will be adjusted accordingly.