



Prot. n. AICSY-OUT-

PROJECT: “Support to the Social and Economic Development of Rakhine State through the Safeguard, Management and Valorisation of the Mrauk-U site”

AID 11292

CIG (BID CONTRACT IDENTIFICATION No.): [CIG NUMBER]

### **SERVICE CONTRACT**

(Hereinafter referred to as “**the Contract**”)

between

**The Italian Agency for Development Cooperation - Yangon Office**

(Hereinafter referred to as “**Contracting Authority**”)

Represented by the Director Maurizio Di Calisto,

41-7B, Inya Myaing, Shwe Taung Gone, Bahan Township, Yangon

and

**[NAME OF THE INSTITUTION]**

(Hereinafter referred to as “**the Service Provider**”)

Represented by [name of the Person],

Address: [address details]

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

### **WHEREAS**

With Decree n. 109 dated December 27, 2017, the Director of the Italian Agency for Development Cooperation authorized the allocation of funds for the Project “Support to the Social and Economic Development of Rakhine State through the Safeguard, Management and Valorisation of the Mrauk-U site” - AID 11292.02.04;

As per the General Operational Plan approved by the Italian Agency for Development Cooperation on April 10, 2018, the Project foresees, among other activities, the provision of the “Specialized Technical Assistance to the Department of Archaeology - DOA” which includes support to the local authorities in the documentation, mapping, conservation and management of the Cultural Heritage sites of Mrauk U;

A competitive selection procedure was carried out in order to identify qualified Service Provider for the above-mentioned Technical Assistance;

With Decree n. [XX/XX] the Director of AICS Yangon authorized the launching of the bidding process for the present service;

The Contracting Authority on [dd/mm/yy], published on the websites [www.ambiyangon.esteri.it](http://www.ambiyangon.esteri.it) and [www.aicsyangon.org](http://www.aicsyangon.org) the “**Invitation to bid for the provision of Technical assistance to DOA staff the project activities of the Italian Agency for Development Cooperation**” – AID 11092 – CIG [CIG NUMBER];

The Offer made by the Institution [Name of the Institution] was considered the most advantageous based on the criterion of the best value for money, and following the evaluation procedures of the technical and financial offers for the execution of the Services indicated under the previous points;

The Offer submitted on [dd/mm/yy], by the Institution [Name of the Institution] was considered financially adequate and in line with the needs of the Project - “**Support to the Social and Economic Development of Rakhine State through the Safeguard, Management and Valorisation of the Mrauk-U site**” - AID 11292.02.04;

That the Contracting Authority hence intends to engage the Services of the above-mentioned Institutions on the terms and conditions hereinafter set forth;

That the Institution [Name of the Institution] is ready and willing to accept this Contract with the Contracting Authority on the below terms and conditions

## **THE PARTIES AGREE AS FOLLOWS**

### **ART. 1 – SCOPE OF THE CONTRACT**

1. In the framework of the project “Support to the Social and Economic Development of Rakhine State through the Safeguard, Management and Valorisation of the Mrauk-U site” - AID 11292.02.04, the Contracting Authority awards to the Service Provider, who hereby accepts, the execution and the completion of the Service Contract within the “*Specialized Technical Assistance to the Mrauk U DOA*” – CIG [CIG NUMBER].
2. The scope of this Contract is thus to provide *Specialized Technical Assistance to the Mrauk U DOA* (hereinafter referred to as the “**Service**”) aimed at strengthening the capacities of the Myanmar Department of Archaeology in duly protecting, managing and valorising the Mrauk U sites.
3. The following Annexes are an integral part of the present Contract:
  - Annex A - Terms of Reference (TOR);
  - Annex B - Timeline chart proposed by the Service Provider;
  - Annex C - Technical Offer
  - Annex D - Financial Offer (including Budget breakdown);
  - Annex E - AICS logo.
4. The Terms of Reference (Annex A) cannot be amended without prior written approval of the Contracting Authority.

5. In connection with the performance of its Services under this Contract, the Service Provider shall neither seek nor accept instructions from any authority external to the Contracting Authority.

## **ART. 2 – ACTIVITIES CARRIED OUT BY THE PROVIDER**

1. The activities carried out by the Service Provider are described in Annex A and Annex C and D, where related quantities and costs are also specified.
2. The days and hours of work of the Service Provider's personnel shall respect the Myanmar laws, regulations and customs and the requirements of the services.
3. While executing the Contract, the Service Provider will interact with the Contracting Authority providing regular updates, when needed, to the Director of the Italian Agency for Development Cooperation - Yangon Office and to the experts delegated by the Director for supervising the execution of the Contract.
4. Based on the tasks listed in the above-mentioned Annex A and namely on the indications given in Ch. 4.1.1 and 4.2, the Service Provider is expected to provide through its personnel the following actions:
  - a. Collaborating with the DOA professional, experts and UNESCO Consultants in the identification of the most relevant attributes of Mrauk U site for the elaboration of the World Heritage nomination dossier, in the elaboration of suitable conservation and maintenance guidelines, indicating category of actions (routine/project/emergency) as well as requirements of institutional, legal and resources frameworks;
  - b. Providing suitable Technical Assistance to increase the DOA Capacities to protect, manage and valorise the Cultural Heritage of Mrauk U and to ensure that a suitable methodology and action plans to properly address the existing or potential conservation issues are handed over to the DOA professionals for the effective management and valorisation of the cultural sites, cultural landscapes and movable cultural assets exhibited in the Museum (or preserved in the DOA storage);
  - c. Elaborating, in collaboration with the DOA, the scientific investigations and diagnosis useful for the local professionals to identify effective conservation measures for the safeguard of Mrauk U sites and cultural landscape, carrying out training courses, pilot projects, on-the-job experiences useful to support the DOA in defining and compiling the management plan and/or any other part of the Mrauk U nomination dossier for the WH;
  - d. Providing guidance for the elaboration of valorisation plan for the Museum and the cultural sites and technical specification for the setting up of a first-aid station/conservation laboratory in compliance to the Mrauk U needs and available space/resources;
  - e. Identifying together with the DOA professionals, the future possibilities for scientific research and/or academic collaboration that may contribute at improving the local and external knowledge about the site conservation, local

traditions and skills, community involvement, art history/iconography/iconology and/or any other relevant aspects.

### **ART. 3 – CONTRACT AMOUNT**

1. The Service Provider undertakes to execute and to complete the services and actions indicated in Annex A, according to the timing and modalities agreed settled in Annex B- timeline chart and in full compliance with the provisions of the present Contract at the price of [Contract amount in figures] [(Contract amount in words)], as indicated in the Annex D – Financial Offer.
2. The Contract amount is fixed and includes all the activities, consultancies, personnel, vehicles, flights, equipment and supplies, travelling, fees and/or any other charge, even if not specifically mentioned in this Contract, which is necessary to complete all the actions foreseen for the Contract, both in terms of quality and quantity.
3. The Service Provider, by submitting his/her Offer, declares that all the general, particular and local circumstances and that any factor that could affect or influence both the material cost for the Service provision, for the required results and deliverables as well as the cost for the human resources, consultancies, expertise and transport charges, or any duties connected to the Service execution have been duly considered.
4. Furthermore, he/she declares to have considered, in defining his/her offer, the possible increases due to the rise of prices during the execution of the Services, and to renounce any claim in this regard.
5. The Service Provider is solely responsible for the payment of service, tax, insurance and all other taxes and government dues as may be applicable. In no case the Contracting Authority will be responsible to pay taxes for this Contract.

### **ART. 4 – PERFORMANCE SECURITY**

1. The signature of this Contract is dependent on the delivery by the Service Provider to the Contracting Authority of a Performance Security, according to the Art. 103 of the Italian Legislative Decree n. 50/2016 and following amendments, or of a certified Bank check in Euro headed to the Italian Agency for Development Cooperation AICS – Yangon Office, for an amount equal at least to 10% (ten per cent) of the Contract value (amount of the performance security in figures and words).

### **ART. 5 - TERMS OF PAYMENT**

1. Payments will be made by the Contracting Authority through bank transfer to the account number specified by the Service Provider in Annex D and will be executed by tranches as detailed below.
2. The payments will be therefore carried out with instalments according to the following rationale:

- 1<sup>st</sup> instalment, [amount to be paid] equal to 10% of the Contract value will be paid upon approval from the Contracting Authority of an **Inception Report** giving a clear and detailed description of the qualified technical assistance they will provide to the DOA with reference to the present Service Contract, along with the updated detailed work program and the method statement for the conservation reports and the pilot projects interventions submitted by the Service Provider within 15 days from the Contract entry into force together with a relevant Invoice;
  - 2<sup>nd</sup> instalment, [amount to be paid] 25% of the Contract value will be paid upon approval from the Contracting Authority in agreement with the DOA of the **First Interim Report** and preliminary conservation documents submitted by the Service Provider within 3 months from the Contract entry into force together with a relevant Invoice;
  - 3<sup>rd</sup> instalment, [amount to be paid] 25% of the Contract Value will be paid upon approval from the Contracting Authority in agreement with the DOA of the **Second Interim Report** together with the training courses reports submitted by the Service Provider within 6 months from the Contract entry into force together with a relevant Invoice;
  - 4<sup>th</sup> instalment, [amount to be paid] 30% of the Contract Value will be paid upon approval from the Contracting Authority of the **Third Interim Report** submitted by the Service Provider within 10 months from the Contract entry into force together with a relevant Invoice;
  - Last instalment, [amount to be paid] 10% of the Contract Value will be paid at the end (within 15 months from the Contract entry into force) upon presentation and approval by the Contracting Authority and by the DOA of an overall **Final Report** clearly detailing the Technical Assistance carried out during the Contract together with the relevant Invoice.
3. These amounts will be reduced in the case that the Contracting Authority decides, incontestably, to suspend the Service.
  4. In that case, the Contracting Authority shall promptly notify the Service Provider (with at least 15 days 'notice), the latter being entitled to receive only the amount related to the expenses incurred up to the time of suspension.
  5. All the payments concerning the execution of the present Contract will be made upon presentation of an invoice for each instalment.
  6. Each invoice shall be duly dated, stamped and signed by the Service Provider.
  7. The above-mentioned instalments will be disbursed, upon reception and approval of the reports and deliverables by the Contracting Authority as per Annex A.
  8. All the invoices shall be expressed in EURO currency only.
  9. The Service Provider shall commit itself to open a EURO account, in case he/she does not have such an account at the moment of the Bid.
  10. All the above-mentioned documents shall be addressed to the Italian Agency for Development Cooperation (AICS) - Yangon Office – Project AID AID 11292.02.04-**[CIG NUMBER]**.

## **ART. 6 - CONTRACT ENTRY INTO FORCE**

1. The present Contract will entry into force following its signature by both Parties. Following the countersignature of the contract a Notice to Commence will be sent by the Contracting Authority to the Service Provider.

## **ART. 7 - DURATION OF THE CONTRACT AND PENALTIES**

1. The duration of the Contract is 15 months, starting from the official Notice to Commence that will be sent by the Contracting Authority to the Provider following the countersignature of the Contract.
2. The duration of the Contract may be extended following a written and duly justified request presented by the Service Provider to the Contracting Authority.
3. The Contracting Authority will evaluate the request and will inform the Service Provider whether an extension period could be granted or not.
4. Without prejudice to the application of other remedies laid down in the Contract, the Contracting Authority will retain the right to apply the following penalties in the observance of the fulfillment of the activities foreseen in the present Contract and whenever they will be only and exclusively ascribed to the responsibility of the Service Provider.
5. If the Service Provider fails to carry out the activities indicated in the present Contract and its Annexes within the lead time stipulated, the Contracting Authority shall, without prejudice to its other remedies under the Contract, deduct from the Contract price, as liquidated damages, a sum equivalent to 0.2% of Contract value for each day of delay until actual delivery, up to a maximum deduction of 10% of the Contract value.

## **ART. 8 – LIABILITY**

1. The Contracting Authority accepts no liability for damage to persons or property related to the performance by the Service Provider of the activities specified in this Contract.
2. The Service Provider shall execute the Contract with due care, efficiency and diligence in accordance with the best professional practice and shall comply with any administrative orders given by the Contracting Authority
3. The Service Provider shall supply, without delay, any information and documents to the Contracting Authority upon request, regarding the conditions in which the Contract is being executed.
4. The Service Provider shall respect and abide by all laws and regulations in force in the Beneficiary Country and shall ensure that its personnel, their dependents, and its local employees also respect and abide by all such laws and regulations.
5. The Service Provider shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Service Provider, its employees and their dependents of such laws and regulations.

6. To perform these tasks, the Service Provider shall comply with all the legislation in force in the Country in the field of medical, insurance and safety measures.
7. The employment relationship between the Service Provider and its staff employed by it to carry out the activities and any offspring from this litigation does not involve in any way the Contracting Authority.
8. The Service Provider shall at all time act impartially and as a faithful adviser in accordance with the code of conduct of its profession as well as with appropriate discretion. It shall refrain from making any public statements concerning the Project or the Services without the prior approval of the Contracting Authority. It shall not commit the Contracting Authority in any way whatsoever without its prior consent and shall make this obligation clear to the third parties.
9. The Service Provider and its staff shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the Country.
10. The Service Provider shall refrain from any action that may adversely affect the DOA of the MORAC and shall fulfill its commitments with the fullest regard to the interests of the Contracting Authority.
11. The payments to the Service Provider under the Contract shall constitute the only income or benefit it may derive in connection with the Contract. The Service Provider and its staff must not exercise any activity or receive any advantage inconsistent with their obligations under the Contract.
12. The Service Provider commits itself to provide suitable qualified personnel and adequate means necessary for the implementation and supervision of the activities agreed upon in this Contract. The Service Provider's personnel shall not be considered in any respect as being the employees or agents of the Contracting Authority.
13. The Service Provider is fully responsible for acts and contractual terms of its personnel according to the Myanmar law in force, including the relative fiscal dispositions. In no circumstances the Contracting Authority will be responsible for the local personnel involved in the implementation of activities.

#### **ART. 9 – OBLIGATIONS ON FINANCIAL FLOW TRACEABILITY**

1. The Contractor shall assume the obligations on financial flow traceability in accordance with Art. 3 of the Italian Law 13 august 2010, n. 136.
2. In case of subcontract/sub-provision of the Service, it has to be included, on pain of nullity, a clause by which each subcontractor shall assume the obligations of the financial flow traceability in acc. with the Italian Law 136/2010

#### **ART. 10 – SUBCONTRACTING AND TRANSFERABILITY**

1. The Service Provider is not allowed to subcontract the provision of these Service and/or to transfer the Contract to a third Party.

## **ART. 11 – INTELLECTUAL AND INDUSTRIAL PROPERTIES RIGHTS**

1. All reports, data and supporting records or materials acquired, compiled or prepared by the Service Provider in the performance of the Contract shall be confidential and shall be the absolute property of the Contracting Authority.
2. The Service Provider shall, upon completion of the Contract, deliver all such documents and data to the Contracting Authority.
3. The Service Provider may retain copies of such documents and data but shall not use them for purposes unrelated to this Contract without the prior written consent of the Contracting Authority.
4. The Service Provider shall not publish articles relating to the Services or refer to them when carrying out any service for others, or divulge information obtained from the Contracting Authority, without its prior written consent.
5. Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be the absolute property of the Contracting Authority, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where intellectual or industrial property rights already exist.

## **ART. 12 – VISIBILITY**

1. The Service Provider is committed to ensuring that all materials produced and distributed, will bear the logo of AICS, as per Annex F, along with their own.
2. The Provider is committed to working with the Contracting Authority, through regular contacts, to ensure full visibility of AICS and the Government of Italy with the Central and Local Institutions, as well as with International Agencies and the Donors community.

## **ART. 13 – SUPERVISION**

1. The Contracting Authority may carry out at any time and if deemed necessary, technical and/or administrative verifications of the activities entrusted to the Service Provider.
2. Any employee of the Service Provider involved in the Project under this Contract, who is, in the Contracting Authority's reasonable opinion, incompetent or in any other way unacceptable, will be promptly replaced, by acceptable employee at no cost for the Contracting Authority.
3. The Contract may be suspended in order to verify whether presumed substantial errors or irregularities or fraud occurred during the award procedure or the performance of the Contract. If these are not confirmed, performance of the Contract shall resume as soon as possible.
4. During the period of suspension, the Service Provider shall take such protective measures as may be necessary.



#### **ART. 14 - TERMINATION BY THE CONTRACTING AUTHORITY**

1. The Contracting Authority may, at any time, terminate this Contract should the mandate or the funding of the Project be curtailed or terminated, in case of interruption for reason of Force Majeure (following Art. 16), upon the payment to the Service Provider of the executed activities satisfactorily performed before the notification of such termination, plus the 10% of the value of the non-executed activities shall be reimbursed by the Contracting Authority, as per Art. 109 of D.Lgs. 50/2016.
2. The Contracting Authority may, after giving seven days' notice to the Service Provider, terminate the Contract in any of the following cases where:
  - a) The Service Provider is in serious breach of Contract for failure to perform its contractual obligations;
  - b) If the Contracting Authority determines that the Service Provider or any of its employee or dependent has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Contracting Authority may terminate the Contract, after giving fourteen (14) days' notice to the Provider;
  - c) The Service Provider fails to comply within a reasonable time with the notice given by the Contracting Authority's representative requiring it to make good the neglect or failure to perform its obligations under the Contract which seriously affects the proper and timely performance of the Service;
  - d) The Service Provider refuses or neglects to carry out any administrative orders given by the Contracting Authority within the Contract obligations as described in Annex I and II;
  - e) The Service Provider assigns the Contract or sub-contracts without written authorization from the Contracting Authority;
  - f) Any organizational modification occurs involving a change in the legal personality, nature or control of the Service Provider, unless such modification is recorded in an Addendum to the Contract;
  - g) Any legal disability hindering performance of the Contract occurs;
  - h) The Service Provider fails to perform its obligation in accordance with Article 2;
3. Termination shall be without prejudice to any other rights or powers under the Contract of the Contracting Authority and the Service Provider. Upon termination of the Contract or when it has received notice thereof, the Service Provider shall take immediate steps to bring the Service to a close in a prompt and orderly manner and to reduce expenditure to a minimum.
4. The Contracting Authority shall, as soon as possible after termination, certify the value of the executed Service and the sums due to the Service as at the date of termination.

#### **ART. 15 – TERMINATION BY THE PROVIDER**

1. The Service Provider may, after giving 14 days of notice to the Contracting Authority, terminate the Contract if the Contracting Authority:
  - a) Consistently fails to meet its obligations after repeated reminders; or
  - b) Suspends the progress of the Service or any part thereof for more than 90 days for reasons not specified in the Contract, or not attributable to the Provider breach or default.

#### **ART. 16 - FORCE MAJEURE**

1. Neither party shall be considered to be in default or in breach of its obligations under the Contract if the performance of such obligations is prevented by any circumstances of force majeure which arise after the date when the Contract becomes effective.
2. The term Force Majeure, as used herein, covers any unforeseeable events, not within the control of either Party and which by the exercise of due diligence neither party is able to overcome such as acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions.
3. A decision of the Italian Government/ the Italian Agency for Development Cooperation to suspend the Cooperation activities with the Beneficiary Country is considered to be a case of force majeure when it implies suspension of funding the Contract.
4. If either Party considers that any circumstances of force majeure have occurred which may affect the performance of its obligations, it shall promptly notify the other Party giving details of the nature, the probable duration and the likely effect of the circumstances.

#### **ART. 17 – CONFLICT OF INTEREST**

1. The Service Provider shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the Contract.
2. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest.
3. Any conflict of interests which may arise during performance of the Contract shall be notified to the Contracting Authority without delay.
4. In the event of such conflict, the Service Provider shall immediately take all necessary steps to resolve it.
5. The Contracting Authority reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Service Provider shall ensure that its staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligations under the

Contract, the Service Provider shall replace, immediately and without compensation from the Contracting Authority, any member of its staff exposed to such a situation.

#### **ART. 18 – DATA PROTECTION**

1. The Service Provider undertakes to adopt technical and organizational security measures to address the risks inherent in processing and in the nature of the personal data concerned in order to:
  - a) prevent any unauthorized person from having access to computer systems processing personal data, and especially:
    - i. unauthorized reading, copying, alteration or removal of storage media;
    - ii. unauthorized data input, unauthorized disclosure, alteration or erasure of stored personal data;
    - iii. unauthorized persons from using data- processing systems by means of data transmission facilities;
    - iv. ensure that authorized users of a data- processing system can access only the personal data to which their access right refers.

#### **ART. 19 - SETTLEMENT OF DISPUTES**

1. The Parties shall make every effort to settle amicably any dispute, even technical, that may arise regarding the interpretation or execution of this Contract, during the progress of the activities or after its termination.
2. Once a dispute has arisen, a Party shall notify the other Party of the dispute, stating its position on the dispute and any solution which it envisages, and requesting an amicable settlement. The other Party shall respond to this request for amicable settlement within 30 days, stating its position on the dispute.

In the absence of an amicable settlement, a Party may notify the other Party requesting a settlement through conciliation by a third person.
3. If the amicable settlement procedure and, if so requested, the conciliation procedure fails, each party may refer the dispute to either the decision of the Italian jurisdiction or arbitration.
4. This doesn't mean, however, that the Contracting Authority surrenders jurisdictional immunities and entitlements enjoyed by Diplomatic and Consular missions.

#### **ART. 20 – OFFICIAL COMMUNICATIONS**

1. Any official communication from the Service Provider concerning this Contract shall be written in English and shall be addressed to:

**Italian Agency for Development Cooperation – Yangon Office,  
41-7B, Inya Myaing, Shwe Taung Gone, Bahan Township, Yangon, Myanmar.**

## **ART. 21 - FINAL PROVISIONS**

1. The Parties of this Contract declare to have read this Contract, including its Annexes, and that they agree with the same in all its parts and accept it fully.
2. The provisions of this Contract may be amended only by a formal Act signed by both Parties.

In witness whereof, the Parties hereto have signed the Contract.

Yangon, [dd/mm/yyyy]

FOR

The Director

FOR

The Italian Agency for Development  
Cooperation - Yangon Office

The Director  
Eng. Maurizio Di Calisto