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# STANDARD CONTRACT DOCUMENT

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## **Mahindra** WORLD CITY

### **Mahindra World City Developers Ltd. (MWCDL)**

Tender for Road Repair & Other Allied Works in Mahindra World City,  
Chengalpet-603004, Tamil Nadu

TENDER NO: MWCDL / Fy25 / Road Repair works / 01

<b>Tender No.</b>	MWCDL / Fy25 / Road Repair Works / 01
<b>Sale of Tender document</b>	Available online through website: <a href="https://www.mahindralifespaces.com/mwc-tender-category/tender-chennai/">https://www.mahindralifespaces.com/mwc-tender-category/tender-chennai/</a>
<b>Document Downloading Start Date</b>	30 <sup>th</sup> Jan 2025
<b>Document Downloading End Date</b>	08 <sup>th</sup> Feb 2025, 18:00 Hours
<b>Bid Submission Start Date</b>	07 <sup>th</sup> Feb 2025, 10:00 Hours
<b>Bid Submission Last Date (Hard Copy)</b>	08 <sup>th</sup> Feb 2025, 18:00 Hours
<b>Date of Pre-Bid Meeting</b>	03 <sup>rd</sup> Feb 2025 (11.30 AM – 01.00 PM)

**Mahindra World City Developers Limited,**  
Administrative Block, Central Avenue,  
Mahindra World City, Chengalpet-603004,  
Kanchipuram (district), Tamil Nadu

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# VOLUME I - A

**Notice Inviting Tender****MWCDL / Fy25 / Road Repair Works / 01**

To,

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Kind Attn: \_\_\_\_\_

**Subject: Notice Inviting Tender****Project: Road Repair and other allied works in Mahindra World City, Chengalpet-603004, Tamil Nadu**

1. Sealed Item Rate Tenders are invited by **MAHINDRA WORLD CITY DEVELOPERS LIMITED**, Administrative block, Central Avenue, Mahindra world city, Chengalpet-603004, Tamil Nadu from contractors, well established in the field and experienced in the execution of similar work of comparable magnitude for the following work.

Name and nature of work	:	Road repair and other allied works in Mahindra World City, Chengalpet-603004, Tamil Nadu
Location	:	Mahindra World City Developers Limited, Administrative block, Central Avenue, Mahindra world city, Chengalpet-603004, Tamil Nadu. location map attached in Annexure M.
Period of completion	:	45 calendar days (including monsoon) from the date of issue of Letter of Intent/ Letter of Award whichever is earlier.
Scope of work	:	Road repair and other allied works in Mahindra World City & allied works as mentioned in the enclosed detailed drawing, specifications and BOQ.
Earnest money deposit (EMD)	:	Rs. 01.00 Lakh (Rupees One lakhs only) either in the form of D.D. or bankers' cheque drawn on any nationalized bank / scheduled bank or by a bank guarantee from a nationalized bank / scheduled bank, as per the list of approved banks as enclosed in <b>Annexure - A</b> in favour of the Mahindra World City Developers Limited payable/issued at Chengalpet and shall be valid till 90 days from the date of submission vide clause 5.4 of instruction to tenderers.

2. The tender documents can be downloaded from our official website with link address <https://www.mahindralifespaces.com/mwc-tender-category/tender-chennai/>
3. The pre bid meeting will be held on 03<sup>rd</sup>-Feb-2025 at the regional office as indicated in Sl. No. 6 of this notice.
4. Contact Person: For any clarification and for tender documents, the tenderers may contact
  - Mr. Senthil Kumar, Manager Contracts; [Muthukrishnan.senthil@mahindra.com](mailto:Muthukrishnan.senthil@mahindra.com)  
(Mobile No 91 72999 96098)
  - Mr. Baskaran, DGM – O&M; [baskaran.k@mahindra.com](mailto:baskaran.k@mahindra.com)
5. Tenderers are requested to visit the site at their own risk and cost which is mandatory and to be undertaken before the scheduled pre bid meeting. In case the tenderers need any assistance in this regard, they may contact MWCDL officials. Submission of proposal, without undertaking the site visit the tender will be liable to reject.
6. Sealed tenders shall be received up to **5.00 pm on 03<sup>rd</sup> Feb 2025** at the regional office given below:

To,  
**Mr. Rajesh – O&M Head – MWC Chennai.**  
**M/s MAHINDRA WORLD CITY DEVELOPERS LIMITED,**  
**Administrative Block, Central Avenue,**  
**Mahindra World City, Chengalpet-603004,**  
**Tamil Nadu**

The sealed cover shall be super scribed

**“TENDER FOR ROAD REPAIR AND OTHER ALLIED WORKS IN MAHINDRA  
WORLD CITY, CHENGALPET, TAMILNADU - 603004”**

7. No consideration whatsoever shall be given for late submission of the Tender.
8. **Tender received without Earnest Money Deposit (EMD) shall be rejected.**
9. **The average annual turnover of the bidder should not be less than Rs 3.00 Crore in the last five financial years.**
10. Developer shall not be responsible for any delay in receipt / submission of tender documents dispatched by post.

The tenderer shall submit the tender after carefully examining the general and special conditions of contract, appendices, drawings, technical specifications, bill of quantities etc. and inspection of site. the tenderer is expected to inspect the site of the proposed

- work and acquaint itself with the site conditions, approaches, availability of raw materials, geological and weather conditions etc. before quoting its rates. submission of the tender shall be deemed to be in due compliance with this clause. the developer reserves the right to split the tender in two or more parts as it may deem fit and award the same to different entities.
11. At any time prior to the award of contract, developer may, for any reason, whether on their own initiative or in response to a clarification requested by a tender or amend the tender documents by an Addendum, Corrigendum or issue Clarification memo.
  12. For clarification on queries of tenderer these should be sent through email to the Developer's representative as stated in Item No. 4 above prior to the date as stated in Item No. 3 above.
  13. This notice inviting tender, the conditions of tender, any clarifications issued, any corrigendum/amendment to tender conditions issued subsequently and the duly completed form of tender will, inter alia, form part of the agreement to be executed by the successful tenderer with the developer.
  14. **The bidder should have expertise in executing at least one similar work of 'Execution of New Road formation / Road repair works with high quality standards in the last three (3) financial years. The value of such work executed shall not be less than Rs. 3.00 crores in not more than 2 (two) orders.**
  15. The acceptance of a tender shall rest at the discretion of developer or its authorized representative who does not bind itself to accept the lowest tender and reserves to itself the right to reject any or all the tenders received without assigning any reason(s) whatsoever. Non-acceptance of any tender shall not make developer liable for compensation or damages.
  16. For more details please refer the tender documents.

Please note that there is an emphasis on completion of all works by the scheduled date of completion with strict adherence to quality and safety norms.

For **[M/s MAHINDRA WORLD CITY DEVELOPERS LIMITED]**

Authorized Signatory.

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**Instructions to tenderers****1. General**

- 1.1. These instructions to tenderers (“these Instructions”) shall not form part of the tenderer’s offer, nor part of the defined words “Tender” or “Contract”. these instructions prescribe the procedures to be followed until the developer either enters into a contract with the tenderer or advises him that the developer does not intend to do so.
- 1.2. Words and expression defined in sub-clause 1.1 of the conditions of contract shall have the same meanings where used in these Instructions.
- 1.3. The tenderer shall bear all costs incurred in the preparation and submission of the Tender, including visits to the Site and other actions mentioned or implied in these instructions. the developer shall be at liberty to request such additional information from any or all of the tenderers after the tenders have been submitted.
- 1.4. The developer will not be responsible or liable for such costs, regardless of the conduct or outcome of the tendering process. the developer reserves the right to accept or reject any tender, or to annul the tendering and reject all tenders, without incurring liability to any tenderer and without being obliged to inform any tenderer of the reasons for the developer’s action. the developer shall also not be obliged to accept the lowest tender.
- 1.5. The tenderers are to treat this Tender and all Tender documents and any information provided by the Developer as strictly confidential and not communicate their prices to a third party, including their personnel except on a “need to know” basis or reveal anything about it to the public or the press. For the purpose of negotiation, the Developer shall be at liberty to disclose the details of competing Tenders to any of the tenderers.
- 1.6. The pricing of the Tender including all rates and prices therein shall be in Indian Rupees (INR) and all payments to be made under the Contract shall be in Indian Rupees.
- 1.7. E-mail, Fax, Telex or Telegraphic tenders shall not be entertained.
- 1.8. The tender shall be submitted in English. all accompanying literature and correspondence shall be in English
- 1.9. The bill of quantities in the excel format will be issued upon request from the bidders. The bidder shall request this facility on or before the pre bid meeting.

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**2. Issuance of tender documents**

2.1 Tenderers can download the tender documents from our official website with link address <https://www.mahindralifespaces.com/mwc-tender-category/tender-chennai/> at free of cost. The tender documents comprising of:

**2.1.1. Volume I - A**

- Notice inviting tender
- Instructions to Tenderers
- Letter of tender
- General Conditions of Contract
- Annexure to general conditions of contract
- Appendix to tender
- Annexure – A – List of approved Banks
- Annexure – M – Location map

**2.1.2. Volume I - B**

- Special Conditions of Contract

**2.1.3. Volume II - A**

- Technical Specifications

**2.1.4. Volume – II – B**

- Tender drawings

**2.1.5. Volume – III**

- Bill of Quantities

**2.1.6. Addenda / Corrigenda / Clarifications as and when if issued****3. The tender documents**

3.1. The tenderer shall be responsive to the complete set of Tender documents and any addenda to the Tender documents issued to the tenderers. The tenderer shall scrutinize each document immediately upon downloaded from website and shall promptly give notice in writing, to the Developer, of any pages which appear to be missing.

3.2. The tenderer must carefully examine all Tender documents. Failure to comply with these Instructions or with any other tendering requirements will be at the tenderer's risk.

3.3. Questions regarding the meaning of any of the tender documents and discrepancies shall be clarified during the pre bid meeting to be held on 03<sup>rd</sup> Feb 2025 at 11.00 AM at the regional office as indicated in Sl. No. 6 of this notice. All clarifications, interpretations, meanings and specific directions if any shall be communicated through emails to all the tenderers by MWCDL before **5.30 PM** on **08<sup>th</sup> Feb 2025** and the same shall be uploaded in our website. The clarification provided to the queries by MWCDL shall be returned duly signed and seal affixed along with tender submission. The notice shall be written in the language for communication as stated in Clause 1.4 of General Conditions of Contract.

3.4. Modifications in any of the above documents will be made by addenda/corrigenda, copies of which will be sent in duplicate to each tenderer before the due date of the tender. One copy shall be signed, sealed and packed along with tender documents. Tender documents to be submitted as detailed hereafter.

The tenderer shall not make any additions/deletions to or amend the text of the documents except in so far as may be necessary to comply with any addenda / corrigenda issued. The tenderers shall use only tender documents as uploaded in our website for submitting his quote in proforma and shall comply with various conditions of contract.

3.5. No claim for costs, charges, expenses incurred by the tenderer in connection with preparation of tender submission and for subsequent clarifications of their tender shall be accepted.

#### **4. Site visit**

Tenderers are advised to inspect and examine the site and its surroundings and satisfy themselves before submitting their tenders at their own risk & Cost which is mandatory and to be undertaken before the scheduled pre bid meeting and in general shall themselves obtain all necessary information as to direct and indirect expenses, risks, contingencies and other circumstances which may influence or affect their tender. In case the tenderers need any assistance in this regard, they may contact MWCDL officials. Submission of proposal, without undertaking the site visit the tender will be liable to reject

The Tenderer shall be deemed to have full knowledge of documents and site and no extra charges consequent on any misunderstanding or otherwise shall be allowed.

#### **5. Preparation of tender**

5.1. The tender and all communications between the tenderer and the developer or the project manager shall be typed or written in indelible ink in the language for communication as stated in clause 1.4 of general conditions of contract.

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- 5.2. The Tender documents uploaded in our website, including any amendments instructed in an Addendum to Tender documents, shall be used without further amendment by the tenderer.
  - 5.3. Any unauthorised alteration or amendment made to the tender documents shall be deemed to have no effect (unless authorised in writing by the project manager / developer or quantity surveyor) and the original text shall be adhered to. for the avoidance of doubt, any alteration or amendment made to the tender documents and included in the acceptance of the tender shall be deemed not to be part thereof nor to be taken into consideration in the interpretation or construction thereof (unless the alteration or amendment has been authorised in writing and/or expressly stated in the letter of acceptance).
  - 5.4. Tender must be accompanied with tender security/earnest money deposit (EMD) either in the form of D.D. or banker's cheque drawn on any nationalized bank or by a bank guarantee from a nationalized bank as per the list of approved banks as enclosed as Annexure - A in favour of the Mahindra World City Developers Limited payable/issued at Chennai and shall be interest free. The tenderer may submit at his cost, with his tender, in the form annexed to these instructions as Appendix B, of an amount mentioned in the tender notice. The tender security shall be issued by a nationalized bank approved by Reserve Bank of India and approved by the developer as per the list of approved banks as enclosed as Annexure-A and shall be valid for not less than 90 days after the date on which the tender is being submitted.

In case the developer requests the tenderer to extend the validity of bid security for a further period, the tenderer shall adhere to that instruction. the developer will return the tender security upon the occurrence of the first of the following events:

- 5.4.1. The developer receives the performance security from the successful tenderer.
- 5.4.2. The Developer abandons his intention to appoint a contractor, or
- 5.4.3. The validity of all tender securities for the contract expires.
- 5.5. The tenderer shall price the whole of the Works, and submit a Tender, in accordance with the Tender documents. A tender which excludes part of the works may be rejected as unresponsive.
- 5.6. Each of the Schedules shall be completed as appropriate.
- 5.7. The tenderer shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his tender for the works and about the rates and prices quoted by him and except in so far as it is otherwise provided in the contract, cover all his obligations under the contract and all matters and things necessary for proper execution and maintenance of the works.

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5.8. Tenders not accompanied by earnest money deposit shall be rejected.

**6. Submission of Tender**

The tenderer shall submit the tender comprising: -

6.1. Envelope No.1 Should be marked as EMD (Envelope –1) and should contain the following:

6.1.1. Earnest Money for the amount and in the manner specified

6.2. Envelope No.2 Should be marked as Technical Bid (Envelope –2) and should contain the following:

6.2.1. Letter from tenderer, accepting all terms, conditions and technical specifications of tender.

6.2.2. Tender (NIT, General & Special Conditions of Contract, technical specifications, Tender drawings in A3 size, Prebid clarifications, addendum if any, etc.) duly signed & stamped.

6.2.3. Photocopy of PAN card and income-tax clearance certificates.

6.2.4. Goods and Service Tax (GST) registration certificate & brief information regarding the income-tax circle, ward & the district in which he/the company is assessed for income tax, the reference number of assessment and the assessment year and also details of any attachments, prohibiting orders, proceedings in connection therewith.

6.2.5. A declaration disclosing all similar kind of work/s for which he has already entered into contract and completed in the last Ten (10) years period, the value of work that remains to be executed in each such contract, and details of any dispute(s) pending in respect of any such contract whether in a court or arbitration or any other forum or under discussion / negotiation with the other party to such contracts. the tenderer has to furnish the work completion certificate issued by client about quality of works, timely completion etc.

The tenderer has to furnish the list of Jobs in hand, along with their magnitude in quantity and in rupees and also their time schedules planned / achieved.

6.2.6. Certified copies of registration certificate (issued by the registrar of companies in case of company and issued by registrar of firms in case of a partnership firm indicating names etc., of all registered partners), partnership deed and power of attorney or memorandum and articles of company in case of limited / private limited companies.

6.2.7. ESI and PF registration with authorities along with supporting documents.

6.2.8. Details of the arrangements and methods which the tenderer proposes to adopt for the execution of the works, in sufficient detail to demonstrate their adequacy to achieve the requirements of the contract including completion within the time for completion;

6.2.9. Detailed work procedures and the key personnel involved by which quality and safety is to be assured for the work performed during construction and the documentation against which such controls are to be undertaken;

6.2.10. Safety, health and environment procedures to be implemented during execution of works.

6.2.11. Authority Letter/ Power of Attorney of authorised signatory

6.2.12. Site organisational chart with names of project in-charge, site engineer, foreman and supervisor along with their qualifications and work experience. contractor to provide details of licensed engineers and supervisors to be employed in the project from statutory board especially for special works.

- 6.2.13. Detailed construction programme based on the milestone chart provided in tender and incorporating the activities of other service/s contractors, keeping in view the provision under various clauses of contracts.
- 6.2.14. Cash flow chart.
- 6.2.15. Detailed list of Plant & Machinery along with shuttering material proposed to be deployed at Project to ensure the timely completion of all the activities as per Appendix M.
- 6.2.16. List of Sub Contractors proposed to be employed at the Project.
- 6.2.17. Solvency Certificate for 120% of the bidder's bid value issued by Tenderer's Banker or by Chartered Accountants of Tenderer.
- 6.2.18. Annual turnover for the last five years shall be provided. A chartered accountant certified copy of balance sheet and profit and loss a/c statement shall be provided for verifying the annual turnover.
- 6.2.19. Average annual turnover of the tenderer should not be less than the amount specified in the tender notice in the last five financial years.
- 6.3. Envelope No.3 Should be marked as Price Bid (Envelope – 3) and should contain the following:
  - a. Priced bill of quantities duly signed and stamped by the authorised signatory;
- 6.4. All the three envelopes shall be put in a 4<sup>th</sup> envelope and shall be sealed and marked:  
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Private and confidential  
Tender for

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To: -  
Mr. Rajesh – O&M Head – MWC Chennai.  
M/s MAHINDRA WORLD CITY DEVELOPERS LIMITED,  
Administrative Block, Central Avenue,  
Mahindra World City, Chengalpet,  
Tamil Nadu - 603004

Attn: Senthil Kumar  
Mobile No. : 72 9999 6098

A tender which is not accompanied by this information may be rejected as unresponsive. The Tenderers shall treat this tender as strictly confidential and shall neither communicate the contents thereof, their responses including their prices or other terms to a third party nor reveal anything about it to the public or the press/media. Tenderer acknowledges and agrees that all the information disclosed/communicated to the Tenderers or that the Tenderers may have access to during the course of this Tender shall be considered as confidential and proprietary information. The Tenderer may be required by Developer to enter into a non-Disclosure agreement in the form and manner required by Developer.

- 6.5. The Tenderer shall submit the tender at the address given in clause 6 of notice inviting tender. Any tender received delay shall not be accepted. All the envelopes shall be envelope wise packed, marked, sealed, and submitted in original with documents listed in these clauses 6.1, 6.2, 6.3 and 6.4. The developer will not be responsible for any postal delay. It is preferable to put the tender in the tender box provided in the office mentioned in the clause 6 of notice inviting tender in person to avoid any delay.

## **7. Validity of Tender**

The Tender shall remain valid and open for acceptance for the period of 90 (Ninety) days from the Tender submission date. Prior to this expiry date the Developer may by written notice request the tenderer to extend the validity period. The tenderer may refuse the request but shall not modify his Tender other than by extending its validity.

## **8. Stating of rates**

- 8.1 The tender shall be filled in English with handwritten in neat manner and all the figures and words shall be legible.
- 8.2 The rates shall be written both in words and in figures. The tenderer shall also show the amount of each item, the total of each section and the grand total of the whole tender.
- 8.3 Correction, if any, shall be made by crossing out, initialling, dating and rewriting.
- 8.4 In case of conflict between the figures and words in the rates, the latter shall prevail.

8.5 The tenders will be verified for accuracy in the arithmetical calculations. Any tender with arithmetical mistakes will be corrected on the basis of the quantities of work given in the tender form and the unit prices quoted by the tenderer in words.

## **9. Unbalanced unit rates**

9.1 In the case of a tender where the unit prices of any item appear unrealistic; such a tender will be considered as unbalanced. The Developer reserves the right to call for the rate analysis in such items, which are in his opinion, unbalanced, and the tenderer is required to give them in a specified format. In case the tenderer is unable to provide satisfactory explanations, the Developer reserves the right to disqualify such a tender and forfeiting EMD without prejudice to any other right for failure on part of the tenderer.

## **10. Opening of tender**

10.1. The tender shall be opened by the Developer in presence of core committee MWCDL members. No bidders are allowed. The evaluation of tender will be carried out as per the evaluation criteria indicated in the tender documents.

10.2. Initial examination to determine substantial responsiveness:

The developer shall cause an initial examination of the tenders submitted to be carried out in order to determine their substantial responsiveness.

The initial examination shall consider the following factors, namely: -

(a) Whether the tenderer meets the eligibility criteria laid down in the tender documents;

The detailed examination shall consider the following factors, namely

(a) Whether the crucial documents have been duly signed;

(b) Whether the tender is substantially responsive to the technical specifications, commercial conditions set out in the bidding documents

The developer shall reject tenders, which on initial examination are found not to be substantially responsive.

After detailed technical evaluation, all the technically qualified bidders will be informed the date and time of opening the Envelope No.3. This cover (price bids/financial bids) of the technically selected bidders will be opened in presence of the selected bidders.

Determination of the lowest evaluated price. -

- (1) Out of the tenders found to be technically responsive after the technical evaluation, the lowest evaluated price will be arrived.
  - (2) In determining evaluated price, the following factors shall be considered, namely: -
    - (a) The quoted price shall be corrected for arithmetical errors;
    - (b) In cases of discrepancy between the prices quoted in words and in figures, amount mentioned in the words shall be considered;
    - (c) "The evaluation shall include all central duties such as customs duty and central excise duty and sales tax service tax etc., as a part of the price.
    - (d) After evaluation, the tenderers are given ranking based on their total evaluated value in the order of ascending viz L1, L2, L3 and so on.
- 10.3. In order to secure the best possible price, negotiations will be carried out with L1 and L2 and the lowest negotiated tender will be considered.

## **11. Agreement**

- 11.1. The successful tenderer shall be bound to implement the contract on receipt of intimation of acceptance from the Developer and he shall sign an agreement in accordance with as per enclosed draft agreement within 14 days on non-judicial stamp paper of Rs 100/- in duplicate in the format as per **Appendix A**; one copy of duly executed agreement document will be given to the contractor and original is in safe custody of the developer. however, till formal agreement is signed, acceptance by the Developer together with tender form by the tenderer shall constitute a binding contract between them.
- 11.2. The successful tenderer shall bear stamp duty and other expenses pertaining to preparation and execution of contract document/agreement.

## **12. Procedure for rejection**

- 12.1. The developer reserves the right to accept or reject any tender or reject all tenders without giving any reasons for their decision. The whole work may be split between two or more contractors or accepted in part and not entirely, if considered expedient.
- 12.2. Tenders are liable to be rejected in which any of the particulars/ prescribed information is either missing or incomplete in any respect and or if the prescribed conditions are not fulfilled.
- 12.3. Canvassing in connection with tender is strictly prohibited and tender submitted by tenderers who resort to canvassing will be liable to rejection.

12.4. Tenders containing uncalled remarks or any additional conditions are liable to be rejected. Tenderer shall not revise, add, omit, or assume anything other than detailed in tender. The Developer reserves the right to ignore such additions, deletion other than brought out in covering letter packed in Envelope No.1, by the tenderer. Decision of the Developer in this regard shall be final and any non-compliance shall render EMD forfeiture.

### **13. Eligibility criteria**

13.1. The bidder should have expertise in executing at least one similar work of 'Road Formation / Road Repair work with high quality standards in the last three (3) financial years. The value of such work executed shall not be less than Rs. 3.00 crores in not more than 2 (two) orders.

13.2. The average annual turnover of the bidder should not be less than the amount specified in the tender notice in the last five financial years.

13.3. The bidder should provide EMD for a value as notified in the tender notice and the manner specified in the tender document.

#### **Points to be noted while submitting the bid:**

- The tender must be delivered to the address specified above no later than the time, on the tender submission date, stated in the notice inviting tender.
- The tender shall be signed by a person or persons duly authorised to bind for the tenderer. Proof of authorisation, in the form of a written power of attorney, shall be annexed to the letter of tender. All pages of the Annexure to tender and schedules Where entries or amendments have been made shall be initialled by the person(s) signing the Letter of Tender.
- The tenderers shall bear all expenses incurred in the preparation of their response to this tender.
- The Developer is not bound to accept the lowest or any tender and such acceptance shall be at the sole discretion of Developer.
- The tenderer is to submit together with the tender its detailed work procedures and the key personnel involved by which quality is to be assured for the work performed during construction and the documentation against which such controls are to be undertaken.
- The Tenderer's attention is drawn to the condition that all rates quoted shall exclude GST but include transportation costs, duties, levies, labour, cutting and waste on materials and goods etc. The rate of GST shall be given separately for

- 
- each item and totalled up separately. The tenderer shall pass the input credit arising out of GST to the Developer.
- The Tenderers shall submit along with their Tender the details of the equipment which they propose to deploy exclusively for carrying out the works and their proposed method statement to complete all the activities within the specified completion period.
  - Developer reserves the right to make amendment to or modification to or deletion of or addition to any of the tender conditions at its sole discretions without any prior notice to the Tenderer. Developer shall communicate such amendment, modification, deletion or addition in writing.
  - Tenderers are advised to inspect and examine the site and its surroundings and satisfy themselves before submitting their tenders, the accommodation they may require and in general shall themselves obtain all necessary information as to risks, contingencies and other circumstances which may influence or affect their tender.
  - Authority of signing
    - If the tender is submitted by an individual, it shall be signed by him.
    - If the tender is submitted by a proprietary firm, it shall be signed by the proprietor.
    - If the tender is submitted by a partnership firm, it shall be signed by all the partners of the firm or by a partner holding the power of attorney for the firm for signing the tender, in which case, a certified copy of power of attorney shall accompany the tender.
    - If the tender is submitted by a limited company or by a corporation, a duly authorised person or the person holding the power of attorney for signing the tender, in which case a certified copy of the power of attorney shall accompany the tender, shall sign it.
    - If the tender is submitted by a Joint Venture, Consortium formed by a group of firms, the sponsoring firm shall submit complete information pertaining to each firm in the group and state along with the bid as to which one of the firms shall have the responsibility for tendering and for completion of the contract document and furnish evidence admissible in court of law in respect of the authority assigned to such firm on behalf of the group of firms for tendering and for completion of the contract document. The full information and satisfactory evidence pertaining to the participation of each member of the group of firms in the tender shall be furnished along with the tender.

- All witnesses and sureties shall be persons of respectable status and probity and their full name, occupations and addresses shall be stated below their signatures.

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**Letter of tender**

For

The Road repair & other allied works in Mahindra World City, Chengalpet as indicated in the tender notice

To: -

M/s Mahindra World City Developers Limited,  
Administrative Block, Central Avenue,  
Mahindra World City, Chengalpet-603004,  
Kanchipuram (district), Tamil Nadu

Sir/s,

1. I/We, have read, examined and understood the Conditions of Contract, Specification, Drawings, Sections, the other Schedules, the attached Annexure to Tender and other Appendices for the execution of the above-named Works. We offer to execute and complete to the satisfaction of Employer the Works and remedy any defects therein in conformity with this Tender which includes all these documents as follows:

Tender for completion of the whole of the Works within the Time for Completion of **45 (Forty-Five) calendar days** from the Commencement Date and the Developer reserves the right for progressive handover of the works for the sum of Indian Rupees \_\_\_\_\_ only. (INR \_\_\_\_\_) or such other sum as may be determined in accordance with the Conditions of Contract.

2. I/We agree that should any discrepancy occur between the amounts written in words and in figures entered upon the Letter of Tender, the amount written in words will be construed as final.
3. I/We confirm that I/We have visited and examined the site of the proposed work and acquired all the requisite information relating to or likely to affect the tender.
4. I/We undertake if our Tender is accepted to commence the Works on the date or dates specified in the Developer's Letter of Award and if there is no such date or dates then as soon as is reasonably possible after the receipt of an order to that effect from the Project Manager and to complete the whole of the Works in accordance with the above-named documents within the Time for Completion.

5. I/We herewith enclosing the detailed work schedule for completing the entire scope of works within 45 (Forty-Five) calendar days from the date of LOI/LOA whichever is earlier.
6. I/We agree to abide by this Tender for the period of 90 days from the date fixed for receiving the same or extended period if agreed and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
7. I/We acknowledge that the Annexure & Appendices to Tender forms part of this Letter of Tender.
8. If my/our offer is accepted, I/we will, within 10 days from the date of issue of Letter of Intent (LOI) or Letter of Award (LOA) whichever is applicable after receiving the Letter of Award or such other period as may be otherwise specified in the Contract, provide you a Performance security in the form specified in the Contract, for an amount equal to an amount mentioned in **Special Conditions of Contract** valid till issuance of Taking Over Certificate by Developer.
9. I/We agree to derive the optimal Contract Structure to maximise cost benefit jointly with the Developer.
10. I/We agree that should any arithmetical or obvious pricing errors be discovered before acceptance of this offer in the priced Tender documents submitted by us, then these errors be corrected to arrive the final cost of tender.
11. Unless and until a formal agreement is prepared and executed this letter of tender, together with your written acceptance thereof, shall constitute a binding contract between us.
12. I/We understand that you are not bound to accept the lowest or any tender you may receive. We understand that you shall have the right to negotiate with L1 and L2 only. We also understand that for the purpose of negotiation you shall be at liberty to disclose the details of our Tender to any of the other tenderers.

Dated this..... day of .....

Signature: ..... in the capacity

of..... duly authorised to sign tenders for and on behalf

of .....

Address: .....

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.....

Witness: .....

Address: .....

.....

Occupation: .....

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## **General conditions of contract**

### **1. General provisions**

#### **1.1 Definitions**

In the Conditions of Contract (“these Conditions”), which include Special Conditions of Contract and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

##### **1.1.1 The Contract**

1.1.1.1 “Contract” means the Contract Agreement, Letter of Award, Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contracts Agreement or in the Letter of Acceptance.

1.1.1.2 “Contract Agreement” means the contract agreement (if any) referred to in Sub-Clause 1.6 [Contract Agreement].

1.1.1.3 “Letter of Award” means the letter of formal acceptance, signed by the Developer, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of award, the expression “Letter of Award” means the Contract Agreement and the date of issuing or receiving the Letter of Award means the date of signing the Contract Agreement.

“The letter of Acceptance” means the letter of acceptance of the Contractor for the letter of award issued by the Developer with abiding all the conditions of the contract.

1.1.1.4 “Letter of Tender” means the document entitled letter of tender, which was completed by the Contractor and includes the signed offer to the Developer for the Works.

1.1.1.5 “Specification” means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Works.

1.1.1.6 “Drawings” means the drawings of the Works, as included in the Contract, and any additional and modified drawings and/or sketches, details issued by (or on behalf of) the Developer in accordance with the Contract from time to time.

1.1.1.7 “Schedules” means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and / or prices.

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- 1.1.1.8 “Tender” means the Letter of Tender and all other documents which the Contractor submitted with the Letter of Tender, as included in the Contract.
- 1.1.1.9 “Appendix to tender” means the completed pages entitled appendix to tender which are appended to and from part of the Letter of Tender and contract.
- 1.1.1.10 “Bill of quantities” and “Day work Schedule” mean the documents so named (if any) which are comprised in the Schedules.

## **1.1.2 Parties and persons**

- 1.1.2.1 “Party” means the Developer or the Contractor, as the context requires.
- 1.1.2.2 “Developer” means the Entity named as Developer in the Special Conditions of Contract and the legal successors in title to this Entity.
- 1.1.2.3 “Contractor” means the Entity named as contractor in the Letter of Tender accepted by the Developer and the legal successors in title to this Entity.
- 1.1.2.4 “Project Manager” means the person appointed by the Developer (either a third entity or his own representative) to act as the Project Manager for the purposes of the Contract or other person/entity appointed from time to time by the Developer and may be notified to the Contractor under Sub-Clause 3.4 [Replacement of the Project Manager].
- 1.1.2.5 “Contractor’s Representative” means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [Contractor’s Representative], who acts on behalf of the Contractor.
- 1.1.2.6 “Developer’s Personnel” means the Project Manager, the assistants referred to in Sub-Clause 3.2 [Delegation by the Project Manager] and all other staff, labour and other employees of the Developer, and any other personnel notified to the Contractor, by the Developer or the Project Manager, as Developer’s Personnel.
- 1.1.2.7 “Contractor’s Personnel” means the Contractor’s Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the contractor in the execution of the Works.
- 1.1.2.8 “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.
- 1.1.2.9 “Bill of Quantities” shall mean the document titled "Bill of Quantities" providing, inter alia, description of the Works, details of relevant material and their rates for the

purpose of undertaking the Works forming part of the Contract Documents and the Contract.

The quantities mentioned in the Bill of Quantities are provisional and are meant to indicate the scope of the Works and each of the Provisional Sums Packages and to provide a uniform basis for tendering.

The Developer reserves the rights to increase or decrease the quantities or to totally omit any item of the Works and/or each of the Provisional Sums Packages, as the case may be. The Contractor by signing this contract shall have no right to claim any extra costs or claim damage on these grounds.

Any change in description or in quantity or omission of items from the Contract shall be done through a Change Order in accordance with Sub-Clause 13.3 [Variation Procedure] and shall not vitiate the Contract.

- 1.1.2.10 “Change Order” shall mean a written change order, approved and signed by the Developer incorporating the change in Main Works and/or each of the Provisional Works Packages, as the case may be, and providing for any increase or reduction of the Contract Price, change in Contract Period or other relevant changes, in each case resulting from such change in Main Works and/or such Provisional Works Package.
- 1.1.2.11 “Quantity Surveyor” means the person appointed from time to time by the Developer to act as the Quantity Surveyor to assist the Project Manager in all matters of valuation or measurement and evaluation under the terms of the contract.
- 1.1.2.12 “Entity” shall refer either to an individual, sole proprietorship, firm, partnership or a company as the case may be.
- 1.1.2.13 “Project Head” means the person appointed by the Developer to act as the Project Head for the purposes of dealing all technical matters and control over all the Contract. He is the person to take a final decision related to all technical matters in consultation with the Developer and his decision is final in this regard.

### **1.1.3 Dates, Tests, Periods and Completion**

- 1.1.3.1 “Base Date” means the date 3 days prior to the Award of Contract.
- 1.1.3.2 “Commencement Date” means the date notified under Sub-Clause 8.1 [Commencement of Works]
- 1.1.3.3 “Time of Completion” means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion], as stated in the Special Conditions of Contract (with any extension under Sub Clause 8.4 [Extension of Time for Completion]), calculated from the Commencement Date.

- 1.1.3.4 “Tests on Completion” means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [Tests on Completion] before the Works or a Section (as the case may be) are taken over by the Developer.
- 1.1.3.5 “Taking - Over Certificate” means a certificate issued under Clause 10 [Developer’s Taking Over].
- 1.1.3.6 “Tests after Completion” means the tests (if any) which are specified in the Contract and which are carried out in accordance with the provisions of the Conditions of Contract after the Works or a Section (as the case may be) are taken over by the Developer.
- 1.1.3.7 “Defects Liability Period” means the period for notifying defects in the Works or a Section (as the case may be) and remedying the same under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects], as stated in the Special Conditions of Contract (with any extension under Sub-Clause 11.3 [Extension of Defects Liability Period]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [Taking Over of the Works and Sections].
- 1.1.3.8 “Performance Certificate” means the certificate issued under Sub-Clause 11.9 [Performance Certificate].
- 1.1.3.9 “Day” means a calendar day and “Year” means 365 days.

#### **1.1.4 Money and Payments**

- 1.1.4.1 “Accepted Contract Amount” means the amount accepted in the Letter of Award for the execution and completion of the Works and the remedying of any defects.
- 1.1.4.2 “Contract Price” means the price defined in Sub-Clause 14.1 [The Contract Price] and includes adjustments in accordance with the Contract.
- 1.1.4.3 “Cost” means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.
- 1.1.4.4 “Final Payment Certificate” means the payment certificate issued under Sub-Clause 14.12 [Issue of Final Payment Certificate].
- 1.1.4.5 “Final Statement” means the statement defined in Sub-Clause 14.10 [Application for Final Payment Certificate].
- 1.1.4.6 This clause not applicable.

- 1.1.4.7 “Interim Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment], other than the Final Payment Certificate.
- 1.1.4.8 “Local Currency” means the currency of the Country, which is Indian, Rupees (INR).
- 1.1.4.9 “Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price Payment].
- 1.1.4.10 “Provisional Sum” means a sum (if any) which is specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.4 [Provisional Sums], if such an amount is allocated in the Contract.
- 1.1.4.11 “Retention Money” means the accumulated retention moneys which the Developer retains under Sub-Clause 14.3 [Application for Interim Payment Certificates] and pays under Sub-Clause 14.8 [Payment for Retention Money].
- 1.1.4.12 “Application for Payment” means a statement submitted by the Contractor as part of an application, under Clause 14 [Contract Price and Payment], for a payment certificate.

### **1.1.5 Works and Goods**

- 1.1.5.1 “Contractor’s Equipment” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor’s Equipment excludes Temporary Works, Developer’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.
- 1.1.5.2 “Goods” means Contractor’s Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.
- 1.1.5.3 “Materials” means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply – only materials (if any) to be supplied by the Contractor under the Contract.
- 1.1.5.4 “Permanent Works” means the permanent works to be executed by the Contractor under the Contract.
- 1.1.5.5 “Plant” means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works.
- 1.1.5.6 “Section” means a part of the works identified as such and more particularly described in the specifications or schedule of works for which a date of completion is stipulated in tender or subsequent communications.

1.1.5.7 **“Temporary Works”** means all temporary works of every kind (other than Contractor’s Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

1.1.5.8 The “Works” is defined as the scope of supply and/or services or both as the context may demand; reasonably inferred from the various documents such as drawings, Bill of Quantities, specifications, site instructions etc. for which the Developer and the Contractor have agreed to enter into this contract. A brief description of Work to be executed under this contract is provided in Special Conditions of Contract. The brief description provided therein is for the sake of convenience only and for detailed description and/or scope, various Contract documents shall be used. The brief definition elsewhere in the Tender in no way alters the intent defined in the various documents mentioned above. The expression “Works” or “Work” where used in these conditions shall unless there be something in the subject or context repugnant to such grammatical construction, be construed to mean the Work or part of Work contracted to be executed or in virtue of the contract, whether temporary or permanent and whether original, altered, substituted or additional.

#### **1.1.6 Other definitions**

1.1.6.1 “Contractor’s Documents” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

1.1.6.2 “Country” means India in which the Site is located, where the Works are to be executed.

1.1.6.3 “Developer’s Equipment” means the apparatus, machinery and vehicles (if any) made available by the Developer for the use of the Contractor in the execution of the Works, as stated in the Specification; but does not include Plant which has not been taken over by the Developer.

1.1.6.4 “Force Majeure” is defined in Clause 19 [Force Majeure].

1.1.6.5 “Laws” shall mean any act, law, legislation, statute, rule, regulation, ordinance, decree, notification, policy, by-law, administrative guideline, ruling, instruction, directive, code, requirement, consent, license, approval, permit, judgement, court order, treaty promulgated by any Governmental Authority and any interpretation thereof by any Governmental Authority as applicable in the Country.

1.1.6.6 “Performance Security” means the bank guarantee (or bank guarantees, if any) under Sub-Clause 4.2 [Performance Guarantee].

- 1.1.6.7 “Site” means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.
- 1.1.6.8 “Unforeseeable” means not reasonably foreseeable by an experienced contractor by the date for submission of the Tender.
- 1.1.6.9 “Variation” means any change to the Works, which is instructed or approved as a Change Order under Clause 13 [Variations and Adjustments].
- 1.1.6.10 “Affiliate” shall mean any Entity Controlling, Controlled by or under common Control with the Developer.

## **1.2 Interpretation**

In the Contract, except where the context requires otherwise:

- (a) Words indicating one gender include all genders;
- (b) Words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) Provisions including the word “agree”, “agreed” or “agreement” require the agreement or be recorded in writing, and
- (d) “Written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record, Emails and electronic correspondence not submitted in hard copy with signatures within 3 days from the date of such email and electronic correspondence shall not be treated as “Written” or “in writing”.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

## **1.3 Communications**

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be:

- (a) In writing and delivered by hand (against receipt), sent by mail or courier, or transmitted facsimile.
- (b) Delivered, sent or transmitted to the address for recipient’s communications as stated in the Special Conditions of Contract, however:

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- (i) If the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
  - (ii) If the recipient has not stated otherwise when requesting an approval of consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed.

#### **1.4 Law and language**

The contract shall be governed by the Laws of the Republic of India as applicable and amended from time to time.

The language of communication shall be in English only.

#### **1.5 Priority of documents**

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the document shall be considered in the following order, the first taking precedence over the second, the second over the third and so on:

- (i) The Contract Agreement,
- (ii) The Letter of Award including the final BOQ.
- (iii) The Letter of Tender,
- (iv) Special Conditions if any agreed between the parties before execution of this agreement.
- (v) Special Conditions of Contract
- (vi) General Conditions of Contract
- (vii) Annexure to these General Conditions,
- (viii) The Drawings,
- (ix) The Specification, and
- (x) The schedules and any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Project Manager shall issue the necessary clarification or instruction.

#### **1.6 Contract agreement**

The Parties shall enter into a Contract Agreement within 15 days after the Contractor receives the Letter of Award, unless the parties agree otherwise. The Contract Agreement shall be based upon the form annexed to the Contract Documents. Contractor shall submit an undertaking on non-judicial stamp paper as per Appendix A (if applicable) before entering into the Contract and the undertaking shall form a part of this contract. Such undertaking shall be duly signed and stamped by the authorized signatories having power of attorney to enter into the Contract from Board of Directors of the Contractor. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne and paid by the Contractor.

This Contract constitutes the entire agreement of the Parties and supersedes any and all prior negotiations, correspondences, understandings and agreements between the Parties, oral or written and the full understanding of the parties is embraced herein. No modification waiver or amendment of this Contract shall be binding unless communicated in writing and signed by both parties.

### **1.7 Assignment**

Contractor shall not assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, the contractor:

- (a) May assign the whole or any part with the prior written consent of the Developer, at the sole discretion of the Developer, and
- (b) May, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract with prior written consent of the Developer.

However, the Developer may assign its interest in whole or any part of the Contract at any stage to its Affiliates and/or third party by giving written information to the Contractor.

### **1.8 Care and supply of documents**

The Specification and drawings shall be in the custody and care of the Developer. Unless otherwise stated in the contract, one copy of the Contract and three copies of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.

Developer will issue the drawings as enlisted in the contract document. Contractor shall study such drawings and confirm the sufficiency of the information given in such drawings for execution and completion of the Works in stipulated time for completion.

In case Contractor requires any additional drawings and/or instruction, information apart from those supplied along with the contract, Contractor shall issue notice requesting such drawings and/or instruction, information to the Project Manager. Such request should commensurate the activities and milestones agreed in the construction programme and shall be issued 15 days prior to the date by which contractor wants to receive the information from the Project Manager.

Project Manager upon receipt of such notice shall determine the need of such information in accordance with the construction programme and inform contractor whether such information is already issued to him or if it is not in accordance with the agreed construction programme provide the same within 7 days of receipt of such notice by the Project Manager.

In case the request is in accordance with the construction programme, Project Manager shall issue the requested drawings and/or instruction, information within 15 days of receipt of such notice by Project Manager.

Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Developer. Unless otherwise stated in the Contract, the Contractor shall supply to the Project Manager three copies of each of the Contractor's Documents.

The contractor shall keep on the site, a copy of the contract, publications named in the specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Developer's Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

### **1.9 Delayed drawings or Instructions**

This Sub-Clause is applicable only if the Contractor has followed the process for requesting the information as stated in Sub-Clause 1.8 [Care and Supply of Documents] above.

The Contractor shall forthwith give notice to the Project Manager whenever the Works are likely to be delayed or disrupted and the Project Manager shall supply/provide necessary drawing or instruction to the Contractor within 7 days from receipt of such notice by the Project Manager. The notice shall include details of the necessary drawing or instruction, details of why and by when it should be issued, and details of the nature and amount of the delay or disruption likely to be suffered if it is late.

After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Project Manager to issue the notified drawing or instruction within 15 days from receipt of the notice referred above with supporting details, the contractor shall give a further notice to the Project Manager and shall be entitled subject to sub-Clause 20.1 [Contractor's Claims] to:

- (a) An extension of time for any such delay, if completion is or will be delayed, under sub-Clause 8.4 [Extension of Time for completion], and
- (b) Payment of any such cost, which shall be included in the Contract Price.

After receiving this further notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

However, if and to the extent that the Project Manager's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time or Cost.

#### **1.10 Developer's use of contractor's documents**

As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.

The Contractor shall be deemed (by signing the Contract) to give to the Developer a non-terminable transferable non-exclusive royalty-free license to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This license shall:

- (a) Apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- (b) Entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) In the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

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The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this Sub-Clause.

### **1.11 Contractor's use of developer's documents**

As between the Parties, the Developer shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Developer. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Developer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

### **1.12 Confidential details**

The Contractor shall disclose all such confidential and other information as the Project Manager may reasonably require in order to verify the Contractor's compliance with the Contract.

The Contractor acknowledges and agrees that all the information disclosed/communicated by Developer or which the Contractor may have access to during the course of this Contract shall be considered as confidential and proprietary information. The Contractor irrevocably agrees and undertakes and ensures that the Contractor shall keep the same secret and confidential and not disclose the same without the prior written permission of Developer nor shall use or allow to be used any information other than for the due performance of the Contractor's obligation under this Contract.

### **1.13 Compliance with laws**

The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated elsewhere in the Contract:

- (a) The Developer shall have obtained (or shall obtain) the planning, zoning or similar permission for the Permanent Works, and any other permissions described in the Specification as having been (or being) obtained by the Developer, and the Developer shall be responsible for the consequences arising out of not obtaining any requisite planning, zoning or similar permission; and
- (b) The Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licenses and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Developer harmless against and from the consequences of any failure to do so.

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**1.14 Joint and several liability**

If the Contractor constitutes (under applicable Laws) a joint venture, consortium, partnership, whether registered or not, or other unincorporated grouping of two or more persons:

- (a) These persons shall be deemed to be jointly and severally liable to the Developer for the performance of the Contract;
- (b) These persons shall notify the Developer of their leader who shall have authority to bind the Contractor and each of these persons; and
- (c) The Contractor shall not alter its composition or legal status without the prior consent of the Developer.

**1.15 Private & confidential details**

The Contractor shall treat the details of the Contract as private and confidential and shall not disclose the same to any third party except to the extent necessary to carry out obligations under this contract or to comply with applicable Laws. The Contractor shall not publish or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous consent of the Developer.

**1.16 Taxes**

Taxes shall mean the following, whether in force on the date hereof or imposed or levied after the date hereof:

- a. GST, Custom duties, other levies, building and construction workers cess and withholding taxes imposed under any Applicable Law (whether within India or outside India) in connection with the Work or performance by the Contractor/ Sub-Contractor of its obligations and responsibilities under this Contract, etc.,
- b. GST and other taxes on Contractor's/Sub-Contractor's income, profit, real and personal property; and
- c. All applicable payroll, withholding, social security, workers' compensation and employment taxes and contributions imposed under any Applicable Law in connection with or measured by compensation (including without limitation wages and salaries) paid to employees of Contractor/Sub-Contractor (including without limitation taxes, health and welfare funds, pensions and

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annuities, disability insurance and all other similar social payments).

The Contractor's rates and prices as contained in the Accepted Contract Sum shall be excluding GST and GST after adjusting the input credit.

**Contractor shall quote percentage of GST for all the items at the prevailing rate of GST separately while submitting the tender.**

In case the Contractor is entitled for any refund of above taxes, necessary certificates regarding the use of materials for proposed Works will be issued by the Developer.

Each payment made by the Developer from time to time to the Contractor shall be subjected to the deduction of all Statutory Taxes as per the provisions of the Rules and Regulations prevailing at that time.

All charges payable to Local Authorities, Royalties and charges payable to Municipal Corporation etc. shall be borne and paid by the Contractor related to the scope of Works.

Any savings as tax relief benefits with respect to rates, duties and taxes as the result of the granting of tax incentives and concessions from the Government of India/State Government the required tax incentives and concessions for the Contract Works shall be returned and paid in favour of the Developer.

Contractor is to provide all necessary backup to the auditor for assessment of taxes.

#### **1.16.1 Goods and Service Tax (GST):**

Contractor is responsible for payment of GST to respective Government and shall file all necessary returns in compliance with State and Central laws including but not limited to Goods and service tax (GST) whether imposed by Central, State or the Union territory. Contractor shall bear applicable GST, any local taxes or any other levies, tax, duties, Cess, Local Body Tax, levied by State Government or Central Government or any statutory or regulatory body thereof by whatever name called wherever and whichever applicable.

- (a) If Mahindra World City Developers Limited (MWCDL) does not receive the GST Input tax credit due to failure of the supplier for compliance with the GST law or non-payment of GST or on account of any error / omission on the part of the

supplier, then MWCDL is not liable to pay GST amount to Contractor. The Contractor will be liable to compensate the loss of GST, interest and penalty incurred by MWCDL. In case GST has already been paid to Contractor by MWCDL then Contractor agrees that such amount stands as recovery from him and MWCDL has all rights of recovery including recovery from contractor in next RA Bill or through his retention amount.

- (b) MWCDL reserves right to reimburse the GST tax amount to Contractor only when the company has received the credit and the same is confirmed as matched credit as per the GSTN portal.
- (c) Contractor will upload the information timely and accurately in GSTR-1 return and MWCDL reserves its right to withhold the payment till the same, the details of the said invoice are not uploaded properly in the GST return so as to enable MWCDL to claim the credit.
- (d) Contractor should pay tax to the Government within specified period as mentioned in the statute and ensure that he is not blacklisted under GST provisions. In the event of Contractor is blacklisted or non-compliant under GST, MWCDL reserves its right to recover the sum of tax, interest and penalty for any past transaction from the future amounts due from the Contractor. In the event of Contractor being blacklisted and continues to work with MWCDL then no GST is payable to Contractor until his blacklisting continues.
- (e) Contractor agrees to issue promptly the credit notes as applicable under the GST Law including but not limited to correction in quantity of work executed, debits to Contractor on account of appropriate reason as per us, Liquidated Damages, return of goods, discount, deficiency of goods or services, excess charging. Contractor agrees that such Credit Notes as co-related with Invoice is reflected in the GST returns of his next month. Contractor acknowledges that MWCDL will be liable to pay tax, interest and penalty on account of delay in issue of credit notes or for improper issue of credit notes on his side and agrees to reimburse the applicable tax, interest and penalty imposed on MWCDL for his failure.
- (f) Contractor is under an obligation (contractual as well as statutory) to issue the invoices containing all the particulars required under the GST Law and the invoicing or other rules and the acknowledges that the input tax benefit will be denied to MWCDL if the Contractor does not raise the invoice as per the specified particulars. Contractor agrees to reimburse the applicable input tax credit, GST tax, interest and penalty for its failure on this account.

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- (g) If the Contractor is unregistered under GST, MWCDL reserves its right to pay the GST under reverse charge and Contractor agrees not to charge any GST to MWCDL for such supplies. If the price is inclusive of GST then MWCDL reserves its right to deduct GST from agreed contract price.
- (h) Contractor agrees that all the GST benefits arising on account of reduction in rates of goods/services or increased input credits will be passed on by way of reduction of price to MWCDL. We hereby reserve the right to audit the Contractor books of accounts for the verification of benefits arising to you and whether the same has been passed to MWCDL or not. Alternatively, we can appoint a mutually acceptable practising Chartered Accountant for the aforementioned work.
- (i) Contractor will ensure that all input tax credit of GST paid by him on Inputs, Capital Goods, Services etc is availed by him and the same is not considered as cost while quoting the contract price and Contractor will ensure that the benefit of input tax credit is reflected as reduction in price to MWCDL.

### **1.17 Form of Contract:**

The Contract is neither a fixed lump sum contract nor a piece work contract but is an **item rate contract** to carry out the Works and each of the Provisional Sums Packages, according to the actual measured quantities at the rates contained in the Bill of Quantities along with estimated quantities with detailed Specifications. The Contract Price shall not exceed the Accepted Contract Amount indicated in the Letter of Award, unless otherwise approved in the Change Orders. Amounts in excess of such amounts, not approved in advance by the Employer shall be at the Contractor's expense. The Contractor has to closely monitor the quantities and cost and obtain an Approval from the Developer well in advance for any change outside the scope of the Work which would cause the cost of the Works to exceed the Accepted Contract Amount as indicated in the Letter of Acceptance or Contract Price as indicated in approved Change Orders issued subsequently by the Developer. Prices mentioned in the Bill of Quantities or otherwise will be firm until the end of the Contract.

No escalation in prices mentioned in the Bill of Quantities or otherwise shall be allowed for any reason whatsoever during the period of the Project unless specified otherwise in the other relevant Conditions of Contract. Claims for revision in rates/prices mentioned in the Bill of Quantities or otherwise or compensation in any other form whatsoever shall not be entertained by the Developer for any reason whatsoever including but not limited to on account of fluctuations in the following:

- Foreign exchange rates
- Cost of materials (Other than the items specified in the basic rate supply)

- Electricity & water charges
- Labour wages & conditions, Minimum Labour wages
- Statutory payments like PF, ESIC, etc.
- Royalties and patent rights
- Licenses and permit fees
- Insurance charges
- Freight charges / transportation costs
- Cost of fuel & lubricants
- Change in Applicable Law
- Or any other rates, costs or conditions whatsoever.

Further, the Contract shall be an item-rate re-measurable Contract only to execute the Project according to the actual measured quantities at the rates contained in the Bill of Quantities. The Contractor shall be paid for the actual quantity of the Works and each of the Provisional Sums Packages done as measured at Site, at the rates quoted and accepted by it in Bill of Quantities. The Contractor understands and agrees that the amount payable is assessed on a re-measurable basis in accordance with the rates mentioned in the Bill of Quantities. However, the Contract Price may be altered on account of a Change Order. The Contract Price shall include payment for the supply of all labour (including payment to its Sub-Contractors), equipment, materials, plant & machinery, tools, transportation, framework, scaffolding, construction of civil works including all applicable duties, LBT / entry tax, levies, royalties, fees, insurance premiums, contributions towards employees benefits including ESIC and provident funds and funds, distribution of power and water and all services and activities constituting the scope of works but excluding GST, The Contract price shall be inclusive of aggregate of all the Provisional sums required to be paid to Nominated Contractor(s). The Contract Price shall also include the costs of Contractor's establishment, infrastructure, overheads and all other direct & indirect charges, & shall be inclusive of every cost and expense required by the Contract to be borne by the Contractor & necessary for the timely & successful execution and completion of the Works under the Contract, in conformity with the Contract & the best engineering & construction practices and to the satisfaction of the Project Manager, Delegated Assistants of Project Manager, Developer's Representative & the Developer.

Unless specified or otherwise in the Conditions of Contract, no escalation of the prices mentioned in the Bill of Quantities or otherwise shall be allowed during the period of the Contract for any reasons whatsoever and such prices shall be deemed to be fixed and constant throughout the Time for Completion in accordance with Clause 8 and Defects Liability Period in accordance with Clause 11 of the General Conditions of Contract

### **1.18 Representations and warranties**

The Contractor represents and warrants to Developer that,

- (i) It is a corporation duly incorporated, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated.
- (ii) It has the full capacity, power, authority and the legal right to enter into this Agreement and to perform its obligations hereunder.
- (iii) It has taken and will continue to take all necessary corporate action and further actions (including but without limitations the obtaining of necessary approval/consents in all applicable jurisdiction) on its part to authorize the execution and delivery of this Agreement and the performance of its obligations.
- (iv) This Agreement and the transaction contemplated by it do not contravene or conflict with, violate, breach or contravene any of its constituent documents or any law, regulation or official directive or any requirement of applicable laws or regulations or any contractual obligations of it.
- (v) The execution of this Agreement and providing Services by the Contractor to Developer does not and will not infringe upon any intellectual property rights.
- (vi) There is no complaint, claim or litigation of any nature whatsoever outstanding, pending or threatened against it or its promoters, directors, officers or employees. The Contractor undertakes to forthwith disclose to Developer of any such complaint, claim or litigation actual or threatened arising after the execution of this Agreement.

### **1.19 Covenants, obligations and ethical code of the Contractor**

- a. Contractor shall get himself registered as the Principal Employer for the Contract.
- b. The Contractors shall be solely responsible for following acts, deeds and things and the Developer shall not be responsible for;

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- i. To Pay Salaries to the Workmen employed by him and/or by his subcontractor; and
  - ii. To control and supervise the work of the Workmen employed by him and/or by his subcontractors; and
  - iii. To select and appoint any or all of the workmen employed by him and/or by his subcontractor; and
  - iv. To act as a disciplinary authority, conduct and discipline of the workmen employed by him and/or by his subcontractor
- c. Neither Contractor nor its representatives/personnel shall at any time use or attempt to use the Developer. Trade Mark/ name or logo for any purpose including for the purpose of this Agreement unless specifically authorized by the Developer, in writing prior to such usage.
- d. The Contractor undertakes to obtain all the requisite license / permission / authorizations and certificates under all the applicable laws and keep the same valid by renewing from time to time as required under the various Acts/ Laws and payment of all applicable taxes, levies, and duties including service tax, if and where required. The Contractor shall maintain all the registers and records required to be maintained under the various labour enactments and rules framed there under.
- e. The Contractor shall ensure that it will employ as its personnel only those individuals who have attained majority as per law and undertakes not to act in violation against Labour Law or any law in force. The Personnel employed by Contractor shall not have any claim whatsoever on the Developer, and shall not raise any Industrial dispute, either directly or indirectly, against the Developer, in respect of any of the service conditions or otherwise. It is further expressly clarified and agreed that in case of death or bodily injury to any such personnel appointed by Contractor while carrying out any of the Services under this Contract, the Developer, shall not be liable or bound to pay any monetary compensation or otherwise be responsible in any way whatsoever. The Developer, shall have the right to call upon the Contractor to replace any personnel of the Contractor who in the sole opinion of the Developer, is jeopardizing the interest of the Developer, and the Contractor shall forthwith comply with the demand of the Developer without any costs/ fees or charges.
- f. The Contractor agrees that Contractor and any personnel assigned by the Contractor shall at all times comply with all applicable laws, policy and procedures including relating to security/access restrictions as may be prescribed by the Developer at the Site.
- g. The Contractor shall not engage in any business activity, either by itself or through its subsidiaries, affiliates, or agents, which is in direct conflict with the interests of the Developer or is detrimental to the interest of the Developer, unless it obtains the prior written consent of the Developer.

- h. The Contractor further warrants to the Developer that, during the term of this Agreement, the Services and materials to be rendered or delivered hereunder, will be of the kind and quality designated and shall meet the requirements and specifications as determined in the Developer's sole and exclusive discretion and communicated to the Contractor from time to time.
- i. The Contractor shall not claim any lien, set-off or counter claim on the material, document, and information of the Developer in the Contractor's possession or control.
- j. The Developer shall also at its sole discretion have the right to set off, deduct and recover from the fees/charges and/or from any other sum payable to the Contractor, any and all amounts which may be or become payable by the Contractor to the Developer.
- k. The Contractor and its directors, partners and officers shall be solely liable for the payment of all taxes, duties, fines, cesses, levies, penalties etc., by whatever name called, as may become due and payable under the applicable laws in force from time to time in relation to the Services rendered pursuant to this Contract.
- l. With respect to the performance of this award the Contractor shall specifically understand and agree that neither the Project Manager nor any of its employees, representatives, agents, servants, contractors etc will pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, whether as a bribe, pay-off, kick back, gift, commission or gratuity, to any public officials for the purpose of illegally or improperly inducing any government or corporation in public sector to make a decision or illegally or improperly influence any public officials or take any other improper action and that, further, the Project Manager shall not maintain slush funds for political contributions or in any way imply or suggest that such illegal payments may be forthcoming from it on behalf of it or MWCDL, its divisions, affiliates, subsidiaries, officers or employees.

## **1.20 Time is the essence**

Time is the essence of this Contract in so far as it relates to the observance or performance by the Contractor of all or any of its obligations under this Contract.

## **2. The developer**

### **2.1 Right of access to the Site**

On successful award of contract the contractor is to submit the project schedule based on mutual agreement the plan shall be finalized.

The Developer shall give the Contractor right of access to required parts of the Site

within the time (or times) stated in the Special Conditions of Contract. The right may not be exclusive to the Contractor. If, under the Contract, the Developer is required to give (to the Contractor) right of access to any foundation, structure, plant, the Developer shall do so in the time and manner stated in the Specification. However, the Developer may withhold any such right until the Performance Guarantee has been received.

If no such time is stated in the Special Conditions of Contract, the Developer shall give the Contractor right of access to the Site within such times as may be required to enable the Contractor to proceed in accordance with the program submitted under Sub-Clause 8.3 [Program].

If the Contractor suffers delay and / or incurs Cost as a result of a failure by the Developer to give any such right within such time, the Contractor shall give notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) Payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

However, if and to the extent that the Developer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time or Cost.

Further if and to the extent that the Developer's failure was caused by any delay in consents or permission from any authority or due to restrictions imposed by any authority, the Contractor shall not be entitled to payment of any such Cost mentioned in (b) above.

## **2.2 Permits, licenses or approvals**

The Developer shall (where he is in a position to do so) provide reasonable assistance for documentation to the Contractor at the request of the Contractor to the extent the relevant authority requires:

- (a) for the Contractor's applications for any permits, licenses or approvals required by the Law of the Republic of India:
  - (i) Which the Contractor is required to obtain under Sub-Clause 1.13 [Compliance with Laws]

- (ii) For the delivery of Goods, including clearance through customs,

### **2.3 Developer's personnel**

The Developer shall be responsible for ensuring that the Developer's Personnel and the Developer's other contractors on the Site:

- (a) Co-operate with the Contractor's efforts under Sub-Clause 4.6 [Co-operation], and
- (b) Take actions similar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (c) of sub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection of the Environment]

### **2.4 Developer's Authority**

The Developer shall have the absolute authority to enforce compliance with the Contract Documents, on all questions relating to the quantities, the acceptability of materials, equipment, or Works, the adequacy of the performance of the Work, and the interpretation of the Drawings and specifications. The decision of the Developer will be final and binding and shall proceed to any payment under the contract agreement unless otherwise provided in the contract documents.

The Developer shall have the authority to stop the progress of work or any part thereof as may be necessary to ensure the proper execution of the Work, to disapprove or reject the work which is defective, to demand the uncovering and inspection or testing of the work, to demand re-examination of the work, to issue interpretations and clarifications, to order changes or alterations in the Work over any other authority as provided elsewhere in the contract documents.

The Developer shall not be liable for the results of any ruling, interpretation, decisions rendered, request, demand, instruction or order issued by him. The Contractor shall promptly comply with requests, demand, instructions, and order from the Developer.

### **2.5 Developer's Claims**

If the Developer considers himself to be entitled to any payment under any clause of these Conditions or otherwise in connection with the Contract, this amount may be included as a deduction in the contract price and payment certificates. The developer shall be entitled to set off against or make any deduction from an amount certified in a Payment Certificate.

### **2.6 Limitations and Responsibility**

The Developer will not be responsible for construction means, methods, techniques, procedures, sequences, or the safety precautions and programs incident thereto, or

any of their supervisors or employees, or any other persons performing any of the Work, or for the Contractor's failure to perform and construct the Works in accordance with the contract documents. Neither the Developer's authority to act under the contract nor any decision made by him in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the Developer to the Contractor, any sub-contractor, any of their supervisors or employees or any other person performing any of the work, nor shall anything in the contract documents create any contractual relationship between any of them and the Developer.

## **2.7 Handing over of site**

The developer has the right to handover the required work site in a phased manner. On the date of commencement of the works, the developer shall give the required land in accordance with the approved construction programme so that the contractor is enable to commence and proceed with the construction of the works.

## **3. The Project Manager**

### **3.1 Project Manager's Duties and Authority**

The Developer shall appoint the Project Manager who shall carry out the duties assigned to him in the Contract. The Project Manager's team shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

The Project Manager shall have no authority to amend the Contract.

The Project Manager may exercise the authority attributable to the Project Manager as specified in or necessarily to be implied from the Contract.

The Project Manager shall have the absolute authority to enforce compliance with the Contract Documents, on all questions relating to quantities, the acceptability of materials, plant, equipment, or Works, the adequacy of the performance of the Work, and the interpretation of the Drawings and specifications. The decision of the Project Manager will be final and binding and shall proceed to any payment under the contract agreement unless otherwise provided in the contract documents.

The Project Manager shall have the authority to stop the progress of work or any part thereof as may be necessary to ensure the proper execution of the Work, to disapprove or reject the work which is defective, to demand the uncovering and inspection or testing of the work, to demand re-examination of the work, to issue interpretations and clarifications, to order changes or alterations in the Work over any other authority as provided elsewhere in the contract documents.

### **3.2 Delegation by the Project Manager**

The Project Manager may from time to time assign duties and delegate authority to assistants and may also revoke such assignment or delegation. These assistants may include a resident engineer, and / or independent inspectors, and/or any third entity appointed by Developer to inspect and / or test items of Plant and / or Materials, or to perform any other duties to assist the Project Manager which developer may deem necessary. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both parties. However, unless otherwise agreed by both Parties, the Project Manager shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.5 [Determinations].

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language].

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Project Manager. However:

- (a) Any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Project Manager to reject the work, Plant or Materials;
- (b) If the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Project Manager, who shall promptly confirm, reverse or vary the determination or instruction.

### **3.3 Instructions of the Project Manager**

The Project Manager may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Project Manager, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

The Contractor shall comply with the instructions given by the Project Manager or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Project Manager or a delegated assistant:

- (a) Gives an oral instruction,
- (b) Receives a written confirmation of the instruction, from (or on behalf of) the contractor, within two working days after giving the instruction, and

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- (c) Does not reply by issuing a written rejection and / or instruction within seven days after receiving the confirmation.

Then the confirmation shall constitute the written instruction of the Project Manager or delegated assistant (as the case may be).

If the Contractor fails or refuses to comply with any instruction issued by the Project Manager or delegated assistant, the Developer may after 7 days' notice from the Project Manager to the Contractor requiring such compliance, carry out or deploy other contractors to do so. All costs incurred shall be recoverable by the Developer from the Contractor.

### **3.4 Replacement of the Project Manager**

If the Developer intends to replace the Project Manager at his sole discretion, the Developer may, before the intended date of replacement, inform the Contractor about such intended replacement of the Project Manager.

### **3.5 Determinations**

Whenever these Conditions provide that the Project Manager shall proceed in accordance with this sub-Clause 3.5 to agree or determine any matter, the Project Manager shall consult with each party in an endeavour to reach agreement. If agreement is not achieved, the Project Manager shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

The Project Manager shall give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration].

## **4. The contractor**

### **4.1 Contractor's general obligations**

The Contractor shall design (to the extent specified in the contract), execute and complete the Works in accordance with the Contract and with the Project Manager's instructions, and shall remedy any defects in the Works.

The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects. The Contractor shall prepare the Contractor's Documents in sufficient details to satisfy all regulatory approvals, to provide to the suppliers and construction personnel with sufficient instructions to execute the works, and to describe the operation of the completed Works from time to time.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor (i) shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible for the design or specification of the Permanent Works.

The Contractor shall, whenever required by the Project Manager, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Project Manager.

If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless otherwise stated elsewhere in the Contract.

- (a) The Contractor shall submit to the Project Manager the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- (b) These Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language], and shall include additional information required by the Project Manager to add to the Drawings for co-ordination of each Party's designs;
- (c) The Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- (d) Prior to the commencement of the Tests on Completion, the Contractor shall submit to the Project Manager the "as-built" documents and operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Developer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under sub-Clause 10.1 [Taking Over of the Works and Sections] until these documents and manuals have been submitted to the Project Manager.

The design (to the extent mentioned in the Contract), the Contractor's documents, the execution and completion of the Works shall all comply fully with the applicable Laws, national specifications, conditions and stipulations (if any) imposed by any authorities.

#### **4.2 Performance Guarantee/Security**

The Contractor shall, within 10 days from the date of issue of LOI/LOA whichever is applicable, provide to the Developer a single, irrevocable and unconditional

performance guarantee from any one of the Nationalized Bank, as per the list of approved banks as enclosed as **Appendix - J**, approved by the Developer, for an amount stated in the Special Conditions of Contract or such other amount as may be otherwise specified in the Contract towards security for due performance of the Contract. Such performance guarantee shall be valid and enforceable 60 days beyond date of issuance of Taking over Certificate under Clause 10 by the Developer for Works. No interest will be paid on the Bank Guarantee.

The Performance Guarantee shall strictly be in the form annexed to the tender Documents. The cost of obtaining such Performance Guarantee shall be borne and paid by the Contractor alone.

The submission of the Performance Bank Guarantee shall be a condition precedent to the Contract.

Any Bank Guarantee shall be considered submitted and valid only after the following conditions are met-

- a. The Bank Guarantee is submitted by the Contractor in hard copy.
- b. On receipt of the second copy of the Bank Guarantee by the Developer directly from the issuing Bank

OR

The authenticity of the Bank Guarantee is verified by the Developer.

The Contractor shall ensure that the Performance Guarantee is valid and enforceable until the Contractor has executed and completed the Works and obtained Taking over Certificate and 60 days thereafter. If the terms of the Performance Guarantee specify its expiry date, and the Contractor has not become entitled to receive the Taking Over Certificate by the date 30 days prior to the expiry date, the Contractor shall immediately extend the validity of the Performance Guarantee until 60 days beyond the extended Time for Completion of the Works and obtaining the Take Over Certificate. If the Contractor fails to extend the validity of such bank guarantee as stated above then Contractor hereby signing this Contract, gives an unconditional and irrevocable authority to the Developer to invoke this bank guarantee without any prior notice to the Contractor and he shall not raise any objection and have no claim whatsoever against such action of Developer.

The Developer shall return the Performance Guarantee to the Contractor within 90 days after signing the Taking over Certificate.

#### **4.3 Contractor's representative**

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the contract.

Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Project Manager for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative.

If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

The Contractor shall not, without the prior consent of the Project Manager, revoke the appointment of the Contractor's Representative or appoint a replacement.

The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Project Manager's prior consent, and the Project Manager shall be notified accordingly.

The Contractor's Representative shall, on behalf of the contractor, receive instructions under Sub-Clause 3.3 [Instructions of the Project Manager].

The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Project Manager has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative and all these persons shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language].

Notwithstanding the above provisions in this Sub-Clause, Contractor shall comply with additional requirements as specified in the Annexure to the General Conditions.

#### **4.4 Subcontractors**

The Contractor shall not subcontract the whole of the Works.

The Contractor shall not engage or permit the engagement of any subcontractor for any part of the Works without the consent of the Project Manager / Developer, which consent shall not be unreasonably withheld. The Contractor shall provide such reasonable details of the Subcontractor as may be required by the Project Manager / Developer, for providing consent.

The Contractor shall give the Project Manager not less than 14 days' notice of the intended date of commencement of each Subcontractor's work, and of the commencement of such work on the Site.

It shall be a condition of any sub-contracting to which Sub-Clause 4.4 refers that the sub-contract shall include provisions which would entitle the Developer's discretionary rights to require:

- (a) The subcontract to be assigned to the Developer under Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or if the Sub Contractor has undertaken a continuing obligation to the Contractor and if such obligation extends beyond the Contract Period, the assignment of the benefit of such obligation or in the event of termination of the Contractor's employment under Sub-Clause 15.2 [Termination by Developer]; and/or
- (b) The sub-contractor to enter into a novation agreement of the sub-contract with the Developer and the Contractor if the Developer so requires upon the termination of the Contractor's employment under this Contract.

The Contractor shall be and remain absolute liable under the Contract for all work sub-contracted and shall be responsible for acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. The Contractor shall make good any damage or loss suffered by the Developer by reason of any breach of contract, repudiation, default or failure (whether total or partial), on the part of any Subcontractor, and shall indemnify the Developer against any damage, liability, claim or loss arising there from.

#### **4.5 Assignment of benefit of subcontract**

If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Project Manager, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Developer, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Developer for the work carried out by the Subcontractor after the assignment takes effect. The Developer shall not be liable for any rights which the Sub Contractor may have against the Contractor unless expressly stated otherwise in the Agreement.

#### **4.6 Cooperation**

The Contractor shall co-operate, co-ordinate and allow appropriate opportunities for carrying out work to:

- (a) The Developer's Personnel,
- (b) Any other contractors deployed by the Developer, and
- (c) The personnel of any legally constituted public authorities,

Who may be deployed in the execution on or near the Site of any work not included in the contract.

Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which shall be provided by the Contractor without any additional cost.

#### **4.7 (Omitted)**

#### **4.8 Safety Procedures**

The contractor shall:

- (a) Comply with all applicable **safety rules, regulations and laws,**
- (b) Take care for the safety of all persons entitled to be on the site,
- (c) Use reasonable efforts to keep the site and works clear of unnecessary obstruction so as to avoid danger to these persons,
- (d) Provide fencing, lighting, guarding and watching of the works until completion and taking over under clause 10 [developer's taking over], and
- (e) Provide any temporary works (including roadways, footways, guards, fences, earthen bund, coffer dam, temporary concrete foundations as required etc.) which may be necessary, because of the execution of the works, for the use and protection of the public and of owners and occupiers of adjacent land.
- (f) Comply **with the additional requirements as specified under/ EHS.**

#### **4.9 Quality assurance**

The contractor has to depute one dedicated Qualified QA / QC Engineer for this package. The minimum qualification of the Quality Engineer should be B.E / B.Tech. In Civil /Mechanical Engineering. The person also has to have a minimum Experience in the QA and QC area in the relevant field for 5 to 6 years.

The person to be deputed for the above Quality assignments should have his CV approved by the Project Manager / Developer.

The Contractor shall institute a Project Quality Plan approved by Project Manager to demonstrate compliance with the requirements of the Contract. The Project Quality Plan shall be in accordance with the details stated in the Contract and quality requirements of Developer. The Project Manager shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Project Manager for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Project Manager, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the Project Quality Plan shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

#### **4.10 Site data**

The Developer shall have made available to the Contractor for his information, prior to the Base Date, all **available** data in the Developer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Developer shall similarly make available to the Contractor all such data which come into the Developer's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.

The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. The Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):

- (a) The form and nature of the Site, including sub-surface conditions,
- (b) The hydrological and climatic conditions,
- (c) The extent and nature of the work and goods necessary for the execution and completion of the Works and the remedying of any defects,
- (d) The Laws, procedures and labour practices of the Country, and
- (e) The Contractor's requirements for access, accommodation, facilities, personnel,
- (f) Power, transport, water and other services.
- (g) Adjacent surrounding buildings/properties, access roads, regulation and/or stipulations by local authorities on movement of traffic.

Contractor shall have no claim whatsoever on account of not understanding or obtaining necessary information, and/or incorrect interpretation of such information or any related provisions in the contract document.

#### **4.11 Sufficiency of the accepted contract amount**

The contractor shall be deemed to:

- (a) Have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount, and
- (b) Have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-clause 4.10 [Site Data].

Unless otherwise stated in the Contract, the Accepted Contract Amount covers entire consideration for all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper execution and completion of the Works and the remedying of any defects. Not with standing anything to the contrary contained in the Contract Documents, the Accepted Contract Amount shall cover material cost required to be borne by the Contractor and inclusive of income tax, levies, or duties of concerned authorities, royalties, insurances, licenses if any and expense towards transportation, loading, unloading, security, storing at site, safely handling at site, expected wastages, labour (skilled / unskilled), tools, plants and equipment, all overhead costs, contractors' profit, miscellaneous expenditure properly incurred or to be incurred whether on or off the site including overhead and other charges properly allocable thereto for an item of work but exclusive of GST.

#### **4.12 Unforeseeable Physical Conditions**

In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydro-logical conditions but excluding climatic conditions.

If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Project Manager as soon as practicable. The Contractor has been informed (and shall be deemed to have been informed by virtue of this Contract) of the hard rock substrata conditions at the Site, dewatering during contract period and the conditions described in the Annexure to General Conditions and accordingly the said physical conditions shall not be considered to be Unforeseeable.

This notice shall describe the physical conditions, so that they can be inspected by the Project Manager and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Project Manager may give. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and / or incurs Cost due to these conditions the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) Payment of any such Cost, which shall be included in the Contract Price.

After receiving such notice and inspecting and / or investigating these physical conditions, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in sub paragraphs (a) and (b) above related to this extent.

However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Project Manager may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favourable conditions were encountered, the Project Manager may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

The Project Manager may take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which may be made available by the Contractor, but shall not be bound by any such evidence.

#### **4.13 Rights of way and facilities**

The Contractor shall bear all costs and charges for special and / or temporary rights-of-way which he may require and granted by the Developer, including those for access to the Site. The Contractor shall also obtain, at his risk and cost, any additional facilities outside the Site which he may require for the purposes of the Works.

#### **4.14 Avoidance of Interference**

The Contractor shall not interfere unnecessarily or improperly with:

- (a) The convenience of the public, or
- (b) The access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the developer or of others.

The Contractor shall indemnify and hold the Developer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

#### **4.15 Access route**

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- (a) The Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
- (b) The Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant
- (c) Authorities for his use of routes, signs and directions;
- (d) The Developer shall not be responsible for any claims which may arise from the use or otherwise of any access route.
- (e) The Developer does not guarantee the suitability or availability of particular access routes, and
- (f) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne **and paid** by the Contractor.

#### **4.16 Transport of Goods**

Unless otherwise stated elsewhere in the Contract:

- (a) The Contractor shall give the Project Manager not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;

- (b) The Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- (c) The Contractor shall indemnify and hold the Developer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods and shall negotiate and pay all claims arising from their transport.

#### **4.17 Contractor's equipment**

The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the works. The Contractor shall not remove from the Site any major items of Contractor's Equipment without the consent of the Project Manager. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off site.

Contractor's Equipment which is owned by the Contractor (either directly or indirectly) shall be deemed to be for exclusive use of Works with effect from its arrival on the Site. However it is hereby clarified that such exclusive use of the equipments at Works shall not:

- (a) Affect the responsibility or liability of the Contractor,
- (b) Prejudice the right of the Contractor to the sole use of the Contractor's Equipment for the purpose of the Works, or
- (c) Affect the Contractor's responsibility to operate and maintain Contractor's Equipment or any risk thereof.

#### **4.18 Protection of the environment**

The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values indicated in the Specification and shall not exceed the values prescribed by applicable Laws.

The Contractor shall follow the Developer's Environment Management System (EMS) established at site. The Contractor shall read Developer's- EMS/EHS Policy, Standard Operating Procedures, and relevant documents prior to commencement of Works. Developer will give necessary awareness to the contractor's personnel on EMS and Green building implementation requirements at site. Specific details are provided in the Annexure to the General Conditions.

#### **4.19 Electricity & Water**

The Contractor shall be responsible for the provision of power, water and other services required for carrying out Works.

The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site as per rates finalised by the developer. The Developer shall at his cost, provide any apparatus necessary for measuring the use of these services by the Contractor and Project Manager shall be responsible for recording the quantities consumed.

The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Project Manager in accordance with Sub-Clause 2.5 [Developer's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Developer.

Contractor shall comply with additional requirements as specified in the Annexure to the General Conditions.

#### **4.20 Progress Reports**

Unless otherwise stated elsewhere in the Contract, daily, weekly and monthly progress reports shall be prepared by the Contractor and submitted to the Project Manager in soft copies and hard copy as required. The daily and weekly progress report shall commence from the date of commencement of Works. The first monthly report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

Each report shall include:

- (i) Charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),

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- (ii) Photographs showing the status of manufacture and of progress on the Site;
  - (iii) For the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
    - a) Commencement of manufacture,
    - b) Contractor's inspections,
    - c) Tests, and
    - d) Shipment and arrival at the Site;
  - (iv) The details described in Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment];
  - (v) Copies of quality assurance documents, test results and certificates of Materials;
  - (vi) List of notices given under Sub-Clause 2.5 [Developer's Claims] and notices given under Sub-Clause 20.1 [Contractor's Claims];
  - (vii) Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
  - (viii) Comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

Notwithstanding the reports listed out in sub clause (i) to (viii) above Contractor shall also comply all the reporting procedures in line with the Project Quality Plan & Project Safety Plan as covered within the contract documents. The format for the reporting structure will be jointly discussed and finalised and will be applicable throughout the project.

#### **4.21 Security of the Site**

Unless otherwise stated elsewhere in the Contract:

- (a) The Contractor shall be responsible for keeping unauthorized persons off the Site, and
- (b) Authorised persons shall be limited to the Contractor's Personnel and the Developer's Personnel; and to any other personnel notified to the Contractor, by the Developer or the Project Manager, as authorized personnel of the Developer's other contractors on the Site.

The Contractor shall at his cost provide at all times adequate number of watchmen to guard the Site, materials and equipment, to the satisfaction of the Developer's Representative/ Project Manager. The Contractor shall at all times be fully responsible for the security of all materials and equipment on the Site, whether its own or those of any Sub-Contractor. Neither the Developer nor the Developer's Representative/Project Manager shall be responsible for any loss due to theft, fire, accident or any other reasons, whatsoever. Further, if any loss is suffered by the Developer, the Project Manager or the Developer's Representative due to any theft, fire, accident or other reasons, whatsoever, the Contractor shall indemnify and hold harmless the Developer, the Project Manager or the Developer's Representative for such losses.

The Developer may provide a security arrangement in his own interest. However, such security arrangement shall not be responsible for safeguarding the Contractor's material, equipment or access.

#### **4.22 Contractor's operations on site**

The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Project Manager as working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.

During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.

Upon the issue of instructions by Project Manager, the Contractor shall clear away and remove, from that part of the Site and Works to which the instructions refer, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Liability Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

#### **4.23 Fossils**

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Developer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, upon discovery of any such finding, promptly give notice to the Project Manager, who shall issue instructions for dealing with it. If the Contractor suffers delay and / or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion]' and
- (b) Payment of any such Cost, which shall be included in the contract Price.

After receiving this further notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

#### **4.24 Ordering materials**

The Contractor shall place his orders for specified materials at the earliest possible date after notification of acceptance of his Tender or at such times as may be specifically stated elsewhere herein for any particular material. If, in the opinion of the Project Manager, the Contractor by his failure to order any specified material, or by his failure to deliver on to the job any specified material within the time stated for same, causes interruption or delay in the progress of the Works, then the Developer shall be entitled to purchase such specified materials in whatever quantities he deems necessary and at the rates prevailing in local markets at the time of purchase and all costs consequent thereon or incidental thereto including delivery charges shall be borne by the Contractor and shall be deducted from monies due to or to become due to him under this Contract by means of a variation and no profit shall be allowed to the Contractor in respect of such items. Contractor will not have any right to challenge the decision of the Developer in any manner to purchase such materials by the Developer.

The Contractor shall on quarterly basis submit to the Project Manager a detailed procurement schedule in for major equipment and materials indicating the planned and actual dates for ordering and delivery of major materials and equipments.

The contractor has to follow the Timelines mentioned in the Special Conditions of Contract for Timelines required for Developer's Approvals & Market Lead times and accordingly plan as per clause 8.3.

#### **4.25 Site meetings**

Contractor shall attend site meetings when requested by the Project Manager from time to time and shall make available a responsible representative conversant with the Works and with authority to accept and make decisions and act on his behalf. The Contractor shall submit to the Project Manager, within 2 days prior to the meeting an agenda listing site problems, variations or extra works instructed by the Project Manager, the programme of Works or any other matters relating to the Contract for discussion during the meeting.

#### **4.26 Public and Private Services**

- a) The Contractor must ascertain and confirm for himself the exact routes and locations of all existing services whether or not shown on the Drawings. Prior to commencement of any Works, the Contractor shall carry out extensive site investigations and make additional records by means of cable detection equipment, exploratory trial holes and/or other approved methods.
- b) The Contractor shall notify the Project Manager and other relevant authorities of any pipe, cable, duct, service main etc. buried or exposed at the site before commencement of work or encountered during the progress of the Works. The Contractor shall protect, uphold and maintain all pipes, cables, ducts, drains, sewers and service mains including any wrappings or special lagging to same during the execution of the Works. Any damage due to a cause within the Contractor's control shall be made good as directed by the Project Manager at the Contractor's expense and the Contractor shall also indemnify the Developer against any claims arising there from. The Contractor shall sequence the Works to accommodate any diversion works to be undertaken by the various Authorities responsible for the services and extend all necessary co-operation and the provision of suitable access to the site for their workmen or contractors. The charges levied by the various Authorities for service diversions shall be borne by the Developer.

#### **4.27 Dumping of unwanted debris, etc.**

The Contractor shall not dump Unwanted Debris, debris, chemicals or any noxious or etc polluting matter at the Site or any vacant land or at the roadside or into any drain or canal. All debris arising from the Contractor's occupation shall be collected, stored and thereafter removed from the Site to a permitted dumping ground, at the sole expense of the Contractor.

The Contractor shall be responsible for obtaining the necessary permits for dumping of Unwanted Debris, etc and ensuring that the carting operation does not cause any spill overs on or any damage to the public roads. The Contractor shall produce necessary documentary evidence of the permits to the Project Manager and shall fully indemnify the Developer against any claims relating to the carting operation.

#### **4.28 Product/Workmanship Indemnities**

Within 14 days from the award of the Contract, the Contractor shall submit to the Project Manager the product/workmanship indemnities in accordance with the specimens annexed to the Tender Conditions and/or as further requested in Technical Specifications.

Where the Contractor is a private limited or limited company, the indemnities shall be executed under seal and the affixation of the common seal must be witnessed by two company directors or a company director and the company secretary.

When submitting the indemnities, the Contractor shall be required to provide a copy of the Board of Directors' resolution confirming that;

- (1) The signatories are the respective company directors or a company director and the company secretary of the Contractor, and
- (2) They are authorized to execute the indemnities and witness the affixing of the common seal.

## **5 Nominated Subcontractors**

### **5.1 Definition of “nominated Subcontractor”**

In the Contract, “nominated Subcontractor” means a Subcontractor:

- (a) Who is stated in the Contract as being a nominated Subcontractor, or
- (b) Whom the Developer instructs Contractor to appoint for any work which the Developer feels deem fit or,
- (c) Whom the Project Manager, under clause 13 [Variations and Adjustments], instructs the Contractor to appoint as a Subcontractor.

### **5.2 Objection to Nomination**

The Contractor under the instructions of the Developer shall not be under any obligation to appoint a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Project Manager as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters unless the Developer agrees to take responsibility of such nomination.

- (a) There are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;

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- (b) The subcontract does not specify that the nominated Subcontractor shall indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or
  - (c) The subcontract does not specify that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:
    - (i) Undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract, and
    - (ii) Indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the subcontractor to perform these obligations or to fulfil these liabilities.

All objections need to be raised well in advanced before appointment of such Nominated Sub Contractors. In case of No Objection raised before appointment of Nominated Sub Contractors, then it shall be deemed that Contractors has no objection to Nomination.

### **5.3 Payments to nominated subcontractors**

The Contractor shall pay to the nominated Subcontractor the amounts which the Project Manager certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with sub-paragraph (b) of Sub-Clause 13.5 [Provisional Sums], except as stated in Sub-Clause 5.4 [Evidence of Payments].

### **5.4 Evidence of payments**

Before issuing a Payment, Certificate which includes an amount payable to a nominated subcontractor, the Project Manager may request the Contractor to supply reasonable evidence that the nominated subcontractor has received all amounts due in accordance with previous Payment Certificates, less applicable deductions for retention or otherwise. Unless the Contractor.

- (a) Submits this reasonable evidence to the Project Manager, or
  - (i) Satisfies the Project Manager in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts, and
  - (ii) submits to the Project Manager reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement,

then the Developer may (at his sole discretion) pay, direct to the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submit the evidence described in sub-paragraphs (a) or (b) above. The Contractor shall repay to the Developer or authorize the Developer to deduct from the amount due or to become due to the Contractor, the amount which the nominated Sub-contractor was directly paid by the Developer.

**Developer also reserves the right of deducting Administration Charges @ 5% of Payment Value in case of Default of payment by Contractor to Nominated Subcontractor whose payments were directly paid by the Developer.**

## **6 Staff and Labour**

### **6.1 Engagement of Staff and Labour**

Except as otherwise stated in the Specification or the Schedules or Annexure to the General Conditions, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

### **6.2 Rates of Wages and Conditions of Labour**

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out and as per the statutory stipulations and applicable Laws. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by Developers whose trade or industry is similar to that of the Contractor

### **6.3 Persons in the Service of Developer**

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out and as per the statutory stipulations and applicable Laws. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by Developers whose trade or industry is similar to that of the Contractor.

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Developer's Personnel or any other consultants appointed by Developer.

### **6.4 Labour laws**

The Contractor shall comply with all the relevant labour Laws applicable from time to time to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, wages, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

During continuation of the contract, the Contractor and his sub- contractors shall abide at all times by all existing labour enactments and rules made there under, regulations, notifications and byelaws of State /Central Government or local authorities and any other labour law (including rules), regulations, bye-laws that may be passed or notified under any labour law by the state / central government or the local authorities during execution of the Work.

The Contractor shall keep the Developer indemnified in case any action is taken against the Developer by the competent authority on account of contravention of any of the provisions of any act or rules made under these regulations or notifications including amendments. In case the Developer is caused to pay or reimburse such amounts as may be necessary to cause or observe or for non-observance of the provisions stipulated in the notifications/bye-laws /acts/rules/regulations including amendments, if any, on the part of the Contractor, the Developer shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Developer. The employees of the Contractor and his subcontractor, whether nominated or otherwise, in no case shall be deemed to be the employees of the Developer at any point of time.

Some of the major labour laws applicable to establishments engaged in building & other construction work are as under. The Contractor shall note that this list is not exhaustive but indicative and it will be the Contractors responsibility to appraise himself with all the applicable laws in addition to the list below, their amendments and other changes.

**Workmen Compensation Act 1923:** Applicable in case of injury by accident on work.

**Payment of Wages Act 1936:** Provides for when and on which date payment is to be made as well as what deductions to be made.

**Minimum Wages Act 1948:** Provides compulsion for payment to contract labour not less than Minimum wages fixed by appropriate Government.

**Maternity Benefit Act 1951:** Provides for leave and other benefits to women employees in case of confinement / miscarriage.

**Employees PF and Misc. Provision Act 1952:**

**Contract Labour (Regulation & Abolition) Act 1970:** Provides Labour welfare measures to be provided by the Contractor. Also provides for acquisition of Labour license if more than 20 contract labours are employed by the Contractor.

**Payment of Gratuity Act 1972:** Applicable to establishment employing 10 or more employees.

**The Water (Prevention & Control of Pollution) Act 1974:** Provides for prevention and control of water pollution and maintaining & restoring of wholesomeness of water.

**Equal Remuneration Act 1979:** Provides for equal wages for work of equal nature to male & female employees.

**The Air (Prevention & Control of Pollution) Act 1981:** Provides for prevention, control and abatement of air pollution.

**Child Labour (Prohibition & Regulation) Act 1986:** The Act prohibits employment of child labour in Building & Construction Industry.

**The Environment Protection Act 1988:** Provides for the protection and improvement of environment and for matters connected therewith and the prevention of hazards to all living beings, plants, & property.

**The building and other construction workers welfare cess Act 1996:** provides for the levy and collection of a cess on the cost of construction incurred by Owners with a view to increase the resources of the Building and Other Construction Workers' Welfare Boards constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

Notwithstanding with the provisions above Contractor shall also comply and perform in accordance with the additional provisions specified under Annexure to the General Conditions.

## 6.5 Working Hours

No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours stated in the Special Conditions of Contract, unless:

- (a) Otherwise stated in the Contract,
- (b) The Project Manager gives consent, or
- (c) The work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Project Manager.

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- (d) Contractor to take care of all statutory requirement before executing the work and will indemnify the Developer in case of any default.

The Project Manager and the Contractor shall agree upon the Working hours in each month, depending upon work schedule requirements, exigencies Traffic restrictions/ statutory requirements, etc.

## **6.6 Facilities for Staff and Labour**

Except as otherwise stated in the Specification or the Schedules, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Developer's Personnel as stated in the Special Conditions of Contract

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the site / structures forming part of the Permanent Works without consent of the Project Manager.

## **6.7 Health and Safety**

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Developer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

Notwithstanding the provisions above Contractor shall also comply with the additional health and safety requirements as specified in Annexure to the General Conditions.

## **6.8 Contractor's Superintendence**

Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [Law and Language]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

## **6.9 Contractor's Personnel**

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Project Manager may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:

- (a) Persists in any misconduct or lack of care,
- (b) Carries out duties incompetently or negligently,
- (c) Fails to conform with any provisions of the contract, or
- (d) Persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall appoint (or cause to be appointed) a suitable person as replacement.

Notwithstanding the provisions above Contractor shall also comply with the additional site organization requirements as specified in Annexure to the General Conditions.

## **6.10 Records of Contractor's Personnel and Equipment**

The Contractor shall submit, to the Project Manager, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Project Manager, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the taking-over certificate for the works

## **6.11 Disorderly Conduct**

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.

## **6.12 Workmen**

The Contractor shall at all times enforce strict discipline and good order among his employees and those of any subcontractor and shall not employ on the Work any unfit

person or anyone not skilled and experienced in the assigned task. The Contractor's employees employed on the Work, who fail to perform the Work in the manner required by the Developer, shall be discharged immediately and such persons shall not be re-employed at the Developer's site for tasks for which they were found unfit. Such discharge shall not be the basis of any claim for compensation or damages against the Developer. Contractor shall not employ any person who is under the age of 18 years. The Contractor shall keep labour attendance records (head counts) for both male & female workers with age group bifurcations as age less than 30 years, between 30 to 50 years and more than 50 years of age. The record of labour attendance (head count) shall be submitted to the Developer on a monthly basis. The Contractor shall make labour payments on regular basis as per the applicable labour laws and records of all labour payments shall be submitted to the Developer as and when required by Developer.

1. Minimum labour requirement should be maintained at site by contractor conforming to IS 7272 (part - I) 1974.
2. Detail calculation of labour requirement should be worked out and submitted by the Contractor on receiving of Good for Construction drawings before executing the activity for review and approval of the Developer.
3. Alternate labour arrangement should be made by the Contractor in peak period of labour shortage in all circumstances.
4. No delays in work will be accepted due to unavailability of labour at site.

## **7 Plant, Materials and Workmanship**

### **7.1 Manner of Execution**

The Contractor shall carry out the execution of the Works:

- (a) In the manner (if any) specified in the Contract,
- (b) In a proper workmanlike and careful manner, in accordance with recognized good practice, and of desired quality, and
- (c) With properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

### **7.2 Samples**

The Contractor shall submit samples of Materials, and relevant information for the Project Manager's consent as and when required, prior to using the Materials for the Works. The samples must be submitted in advance giving ample time for the Project Manager's review prior to quantity fabrication or, in the case of manufactured items, prior to placing purchase orders.

### **7.3 Inspection**

The Developer's Personnel shall at all reasonable times:

- (a) Have full access to all parts of the Site and to all places from which natural Materials are being obtained, and
- (b) During construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Contractor shall give the Developer's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

The Contractor shall give notice to the Project Manager whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Project Manager shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Project Manager does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Project Manager, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

### **7.4 Testing**

The Sub-Clause shall apply to all test specified or required to confirm the performance of the design, materials and workmanship proposed by the Contractors, other than Tests after completion.

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall have well equipped laboratory at site with brand new equipment for testing of materials and samples as stated in list of laboratory equipment annexed to the contract document. The Contractor shall agree, with the Project Manager, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Project Manager may, under Clause 13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne and paid by the Contractor, notwithstanding other provisions of the Contract.

The Project Manager shall give the Contractor not less than 24 hours' notice for offsite test and 4 hours' notice for all routine onsite tests of the Project Manager's intention to attend the tests. If the Project Manager does not attend at the time and place agreed, the Contractor any proceed with the tests, unless otherwise instructed by the Project Manager, and the tests shall then be deemed to have been made in the Project Manager's presence.

If the Contractor suffers delay and / or incurs Cost from complying with these instructions or as a result of a delay for which the Developer is responsible, the Contractor shall give notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) Payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

The Contractor shall promptly forward to the Project Manager duly certified reports of the tests. When the specified tests have been passed, the Project Manager shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Project Manager has not attended the tests, he shall be deemed to have accepted the readings as accurate.

## **7.5 Rejection**

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Project Manager may reject the Plant, Materials or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect or replace such Plant, Materials and/or Workmanship and ensure that the rejected item complies with the Contract.

If the Project Manager requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Developer to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [Developer's Claims] pay these costs to the Developer.

## **7.6 Remedial Work**

Notwithstanding any previous test or certification, the Project Manager may instruct the Contractor to:

- (a) Remove from the Site and replace any Plant, Materials and/or Workmanship which is not in accordance with the Contract,
- (b) Remove and re-execute any other work which is not in accordance with the Contract, and
- (c) Execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c).

If the Contractor fails to comply with the instruction, the Developer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to sub-clause 2.5 [Developer's Claims] pay to the Developer all cost arising from this failure.

The Project Manager may but shall not be bound to accept any defective Plant, Materials or work not remedied, in which event the Contract Price shall be reduced to reflect the loss of value of the Works to the Developer or any savings in cost to the Contractor in not having to rectify the defective Plant, Materials or work whichever is greater. The Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine such adjustment.

## **7.7 Ownership of Plant and Materials**

Each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Developer at whichever is the earlier of the following times, free from lines and other encumbrances:

- (a) When it is delivered to the Site;
- (b) When the Contractor is entitled to payment of the value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension].

## **7.8 Royalties**

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Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments and submit necessary proofs prior to commencement of Works for:

- (a) Natural Materials obtained from outside the Site, and
- (b) The disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

## **8 Commencement, Delays and Suspension**

### **8.1 Commencement of Works**

The Commencement Date shall be the Date of Letter of Award of Contract or as mentioned in the Special Conditions of Contract.

The Contractor shall commence the execution of the Works from Commencement Date. Contractor will submit all the below mentioned prerequisite obligations within 15 days of Letter of Award of Contract/ Letter of Intent whichever is earlier.

Prerequisite Obligations to Commencement of Works:

Submission of Performance security/Guarantee in accordance with Sub-Clause 4.2,

Submission of Insurances in accordance with Clause 18,

Approval of Project Quality Plan in accordance with Sub-Clause 4.9 and Annexure to the General Conditions,

Approval of Project Safety Plan Sub-Clause 4.8 and Annexure to the General Conditions,

Obtaining Labour License from the concerned authorities,

Approval of Construction Programme in accordance with Sub-Clause 8.3,

### **8.2 Time for Completion**

The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), as stated in Special Conditions of Contract including:

- (a) Achieving the passing of the Tests on Completion, and

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- (b) Completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections.]

### **8.3 Programme**

The Contractor shall submit a detailed time programme as per the Special Conditions of the Contract to the Project Manager within 15 (Fifteen) days after receiving the notice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

- (a) Micro construction schedule in MS Project/Primavera identifying all major/minor milestones and activities in the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing,
- (b) Each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors])
- (c) The sequence and timing of inspections and tests specified in the Contract, and
- (d) A supporting report which includes:
  - (i) A general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and
  - (ii) Details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage.

The Contractor shall submit his detailed Program of Work in the form of a schedule to the Project Manager for approval, indicating the date that each part or element of the Work will be started and completed including, where applicable, the continuance of operations and indicating a schedule of the required submittals including shop drawings, samples, list of materials and equipment, equipment data and instruction manuals. The program and schedule shall conform to the Work and the Time for Completion and shall be subject to such revisions the Project Manager may require for his approval.

The Contractor shall update and revise the above schedule every month. Each updated and revised schedule shall be submitted to the Project Manager for approval simultaneously with the Contractor's application for progress payment for the same time period and shall be subject to such revisions the Project Manager may require for his approval. Additional requirements from the Developer in this regard are enlisted in the Annexure to General Conditions.

The Project Manager's approval of revised progress schedules may be a condition precedent to the approval of the Contractor's applications for progress payments.

Unless the Project Manager, within 07 (Seven) days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Developer's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Project Manager of specific probable future events or circumstances which may adversely affect the work increase the contract price or delay the execution of the works. The Project Manager may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and / or a proposal under Sub-Clause 13.3 [Variation Procedure].

If, at any time, the Project Manager gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the contractor shall submit a revised programme to the Project Manager in accordance with this Sub-Clause.

#### **8.4 Extension of time for completion**

The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes:

- (a) A Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedural],
- (b) A cause of delay giving an entitlement to extension of time under a Sub-clause of these Conditions,
- (c) Exceptionally adverse climatic conditions,
- (d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- (e) Any delay, impediment or prevention caused by or attributable to the Developer, the Developer's Personnel, or the Developer's other contractors on the Site.
- (f) Any changes in quantities, in the Bills of Quantities, due to errors in the measurement shall not be a cause for any extension of time.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall immediately give notice to the Project Manager in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Project Manager shall review previous determinations and may without being obliged to increase, but shall not decrease, the total extension of time.

Nothing contained in this clause or in Clause 8.5 (Delays caused by authorities) shall be construed as giving a right to the Contractor for receiving increased Costs unless such entitlement to increased Costs are specifically provided for elsewhere in the Contract.

The decision of the Project Manager for application of the above conditions shall be final and binding to the Contractor.

### **8.5 Delays Caused by Authorities**

If the following conditions apply, namely:

- (a) The Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,
- (b) These authorities delay or disrupt the Contractor's work, and
- (c) The delay or disruption was Unforeseeable,

Then this delay or disruption will be considered as a cause of delay under sub paragraph (b) of Sub-clause 8.4 [Extension of Time for Completion].

The decision of the Project Manager for application of the above conditions shall be final and binding to the Contractor.

### **8.6 Rate of progress**

If, at any time:

- (a) Actual progress is too slow to complete within the Time for Completion, and /  
  
or
- (b) Progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme],

Other than as a result of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the Project Manager may instruct the Contractor to submit, under Sub-Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete the Works within the Time for completion.

Unless the Project Manager notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and / or Goods, at the risk and cost of the Contractor. If these revised methods cause the Developer to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [Developer's Claims] pay these costs to the Developer, in addition to delay damages (if any) under Sub-Clause 8.7 below. This is without prejudice to right of the Developer to deduct and recover such amount from progress payment due to the Contractor.

### **8.7 Liquidity damages (LD)/Delay Damages**

Damages for the delay in completion of the work due to reasons attributable to Contractor after taking into consideration approved extension of time, an amount equivalent to 0.5% of the contract price will be deducted from amount payable for every week's delay not exceeding 5% of contract price.

At the discretion of Project Manager such delay damages may be applicable for intermediate milestones as stated in the Special Conditions of Contract or agreed otherwise in the construction programme. In the event the contractor has achieved next milestone, the damages imposed or levied on the earlier milestone(s) shall be reversed & paid back to the contractor in subsequent Application for Payment.

### **8.8 Suspension of Work**

The Project Manager may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The Project Manager may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 8.9, 8.10 and 8.11 shall not apply.

### **8.9 Consequences of Suspension**

If the Contractor suffers delay and/or incurs Cost from complying with the Project Manager's instructions under Sub-Clause 8.8 [Suspension of Work] and / or from resuming the work, the Contractor shall give notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and

- (b) Reimburse the cost where the Contractor shall have no claim to any payment or compensation whatsoever by reason of or in pursuance of any notice as aforesaid, on account of any suspension, stoppage or curtailment except to the extent specified hereinafter,

Where the Developer requires the Contractor to suspend the Work for a period in excess of 60 (sixty) days at a time, the Contractor shall be entitled to apply to the Project Manager within 30 (thirty) days of the resumption of Work after such suspension, for payment of compensation to the extent of cost incurred by him in respect of working machinery rendered idle on the site or on account of his having had to pay the salary or wages of labour engaged by him during the said period of suspension, provided always that the Contractor shall not be entitled to any claim in respect of any such working machinery, salary or wages for the first continuous 60 (sixty) days of such suspension or in respect of any suspension whatsoever occasioned by unsatisfactory Work or any other default on his part. For likely stoppage or suspension of work in excess of 90 days the charges for idle time will be restricted to the actual or a maximum of 15 days and shall be limited to the percentage mentioned in the Special condition of the Contract of the contract value

After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the contractor's faculty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-clause 8.8 [Suspension of Work].

The Contractor shall not be entitled to any revision in item rates in Bill of Quantities post resumption of Works in case of suspension.

#### **8.10 Payment for Plant and Machinery in Event of Suspension**

The compensation to the Contractor for the period of suspension exceeding 60 (sixty) days as mentioned in the Sub-Clause 8.9(b) above, shall be decided by the Developer and shall be included in the Contract Price. The decision of the Developer in this regard shall be final and conclusive against the Contractor.

#### **8.11 Prolonged Suspension**

If the suspension under Sub-clause 8.8 [Suspension of work] has continued for more than 90 (Ninety) days, the Contractor may request the Project Manager's permission to proceed to demobilise. If the Project Manager does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Project Manager, treat the suspension as an omission under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole

of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [Termination by Contractor].

## **8.12 Resumption of work**

After the permission or instruction to proceed is given, the Contractor and the Project Manager shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

## **9 Tests on Completion and Pre-Completion Inspection**

### **9.1 Contractor's Obligation**

The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing], after providing the documents in accordance with sub-paragraph (d) of Sub-Clause 4.1 [Contractor's General Obligations].

The Contractor shall give to the Project Manager not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Project Manager shall instruct.

In considering the results of the Tests on Completion, the Project Manager shall make allowances for the effect of any use of the Works by the Developer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on completion, the Contractor shall submit a certified report of the results of these Tests to the Project Manager.

### **9.2 Delayed tests**

If the Tests on Completion are being unduly delayed by the Developer, Sub-Clause 7.4 [Testing] (fifth paragraph) and / or Sub-clause 10.3 [Interference with Tests on Completion] shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, the Project Manager may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Project Manager

If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Developer's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted by the Contractor as accurate.

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**9.3 Re-testing**

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Project Manager or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the Same terms and conditions.

**9.4 Failure to Pass Tests on Completion**

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Re-testing], the Project Manager shall be entitled to:

- (a) Order further repetition of Tests on Completion under sub-Clause 9.3;
- (b) If the failure deprives the Developer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be, in which event the Developer shall have the same remedies as are provided in sub-paragraph (c) of sub-clause 11.4 [Failure to remedy Defects]; or
- (c) Issue a Taking-Over Certificate if the Developer so requests.

In the event of sub-paragraph (c); the Contractor shall proceed in accordance with all other obligations under the contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Developer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Developer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.5 [Developer's Claims] and Sub-clause 3.5 [Determinations].

**9.5 Pre-Completion Inspection**

Prior to any application for the Taking-Over Certificate, the Contractor shall issue a written request to the Developer to carry out a joint inspection of the Works with the Contractor. The written request along with necessary supporting documents stating the completion of Works shall be issued at least seven (7) days prior to the commencement of the said joint inspection

If during the course of the said joint inspection, the Developer is of the opinion that there is any item of Works or Section, which does not comply with the Contract in any respect and that the same should be made good, remedied or reconstructed before the application of the Taking-Over Certificate, then the Project Manager shall instruct in writing to the Contractor to make good, remedy or reconstruct the same to the satisfaction of the Project Manager and the Contractor's full compliance therewith shall immediately operate as a condition precedent to the application of the Taking-Over Certificate under Sub-Clause 10.1 unless the Project Manager expressly agrees to accept (but shall not be bound to) any of the items of Works or Section, specified in

The said instructions without their being made good, remedied or reconstructed by the Contractor in such event the Contract Price shall be reduced by any loss of value or otherwise suffered by the Developer, or by any saving in cost to the Contractor in carrying out the same, whichever is greater.

For the avoidance of doubt, nothing contained in this sub-clause shall be construed as limiting the other powers of the Project Manager under the Contract or as prejudicing the other rights or remedies of the Developer under the Contract.

## **10 Developer's taking over**

### **10.1 Taking over of the works and Sections**

Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be taken over by the Developer when (i) the Works have been completed in all respect in accordance with the Contract, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Project Manager for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

The Project Manager shall, within 28 days after receiving the Contractor's application:

- (a) Issue the Taking-Over Certificate to the Contractor, stating the date which the Works or Section were completed in accordance with the Contract.; or
- (b) Reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Project Manager fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract the Contractor shall issue a communication to the Project Manager with a copy to the Developer stating that the issuance of Taking Over Certificate is pending and if the Project Manager fails to respond within 15 days of receipt of such communication, the Developer shall intervene with appropriate measures after verifying the factual position, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

Issue of Taking Over Certificate shall not be construed as certifying that there are no Defects concerning the Works nor shall it absolve the Contractor from liability if any defects concerning the Works are subsequently notified during defects Liability period.

Provided that, without prejudice to the Project Manager's power under Sub-Clause 10.2, if any outstanding works are, in the opinion of the Project Manager, minor such that:

- (a) They can be completed following the removal of the Contractor's site organisation and major plant or equipment works; and
- (b) There would not be unreasonable disturbance of the Developer's full enjoyment and occupation of the property, then upon the Contractor's undertaking in writing in favour of the Developer to complete such minor outstanding work within such time or times as may be stipulated by the Project Manager, the Project Manager may (but shall not be bound to) issue a Taking-Over Certificate after consultation with Developer.

The Taking-Over Certificate when issued shall record the said minor outstanding work by way of a schedule attached to the certificate together:

- (a) With the terms of any agreement with the Contractor for the completion or performance of the said minor outstanding work, and
- (b) With the terms of any agreement as to the withholding and subsequent release of any monies that may otherwise have been payable or will be paid under the terms of the Contract.

## 10.2 Taking Over of Parts of the Works

The Project Manager may, at the sole discretion of the Developer, issue a Taking-Over Certificate for any part of the Permanent Works.

The Developer shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Project Manager has issued a Taking-Over Certificate for this part. However, if the Developer does use any part of the Works before the Taking-Over Certificate is issued:

- (a) The Part which is used shall be deemed to have been taken over as from the date on which it is used,
- (b) The Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Developer, and

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- (c) If requested by the Contractor, the Project Manager shall issue a Taking-Over certificate for this part.

After the Project Manager has issued a Taking-Over Certificate for a part of the Works, the contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Liability Period.

If the Contractor incurs cost as a result of the Developer taking over and/or using a part of the Works, other than such use as is specified in the contract or agreed by the Contractor, the Contractor shall (i) give notice to the Project Manager and (ii) be entitled subject to Sub-Clause 20.1 [Contractor's Claims] **to payment of any such Cost**, which shall be included in the Contract Price. After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this Cost.

### **10.3 Interference with Tests on completion**

If the Contractor suffers delay and / or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Project Manager and shall be entitled subject to sub-Clause 20.1 [Contractor's Claims] to:

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) Payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

### **10.4 Surfaces requiring reinstatement**

Except as otherwise stated in a taking-over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

## **11 Defects liability**

### **11.1 Completion of outstanding Work and remedying defects**

In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Liability Period as stated in Special Conditions of Contract or as soon as practicable thereafter, the contractor shall:

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- (a) Complete any work which is outstanding on the date stated in a Taking-Over Certificate, as set out in the Schedule to the Taking-Over Certificate, and
  - (b) Execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Developer on or before the expiry date of the Defects Liability Period for the Works or Section (as the case may be).

If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Developer.

## **11.2 Cost of Remedying Defects**

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding work and Remedying Defects] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- (a) Any design for which the Contractor is responsible, Plant, Materials or workmanship not being in accordance with the Contract, or
- (b) Failure by the contractor to comply with any other obligation.
- (c) Any other reason attributable to the Contractor.

## **11.3 Extension of defects liability period**

The Developer shall be entitled subject to Sub-Clause 2.5 [Developer's Claims] to an extension of the Defects Liability Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage. However, a Defects Liability Period shall not be extended by more than two years for individual contract.

If delivery and / or erection of Plant and / or Materials was suspended under Sub-Clause 8.8 [Suspension of Work] or Sub-clause 16.1 [Contractor's Entitlement to suspend Work], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Liability Period for the Plant and / or Materials would otherwise have expired.

This Sub-Clause shall not apply for the Works or Sections for which a separate indemnity /ies is / are obtained from the Contractor for specified trades of the Works.

## **11.4 Failure to remedy defects**

If the Contractor fails to remedy any defect or damage within a reasonable time, a date shall be fixed by (or on behalf of) the Developer, on or by which the defect or damages to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the contractor under Sub-clause 11.2 [Cost of Remedying Defects], the Developer may (at his option):

- (a) Carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.5 [Developer's Claims] pay to the Developer the costs incurred at actual by the Developer in remedying the defect or damage without prejudice to the Developer's right to claim damages as provided in this Contract or under the Law.
- (b) Require the Project Manager to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [Determinations] Reasonable reduction shall mean either any saving in cost obtained by the contractor by failing to remedy the defect or damage or the reduced value of the works to the Developer or the cost of rectifying, reconstruction or replacement of the Works by methods stipulated or approved by the Project Manager, whichever is the greatest; or
- (c) If the defect or damage deprives the Developer of substantially the whole benefit of the Works or any major part of the Works, terminate the contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the contract or otherwise, the Developer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the site and returning Plant and Materials to the Contractor.
- (d) The Developer Reserves the right to invoke the Performance Guarantee/retention money or any amount due to the contractor in case of the Contractor's failure to remedy Defects

### **11.5 Removal of defective work**

If the defect or damage cannot be remedied expeditiously on the Site and the Developer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security as approved by Developer.

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**11.6 Further tests**

If the work of remedying of any defect or damage may affect the performance of the Works the Project Manager may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Contractor, under sub-clause 11.2 [Cost of Remedying Defects], for the cost of the remedial work.

**11.7 Right of access**

Until the Performance Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Developer's reasonable security restrictions.

**11.8 Contractor to Search**

The Contractor shall, if required by the Project Manager, search for the cause of any defect, under the direction of the Project Manager. Unless the defect is to be remedied at the cost of the Contractor under sub-Clause 11.2 [Cost of Remedying Defects], the Cost of the search shall be agreed or determined by the Project Manager in accordance with Sub-Clause 3.5 [determinations] and shall be included in the contract Price.

**11.9 Performance Certificate**

Performance of the Contractor's obligations shall not be considered to have been completed until the Project Manager has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Project Manager shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Liability Period(s), or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Developer.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

**11.10 Unfulfilled Obligations**

After the Performance certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

### **11.11 Clearance of Site**

Upon receiving the Taking-Over Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site at his cost.

If all these items have not been removed within 28 days after the Developer receives a copy of the Taking-Over Certificate, the Developer may sell or otherwise dispose of any remaining items. The Developer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Developer's costs, the Contractor shall pay the outstanding balance to the Developer.

### **11.12 Temporary Reinstatement**

If in connection with the execution of the Works, any highway or other road or way is damaged or otherwise affected and if the permanent reinstatement of such highway or other road or way is to be carried out by persons other than the Contractor, the Contractor shall:

- (a) At his own cost and independently of any requirement of or notice from the Project Manager make good any defects and maintain the temporary reinstatement so made good until:
  - (i) The end of the Defects Liability Period; or
  - (ii) The taking of possession of the Site by the relevant authorities or any other person for the purposes of carrying out permanent reinstatement works; whichever is earlier; and

Till such time as stated in (i) or (ii) above, keep the Developer indemnified against any loss arising from any damage, loss or expense arising from or in connection with the temporary reinstatement or the Contractor's failure to carry out the temporary reinstatement works.

Where the relevant authorities or any person take possession of the Site as aforesaid in sections or lengths, the responsibility of the Contractor shall cease with respect to such sections or lengths and the indemnity/ies given by the Contractor shall be construed and have effect accordingly.

## **12 Measurement and evaluation**

### **12.1 Works to be measured**

In the opinion of the Project Manager or his delegated assistants; should any part of the Works require measurement for the purpose of;

- (a) Evaluation of a Variation in accordance with Sub-Clause 13.3 [Variation Procedure]; or
- (b) Computation of the Contract Price of the item(s) of works of which value is included in the Accepted Contract Amount on the basis of approximate quantities; or
- (c) Any other provision of the Contract requires measurement for its implementation, reasonable notice shall be given to the Contractor's Representative, who shall:
  - Promptly either attend or send another qualified representative to assist the Project Manager in making the measurement at site and/or from the drawings issued to the Contractor for Works, and
  - Supply any particulars requested by the Project Manager.

If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Project Manager shall be accepted as accurate.

Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Project Manager. The Contractor shall, as and when requested, attend to examine and agree the records with the Project Manager, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.

If the Contractor examines and disagrees the records, and / or does not sign them as agreed, then the Contractor shall give notice to the Project Manager of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Project Manager shall review the records and either confirm or vary them. If the Contractor does not so give notice to the Project Manager within 14 days after being requested to examine the records, they shall be accepted as accurate.

### **12.2 Method of measurement**

Except as otherwise stated in the Contract and notwithstanding local practice:

- (a) Measurement shall be made of the net actual quantity of each item of the Permanent Works, and
- (b) In addition to other measurement methods elaborated under the specification, the method of measurement shall be in accordance with SP-27: 1987 “Handbook of Method of Measurement of Building Works” and IS: 1200 “Method of measurement of building and civil engineering works” published by the Bureau of Indian Standards.”

### **12.3 Evaluation**

Except as otherwise stated in the Contract, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriate rate or a price for the item.

For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work, However, a new rate or price shall be appropriate for an item of work if:

- (i) The work is instructed under Clause 13 [Variations and Adjustments], and
- (ii) No rate or price is specific in the Contract for this item, and
- (iii) No specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

Extra Item or any new rates will be derived from:

Rates will be worked out from Similar Items in the bill of quantity (BOQ).

Where rates cannot be derived from Similar Items in the BOQ, the rates of such extra items shall be finalized by using the following:

The rate for items directly carried out by the contractor shall be worked out based on actual cost of [material (in contractor’s scope) + labour + plant & equipment] + insurance + 15% towards overheads and profits. Rate analysis for the same shall be submitted by the Contractor for the approval of Developer’s Representative.

GST shall be paid extra as may be applicable.

The calculation for determination of Rates for Extra Items will be in line with the District Schedule of Rates or on actual whichever is lower.

- a) For extra Items which are carried out through sub contractor or through specialised agencies, contractor will be paid the actual cost of the specialised agencies/ sub contractor + 7.5% towards Overhead and Profit + Taxes as applicable. The rates of the subcontractor will be vetted by the Developer's Representative before actual award of work by the contractor on his sub-contractor/ specialised agency.
- b) Under no circumstances the work will be delegated to more than one level of sub-contracting.
- c) In the both the cases Tax Optimisation will be done and all benefits from such exercise will be to the account of the Developer.

Until such time as an appropriate rate or price is agreed or determined, the Project Manager shall determine a provisional rate or price for the purposes of Interim Payment Certificates.

## 12.4 Omissions

Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

- (a) The Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount;
- (b) The omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and
- (c) This cost is not deemed to be included in the evaluation of any substituted work;

Then the Contractor shall give notice to the **Project Manager** accordingly, with supporting particulars. Upon receiving this notice, the **Project Manager** shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

## 13 Variations and Adjustments

### 13.1 Right to vary

Variations may be initiated by the Project Manager at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Project Manager stating (with supporting particulars) that the Contractor cannot readily obtain the Goods required for the Variation. Upon receiving this notice, the Project Manager shall cancel, confirm or vary the instruction.

Each Variation may include:

- (a) Significant changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),
- (b) Significant changes to the quality and other characteristics of any item of work
- (c) Changes to the levels, positions and / or dimensions of any part of the Works,
- (d) Omission of work, unless it is to be carried out by others,
- (e) Any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or
- (f) Changes to the sequence or timing of the execution of the Works.

The Contractor shall not make any alteration and/or modification of the Permanent Works, unless until the Project Manager instructs or approves a Variation.

For the avoidance of doubt, the term "Variation" shall not only include changes as aforesaid but also include the changes which may be designed to alter the use to which the Works will be put but shall exclude any instruction (which would otherwise be a Variation) which has arisen due to or is necessitated by or is intended to cure any default of or breach of contract by the Contractor.

### **13.2 Value engineering**

The Contractor may, at any time, submit to the Project Manager a written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Developer of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Developer of the completed Works, or (iv) otherwise be of benefit to the Developer.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [Variation Procedure].

If a proposal, which is approved by the Project Manager, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:

- (a) The Contractor shall design this part,

- (b) Sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor's General Obligations] shall apply, and
- (c) If this change results in a reduction in the contract price of this part, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations]:

### **13.3 Variation procedure**

If the Project Manager requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) A description of the proposed work to be performed and a programme for its execution,
- (b) The contractor's proposal for any necessary modifications to the programme according to sub-clause 8.3 [programme] and to the time for completion, and
- (c) The contractor's proposal for evaluation of the Variation.

The Project Manager shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [Value Engineering] or otherwise), respond with approval as change order, disapproval or comments. The Contractor shall not proceed with any work in absence of a signed change order released by Project Manager on behalf of Developer.

The Contractor shall not proceed with additional scope of work without prior Approval from Developer/Developer's Representative through Project Manager.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Project Manager to the Contractor, who shall acknowledge receipt.

Each Variation shall be evaluated in accordance with Clause 12 [Measurement and Evaluation] unless the Project Manager instructs or approves otherwise in accordance with this Clause.

### **13.4 Provisional Sums**

The term Provisional Sums also refers to the Prime Cost Sums or P.C. Sums.

Each Provisional Sum shall only be used, in whole or in part, in accordance with the Project Manager's instructions and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Project Manager shall have instructed. For each Provisional Sum, the Project Manager may instruct:

- (a) Work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [Variation Procedure]; and / or
- (b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]) or otherwise; and for which there shall be included in the Contract Price:
  - i. The actual amounts paid (or due to be paid) by the Contractor, and
  - ii. A sum for overhead changes and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate schedule.

The Contractor shall, when required by the Project Manager, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

### **13.5 Day work**

For work of a minor or incidental nature, the Project Manager may instruct that a Variation shall be executed on a day work basis. The work shall then be valued in accordance with the Day work Schedule included in the Contract, and the following procedure shall apply. If a Day work Schedule is not included in the Contract, this Sub-Clause shall not apply.

Before ordering Goods for the work, the contractor shall submit quotations to the Project Manager. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the Day work Schedule specifies that payment is not due, the Contractor shall deliver each day to the Project Manager accurate statements in duplicate which shall include the following details of the resources used in executing the precious day's work:

- (a) The names, occupations and time of Contractor's Personnel,
- (b) The identification, type and time of Contractor's Equipment and Temporary Works, and
- (c) The quantities and types of Plant and Materials used.

One copy of each statement will, if correct, or when agreed, be signed by the Project Manager and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Project Manager, prior to their inclusion in the next Statement under Sub-clause 14.3 [Application for Interim Payment Certificates].

### **13.6 Adjustments for Changes in Legislation**

The contract price shall be adjusted to take account of any cost relating to the change in the legislation Tax system more particularly on implementation of GST. The contract price shall not be adjusted for any other legislation changes on any other direct/indirect taxes and duties.

## **14 Contract price and payment**

### **14.1 The contract price**

Unless otherwise stated elsewhere in the Contract:

- a. The Contract Price shall be the agreed and accepted Contract amount indicated in the letter of award and letter of acceptance or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments in accordance with the Contract;
- b. The Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
  - i) Of the Works which the Contractor is required to execute, or
  - ii) For the purposes of Clause 12 [Measurement and Evaluation]; and
- c. The Contractor shall submit to the Project Manager, within 60 days after the Commencement Date mutually agreed stages, a re-measured bill of quantities worked out from drawings and designs issued by Project Manager. Such bill of quantities shall be supported by valid measurement sheets in the format agreed with the Project Manager. The Project Manager may take account of such Bill of Quantities when preparing Payment Certificates but shall not be bound by it.

The Contract Price shall in no situation exceed the Accepted Contract Amount unless there has been an increase in Cost in accordance with the conditions contained in this Contract.

### **14.2 Advance payment**

The Developer shall make an advance payment, as an interest-free loan for mobilisation, when the Contractor **submits** an irrevocable, single and unconditional Bank Guarantee, from a Nationalized Bank / Scheduled Bank, as per the list of approved banks as enclosed as **Annexure - A** for an equivalent amount as per the format enclosed in Tender in accordance with this Sub-Clause. The total advance payment, the number and timing of instalments (if more than one), and proportions, shall be as stated in the Special Conditions of Contract

Unless and until the Developer receives this bank guarantee, or if the total advance payment is not stated in the Special Conditions of Contract, this Sub-clause shall not apply

The Project Manager shall issue an Interim Payment Certificate for the first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after the Developer receives (i) the Performance Guarantee in accordance with Sub-clause 4.2 [Performance Security] and (ii) a bank guarantee in amounts and currencies equal to the advance payment. This bank guarantee shall be issued by a nationalized or schedule bank as per the list of approved banks as enclosed as annexure-A.

The Contractor shall ensure that the bank guarantee is valid and enforceable until the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the bank guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall immediately extend the validity of the guarantee until the advance payment has been fully repaid. If the Contractor fails to extend the validity of such bank guarantee as stated above then Contractor hereby signing this Contract, gives an unconditional and irrevocable authority to the Developer to invoke this bank guarantee without any prior notice to the Contractor and he shall not raise any objection and have no claim whatsoever against such action of Developer.

The advance payment shall be deducted on prorata basis at the percentage stated in Special Conditions of Contract in Payment Certificates. Total advance payment shall be recovered when value of works certified in payment certificate reaches 85% of the Accepted Contract Amount.

If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the works or prior to termination under Clause 15 [Termination by Developer], Clause 16 [Suspension and Termination by Contractor] or clause 19 [Force Majeure] (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Developer and Developer shall be entitled to immediately adjust the same from the balance payment due to the Contractor.

### **14.3 Application for interim payment certificates**

The contractor shall submit a draft application for payment in 2 copies to the Project Manager on 21<sup>st</sup> day of each month or as mentioned in special conditions of contract, in the form approved by the Project Manager showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause 4.21 [Progress Reports]. The Project Manager shall immediately send one copy of such application to the Developer for processing the same and to make ad hoc payment to the contractor as per clause 14.6 (b).

The Draft Application for Payment shall include the following items, as applicable, which shall be, in the sequence listed:

- (a) The estimated contract price of the Works executed and the Contractor's Documents produced up to the 21<sup>st</sup> day of month from 22<sup>nd</sup> day of preceding month (including Variations but excluding items described in sub-paragraphs (b) to (g) below;
- (b) Any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Special Conditions of Contract to the total of the above amounts, until the amount so retained by the Developer reaches the limit of retention Money (if any) stated in the Special Conditions of Contract;
- (c) Any amounts to be added and deducted for the advance payment and repayments in accordance with Sub-Clause 14.2 [Advance Payments];
- (d) Any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [Claims, Disputes and Arbitration]; and

The deduction of amounts certified in all previous Payment Certificates.

All Applications for Payment shall be deemed to have been submitted to the Project Manager only after joint measurements (if required) are certified. In case joint measurement is not needed and the payment is made as per the dimensions on the drawings, the bills will be deemed to have submitted only after a joint preliminary check has been done and accepted.

Undertaking stating compliance with all applicable laws including Labour Regulations as per Appendix F & G as amended by Developer from time to time and as per any other formats provided by the Developer from time to time.

On approval from Project Manager to the draft Application for Payment as detailed above, Contractor shall submit the Application for Payment in three copies with all necessary supporting documents as stated above on 25<sup>th</sup> day or after 4 working days whichever is later of each month and it should be compulsorily having the details as

per Rule 4A of Service Tax Rules 1994. The Project Manager shall immediately send one copy of such application to the Developer for processing the same and to make ad hoc payment to the contractor as per clause 14.6 (b)(i).

#### **14.4 Schedule of payments**

The Contractor shall submit a program of the various activities of the project with milestone along with specific dates of completion of vital activities indicating the percentage of payments to be released on completion of each milestone. This shall be discussed and mutually agreed between the Developer and Contractor before acceptance of the Contract.

#### **14.5 Issue of interim payment certificates**

No amount will be certified or paid until the Developer has received and approved the Performance Guarantee. Thereafter, the Project Manager shall, within 14 days after receiving Application for Payment and supporting documents, issue to the Developer an Interim Payment certificate which shall state the amount which the Project Manager fairly determines to be due, with supporting particulars.

However, prior to issuing the Taking-Over Certificate for the Works, the Project Manager shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated in the Special Conditions of Contract. In this event, the Project Manager shall give notice to the Contractor accordingly.

An Interim Payment Certificate shall not be withheld for any other reason, although:

- (a) If in the opinion of Project Manager anything supplied or work done by the Contractor is not in accordance with the contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and / or
- (b) If in the opinion of Project Manager, the Contractor was or is failing to perform any work or obligation in accordance with the contract, and had been so notified by the Project Manager, the value of this work or obligation has been performed.

The Project Manager may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Project Manager's acceptance, approval, consent or satisfaction.

#### **14.6 Payment**

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The Developer shall pay to the Contractor in accordance with Sub-Clause 14.14 [Disbursement of Payment] if it is in operation:

- (a) The first instalment of the advance payment shall be deducted immediately in the bills submitted by the Contractor from RA bill number 3 onwards and the entire advance payment made to the contractor shall be recovered when 85% of works completed. The recovery amount in each bill shall be on pro rata basis.
- (b) The amount certified in each Interim Payment Certificate within 30 days after the Project Manager accepts the Application for Payment and supporting documents as stated in Sub-Clause 14.3 [Application for Interim Payment Certificates]; and
  - (i) An ad hoc Payment of 60% of the net payable amount of the Interim Application for Payment submitted taking into account all recoveries, advance payment, taxes etc. shall be made not later than 10 (Ten) days from acceptance of the Application for Payment by the Project Manager. The submission of the draft Application for Payment shall not be deemed as an acceptance. The said amount shall be paid to the Contractor.
  - (ii) In case the amount claimed in any of the Application for Payment submitted by the Contractor is in excess of the finally certified amount by the Project Manager by more than 10% then the facility of ad-hoc payment may be withdrawn from the subsequent interim payment certificates.”
  - (iii) Payment for remaining amount of the Interim Payment Certificate after deducting Ad-hoc payment made as stated in (i) above, shall be made within 14 (Fourteen) days after receipt of the Payment Certificate by the Developer from Project Manager. The certification of interim bills shall be done within 14 (Fourteen) days after acceptance of the Application of Payment by Project Manager.
- (c) The amount certified in the Final Payment Certificate and Certificate at Completion within 60 days after the Developer receives this Payment Certificate.

#### **14.7 Deleted**

#### **14.8 Payment of retention money**

Promptly after the issuance of the Performance Certificate, the Retention Money in the form of Cash retention shall be certified by the Project Manager for release/payment to the Contractor.

However, if any work remains to be executed under Clause 11 [Defects Liability], the Project Manager shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

#### **14.9 Application for payment and payment at completion**

Within 28 days after receiving the Taking-Over Certificate for the Works, the contractor shall submit to the Project Manager three copies of an Application for Payment at completion with supporting documents, in accordance with Sub-clause 14.3 [Application for Interim Payment Certificates], showing:

- (a) The value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the works;
- (b) Any further sums which the contractor considers to be due, and
- (c) An estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

When submitting the Application for Payment at Completion, the Contractor shall submit a written discharge which confirms that the total of the Application for Payment at Completion represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the contractor has received the Performance Guarantee, Retention Money and the outstanding balance of this total, in which event the discharge shall be effective on such date. Such written discharge shall be submitted as per proforma annexed to this Contract.

The Project Manager shall then certify Payment at Completion as stated below.

The Project manager will, within 45 (Forty-Five) days after the Contractor has submitted the Application for Payment at Completion as stated above and has satisfied all the Developer's requirements of the contract, indicate in writing his approval of payment or will return the application to the Contractor within 15 (fifteen) days indicating in writing his reasons for refusing to approve final account, in which case the Contractor shall make the necessary corrections and resubmit

The Developer within 28 (Twenty-Eight) days from receipt of Certificate from Project manager under Sub-Clause 14.10 will [Application for final payment certificate] pay the Contractor the amount due less, the unsatisfied liens, after all the reconciliation of material, advances etc. has been completed, unless a longer period of time is prescribed by law or required for the lawful filing and publishing of notices of completion. Appropriate deductions as required by law shall be made for taxes duties; royalties etc. from the payment due to the Contractor.

#### **14.10 Application for final payment certificate**

Within 60 days after receiving the Performance Certificate, the Contractor shall submit, to the Project Manager, three copies of a draft final Application for Payment with supporting documents showing in detail in a form approved by the Project Manager:

- (a) The value of all work done in accordance with the Contract, and
- (b) Any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Project Manager disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Project Manager may reasonably require and shall make such changes in the draft as may be agreed between them. The contractor shall then prepare and submit to the Project Manager the final statement as agreed. This agreed statement is referred to in these conditions as the "Final Statement".

However, if, following discussions between the Project Manager and the contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Project Manager shall deliver to the Developer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 20.2 [Amicable Settlement] or 20.3 [Arbitration], the Contractor shall then prepare and submit to the Developer (with a copy to the Project Manager) a Final Statement.

#### **14.11 Discharge**

When submitting the Final Statement, the Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the contractor has received the outstanding balance of this total, in which event the discharge shall be effective on such date. Such written discharge shall be submitted as per proforma annexed to this Contract.

#### **14.12 Issue of final payment certificate**

Within 45 days after receiving the Final Application for Payment and written discharge in accordance with Sub-Clause 14.10 [Application for Final Payment Certificate] and Sub-Clause 14.11 [Discharge], the Project Manager shall issue, to the Developer, the Final Payment Certificate which shall state:

- (a) The amount which is finally due, and'

- (b) After giving credit to the Developer for all amounts previously paid by the Developer and for all sums to which the Developer is entitled, the balance (if any) due from the Developer to the Contractor or from the Contractor to the Developer, as the case may be.

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.10 [Application for Final Payment Certificate] and Sub-Clause 14.11 [Discharge], the Project Manager shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Project Manager shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

#### **14.13 Cessation of developer's liability**

The Developer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:

- (a) In the final statement and also
- (b) (Except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.9 [Application for payment and payment at completion]

#### **14.14 Disbursement of payment**

Along with submission of the invoice for progress payment, the Contractor shall also submit a declaration, clearly stating that all the payments due to the Contractors vendors/ suppliers for the Works and subcontractors including the labour contractors engaged for the Works have been made for the period starting 60 days previous to the date of invoice and ending 30 days previous to the date of invoice. The aforesaid declaration shall cover the following payments but shall not be limited to the same.

1. Salaries of Contractors employees engaged for the Works
2. Payments to the subcontractors and labour contractors for the period stated above.
3. Payment to all the suppliers and vendors for the Works.
4. All the statutory payments towards Income Tax, GST etc.
5. Payment of the net liability of the GST

In case the Developer wants to see the documentary evidence for all or any of the above, the Contractor shall produce the same without delay.

In case the Contractor fails to submit such a declaration consecutively for two progress payments then the procedure enlisted in the following paragraph shall come in effect without any further representation on the issue.

The Developer will open an Escrow account in a nationalized / Schedule bank of the Developer's choice. The Contractor shall enter into an Escrow agreement as per the proforma annexed to the Contract. This Escrow account will be for the sole purpose of the Works only. This Escrow bank account shall be operated under control of the Developer. The Contractor by signing this contract confirms his concurrence to facilitate the opening and operating this account. The Contractor shall not deposit any money in this account for any purpose whatsoever without the written permission of the Developer. Any deviation will be held as a breach of this Contract. The purpose for this arrangement is to ensure smooth payments to the suppliers / vendors / subcontractors. The Developer is not liable for any claims or lien or any dispute that the Contractor may have to face from a supplier/ vendor/ or a subcontractor. This is only an arrangement and by signing this Contract, the Contractor agrees that the Developer is in no way liable for any payment or shortfall of payment to any of the suppliers / vendors or sub-contractors. On approval of the progress payment, the Contractor shall receive a part of the approved payment in this account. The suppliers / vendors or sub-contractors shall be paid through this account. Notwithstanding this method of payment, no Developer employee relationship will be deemed to have been created between the subcontractors and the Developer. Cost for opening and operating this Escrow Account shall be fully borne and paid by the Contractor.

#### **14.15 Developer's final statement**

The Project Manager may (but shall not be bound to) proceed to prepare the Final Application for Payment and issue the Final Payment Certificate if the Contractor fails to submit the draft final Application for Payment under Sub-Clause 14.10 after 28 days from the date of his receipt of the Project Manager's notice requiring him to submit the same. The final application for Payment prepared by the Project Manager under this Sub-Clause shall in the absence of any written objection by the contractor with 28 days from the date of its receipt by the contractor be deemed to be final and conclusive.

#### **14.16 Withholding of payments**

The Project Manager may withhold payment or, on account of subsequently discovered evidence, nullify the whole or a part of any payment certificate to such extent as may be necessary to protect the Developer from loss on account of including but not limited to the following:

- Defective work not remedied by the contractor.
- Failure of the contractor to make payments properly and regularly to its own workers, to its Sub-Contractors, to its suppliers.
- Damage by the contractor to the work of other contractors, Sub-Contractors or Vendors.
- A reasonable doubt that the contract cannot be completed for the balance unpaid

amount.

- A reasonable doubt that the contractor intends to leave work items incomplete.
- Failure of the contractor to execute the Works in conformity with the contract documents.
- Failure of the contractor to meet or keep-up with the approved construction programme.
- Failure of the contractor to comply with and fulfil all contractual obligations and liabilities stipulated in the contract.

#### **14.17 Price escalation**

The rates quoted by the contractor shall be firm for successful completion of contract and no price escalation shall be allowed. Price escalation due to Fuel, oil, lubricants rise in prices, GST or any taxes/duties, minimum wages acts / rates, etc. for material and labour or otherwise during contract period shall not be paid.

### **15 Termination by developer**

#### **15.1 Notice to correct**

If the contractor fails to carry out any obligation under the Contract, the Project Manager may by notice, notify the contractor on the failure and ask the Contractor to remedy it within a specified reasonable time.

#### **15.2 Termination by developer**

The Developer shall be entitled to terminate the Contract **at any point of time** if the Contractor:

- (a) Fails to comply with **his obligations as per** Sub-Clause 4.2 [Performance Guarantee] or with a notice under Sub-Clause 15.1 [Notice to Correct],
- (b) Abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- (c) Without reasonable excuse fails:
  - (ii) To proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension], or
  - (iii) To comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 14 days after receiving it,
- (d) Subcontracts the whole of the Works or assigns the Contract without the required agreement,

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- (e) Becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events, or
  - (f) Gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity commission or other thing of value, as an inducement or reward:
    - (ii) For doing or forbearing to do any action in relation to the Contract, or
    - (iii) For showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f) however, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

Without prejudice to the rights and remedies available to the Developer under this Agreement or law, the Developer may at any point of time terminate this Agreement upon happening of any one or more of the following events:

- (g) Contractor commits a breach of all or any of the terms of this Agreement or fails or neglects to observe or commits or allows to be committed any breach of the terms, conditions provision, representation warranties, covenants or stipulations of this Agreement.
- (h) Contractor discontinues its business.
- (i) Contractor is dissolved or liquidated or any petition is filed against the contractor for the same, makes a general assignment for the benefit of its creditors, or files or has filed against it, a petition in Bankruptcy or has a receiver appointed for a substantial part of its assets.
- (j) If any of the representations made by Contractor are found to be false or wrong.
- (k) If Contractor does or suffers any act or thing or omits to do or suffers to be done any act, thing, deed or matter whereof in the consequence of which the business of the Developer may be or is likely to suffer.
- (l) If Contractor acts beyond the scope of this Agreement or is suspected or falsifying records or;
- (m) If the Contractor by its act of omission or commission given to the Developer reasonable ground to consider that its rights may; be prejudiced or jeopardized.

(n) fails to comply with Sub-Clause 6.12 [Workmen],

In any of these events or circumstances, the Developer may, upon giving 14 days notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f), the Developer may by notice terminate the Contract immediately.

The Developer's decision to terminate the Contract shall not prejudice any other rights of the Developer, under the Contract or otherwise.

The Contractor shall then leave the Site and deliver any required goods, all Contractors' documents and other design documents made by or for him, to the Project Manager. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment or novation of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Developer may complete the Works and / or arrange for any other entities to do so. The Developer and these entities may then use any Goods, Contractor's documents and other design documents made by or on behalf of the Contractor.

The Developer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Developer, these items may be sold by the Developer on the terms and conditions which Developer may deem fit in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

### **15.3 Valuation at date of termination**

As soon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by Developer] has taken effect, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of the Works, Goods and Contractor's Documents and any other sums due to the Contractor for work executed in accordance with the Contract.

### **15.4 Payment after termination**

After a notice of termination under Sub-Clause 15.2 [Termination by Developer], has taken effect, the Developer may:

(a) Proceed in accordance with Sub-Clause 2.5 [Developer's claims],

- (b) Withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Developer, have been established, and /or

Recover from the Contractor any losses and damages incurred by the Developer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, the Developer shall pay balance to the Contractor.

### **15.5 Developer's entitlement to termination**

Notwithstanding with anything contained in this contract, in case at any point of time after the issue of Letter of Acceptance , the Developer shall for any reason whatsoever not require the whole or part of the Works to be carried out by the Contractor or intend to terminate this Contract for any other reason whatsoever, the Developer shall give notice in writing of the fact to the Contractor without assigning any reason to foreclose and/or terminate the Works within 30 days of receipt of such notice, who shall have no claim to any payment of compensation or otherwise howsoever on account of any profit or advantage, which he might have derived from execution of the Work in full but which he did not derive in consequence of the foreclosing of the Work. The Contractor shall be paid at Contract Rates for the portion of Work executed including such additional works e.g. clearing of the Site, etc. as may be rendered necessary by the said foreclosing. The Contractor shall also be allowed a reasonable payment for any expenses sustained on account of labour, materials, Contractor's Equipment collected but which could not be utilized on the Works as verified by the Developer and certified by him. Upon such foreclosure Developer shall be at absolute liberty and entitled to carry remaining work through any other Contractor or in any other manner as Developer deems fit.

Upon such termination or foreclosure of the contract the Contractor shall have no interest or right of any nature in the Works and he shall not create any impediment to the other/ new Contractor or the Developer in carrying out the balance Works.

### **15.6 Appointment of new contractor after termination**

If the termination of this contract takes place in accordance with Sub-Clause 15.2; and Developer appoints a new contractor at the price solely negotiated by Developer following a competitive bidding process.

Any difference in contract price finalized with the new contractor and that of this contract shall be borne and paid by the Contractor or adjusted from the payment to be made to the Contractor in accordance with Sub-Clause 15.3 & 15.4.

## **16 Suspension and termination by contractor**

## **16.1 Contractor's entitlement to suspend work**

Only, if the developer fails to comply with Sub-Clause 14.6 [Payment], the Contractor may, after giving not less than 45 days' notice to the Developer, suspend

work unless and until the contractor has received the payment certificate reasonable evidence or payment, as the case may be and as described in the notice

If the contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and / or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) Payment or any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

## **16.2 Termination by contractor**

The Contractor shall be entitled to terminate the Contractor if:

- (a) The Developer substantially fails to perform his obligations under the Contract,
- (b) A prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or
- (c) The Developer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these above acts or events.

In any of these events or circumstances, the Contractor may, upon giving 45 days' notice to the Developer, terminate the Contract. However, in the case of sub-paragraph (b) or (c), the Contractor may by notice terminate the Contract immediately.

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**16.3 Cessation of work and removal of contractor's equipment**

After a notice of termination under Sub-Clause 15.5 [Developer's Entitlement to Termination], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.6 [Optional Termination, Payment and Release] has taken effect, the Contractor shall promptly:

- (a) Cease all further work, except for such work as may have been instructed by the Project Manager for the protection of life or property or for the safety of the works,
- (b) Hand over Contractor's documents, Plant, Materials and other work, for which the Contractor has received payment, and
- (c) Remove all other Goods from the Site, except as necessary for safety, and leave the Site at his own cost.

**16.4 Payment on termination**

After a notice of termination under Sub-Clause 16.2 [Termination by contractor] has taken effect, the Developer shall promptly:

- (a) Return the Performance Security to the Contractor,
- (b) Pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release].

**17 Risk and responsibility****17.1 Indemnities**

The Contractor shall indemnify, keep indemnified and hold harmless the Developer till issuance of Performance Certificate, the Developer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) Bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the contract by the Developer, the Developer's Personnel, or any of their respective agents, and
- (b) Damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
  - (i) Arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, and

- (ii) Is attributable to any negligence, wilful act or breach of the Contract by the Contractor, the Contractor's Personnel, their respective agents; or anyone directly or indirectly employed by any of them.

## 17.2 Contractor's Care of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [Taking Over of the Works and Sections]) for the Works, when responsibility for the care of the Works shall pass to the Developer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Developer.

After responsibility has accordingly passed to the Developer, the Contractor shall take responsibility for the care of any work which is outstanding and to be completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [Developer's Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

## 17.3 Developer's Risks

The risks referred to in Sub-Clause 17.4 below are:

- (a) Use or occupation by the developer of any part of the permanent works except as may be specified in the contract,
- (b) Design of any part of the Works by the Developer's Personnel or by others for whom the Developer is **responsible**.

## 17.4 Consequences of developer's risks

If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's documents, the Contractor shall promptly give notice to the Project Manager and shall rectify this loss or damage to the extent required by the Project Manager.

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If the Contractor suffers delay and / or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [contractor's Claims] to:

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of time for Completion], and
- (b) Payment of any such Cost, which shall be included in the contract Price.

After receiving this further notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

## **17.5 Intellectual and Industrial Property Rights**

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Developer shall **bear the cost arising** from any claim alleging an infringement which is or was:

- (a) Result of the Contractor's compliance with the Contract, unless the Contractor was aware or with reasonable diligence ought to have become aware that the same would result in an infringement, or
- (b) A result of any Works being used by the Developer:
  - (i) For a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
  - (ii) In conjunction with anything not supplied by the Contractor unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Developer harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.

## **17.6 Limitation of liability**

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract unless specifically provided for. The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Developer's Equipment and Free-Issue Material], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum up to 10% of the Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

## **18 Insurance**

### **18.1 General requirements for insurances**

In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Developer. These terms shall be consistent with any terms agreed by both parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

Wherever the Developer is the insuring Party, each insurance shall be effected with insurers and in terms consistent with the details annexed to the Contract conditions.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause,

- (i) The contractor shall act under the policy on behalf of these additional joint insured except that the Developer shall act for Developer's Personnel,
- (ii) Additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and
- (iii) The insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring party shall, before the commencement of any work on Site, submit to the other Party:

- (a) Evidence that the insurances described in this Clause have been effected, and
- (b) Copy of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and contractor's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].

Developer shall procure the Insurances as listed under Special Conditions of Contract. The Contractor shall be liable to take all other Insurances in the manner and to the extent specified in Clause 18 and Special Conditions of Contract.

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Project Manager.

Each party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Developer, under the other terms of the contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and / or the Developer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

Payments by one party to the other Party shall be subject to Sub-Clause 2.5 [Developer's Claims] or Sub-Clause 20.1 [Contractor's Claims], as applicable.

## **18.2 Insurance for works and contractor's equipment**

The insuring party shall insure the Works, Plant, Equipment, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the Commencement Date, until the date of issue of the Taking-Over Certificate for the Works. Contractor's All Risk (CAR) insurance if procured by Developer will not cover Plant, Equipment, Materials and Documents of Contractor and the Contractor shall solely be responsible for the same.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the contractor in the course of any other operations (including those under Clause 11 [Defects Liability]).

The Contractor shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment.

Unless otherwise stated in the Contract Conditions, insurances under this Sub-Clause:

- (a) Shall be effected and maintained by the Contractor as insuring Party,
- (b) Shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated between the Parties for the sole purpose of rectifying the loss or damage,
- (c) Shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Developer's Risks],
- (d) Shall also cover loss or damage to a part of the Works which is attributable to the use or occupation by the Developer of another part of the Works, and loss or damage from the risks listed in Sub-clause 17.3 [Developer's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the Special Conditions of Contract (if an amount is not so stated, this sub-paragraph (d) shall not apply), and
- (e) May however exclude loss of, damage of, and reinstatement of:
  - (i) A part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),
  - (ii) A part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,

### **18.3 Insurance against injury to persons and damage to property**

The insuring party shall insure against each party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for works and Contractor's Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor's Personnel]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

This insurance shall be with a claim value of the percentage indicated in Special Condition of Contract with no limit on the number of occurrences. If a value is not stated in the Special Conditions of Contract, this sub-clause shall not apply.

Unless otherwise stated in the Contract conditions, the insurances specified in this Sub-Clause:

- (a) Shall be effected and maintained by the contractor as insuring party,
- (b) Shall be in the joint names of the parties,
- (c) Shall be extended to cover liability for all loss and damage to the developer's property (except things insured under sub-clause 18.2) arising out of the contractor's performance of the contract, and
- (d) May however exclude liability to the extent that it arises from:
  - a. The Developer's right to have the Permanent Works executed, over, under, in or through any land, and to occupy this land for the Permanent Works,
  - b. A cause listed in Sub-Clause 17.3 [Developer's Risks], except to the extent that cover is available at commercially reasonable terms.

#### 18.4 Insurance for contractor's personnel

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

The Developer and the Project Manager shall also be indemnified **by the Contractor** under the policy of insurance **or otherwise**, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Developer or of the Developer's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be **primarily** responsible for compliance with this Clause.

The insurance policy effected by the Contractor under this sub-clause shall be endorsed to include as jointly insured with the Contractor, the Developer as Principal. The policy shall be further endorsed to extend cover to all workers upon the site including those who are not statutorily required to be insured under the Workmen's Compensation Act or any other applicable laws and must be sufficient and adequate to meet any claim arising out of or in the course of or by reason of the carrying out of the works.

The Contractor shall also indemnify and keep the Developer indemnified till issuance of performance certificate against all claims, losses and damages which may be upon the Developer, whether under the Workmen's Compensation Act 1923 or any other applicable Laws, during the duration of this Contract or in respect of any employee of the Contractor or Subcontractor and shall at his own expense effect and maintained until the end of the Defect Liability Period, with an insurance company, approved by the Developer, a policy of insurance against such risks and deposit such policy or policies with the Developer from time to time during the duration of this Contract."

## **19 Force majeure**

### **19.1 Definition of force majeure**

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) Which is beyond a Party's control,
- (b) Which such Party could not reasonably have provided against before entering into the Contract
- (c) Which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) Which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- i. War, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- ii. Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
- iii. Riot, commotion, disorder, strike or lockout by persons other than the contractor's personnel and other employees of the contractor and sub-contractors,
- iv. Munitions of war, explosive materials, ionising radiation or contamination by radioactivity except as may be attributable to the contractor's use of such munitions, explosives, radiation or radioactivity and
- v. Natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

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**19.2 Notice of force majeure**

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure condition prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either party to make payments to the other party or to recover from the other party under the contract.

**19.3 Duty to minimise delay**

Each party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure conditions.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

**19.4 Consequences of force majeure**

If the contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) Neither party shall claim for payment of cost incurred or arising from the consequences of Force Majeure except for those incidences covered under CAR Insurance policy.

Under the terms of this CAR policy, the Contractor shall prepare and forward all such claims to the insurance company and all such claims shall be directly covered / payable by the insurance company to the Contractor

After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

**19.5 Force majeure affecting subcontractor**

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

## **19.6 Optional termination, payment and release**

If the execution of substantially all the works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].

Upon such termination, the Project Manager shall determine the value of the work done and issue a Payment Certificate which shall include:

- (a) The amounts payable for any work carried out for which a price is stated in the Contract;
- (b) The Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Developer when paid for by the Developer, and the Contractor shall place the same at the Developer's disposal;
- (c) Any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
- (d) The Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) The Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

## **19.7 Release from performance under the Law**

Notwithstanding any other provision of this clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) The Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and

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- (b) The sum payable by the Developer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.6

## **20 Claim, Disputes and Arbitration**

### **20.1 Contractor's Claims**

If the Contractor considers himself to be entitled to any extension of the Time for Completion and / or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Developer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Developer's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and / or instruct the contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and / or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) This fully detailed claim shall be considered as interim;
- (b) The contractor shall send further interim claims at monthly intervals, giving the accumulated delay and / or amount claimed, and such further particulars as the project manager may reasonably require; and

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- (c) The contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the contractor and approved by the Project Manager.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of time for Completion], and / or (ii) the additional payment (if any) to which the contractor is entitled under the contract.

The requirements of this Sub-Clauses are in addition to those of any other Sub-Clause which may apply to a claim. If the contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and / or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

## **20.2 Amicable settlement**

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either Party may refer the dispute through notice in writing to the Senior Management of the other party for its amicable settlement with copy to the Project Manager. Such notice shall clearly state that it is given under this Sub-Clause. Upon receipt of such notice by the other party both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the forty second day after the day on which such notice was received by the other party, even if no attempt at amicable settlement has been made.

## **20.3 Arbitration**

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All disputes and differences, failing amicable settlement under Sub-Clause 20.2 [Amicable Settlement] of GCC, shall be resolved through Arbitration in accordance with the Arbitration and Conciliation Act 1996 and/or statutory modifications thereof.

In the case of contracts, whose Contract Price does not exceed Rs 500.00 (Five hundred) Lac, reference shall be to a sole arbitrator nominated by the "Developer". The party seeking arbitration at the time of requesting the aforesaid "Developer" shall specify the dispute or disputes to be referred to arbitration together with the amount or amounts claimed in respect of each dispute, with intimation to the other party. Both parties may send panels of names to facilitate the task of the "Developer" in the selection of the Sole Arbitrator, though it shall not be bound to select from either of the panels.

In case of contracts whose Contract Price exceeds Rs 500.00 (Five hundred) Lac, unless both the parties concur in the appointment of a Sole Arbitrator, reference shall be made to three arbitrators, one to be appointed by each party within 30 (thirty) days after receipt by the other party of a written notice from the other such other, party having appointed an arbitrator before issue of the notice, and a third arbitrator to be selected by the two arbitrators so appointed by the parties within 30 (thirty) days of the date of nomination of the second arbitrator.

The arbitration award shall be final and binding on the parties. The venue of Arbitration proceedings shall be as stated in Special Conditions of Contract and language of the proceedings shall be in English.

The Arbitrator shall have power to open up, review and revise any certificate, opinion, decision, requisition or notice save in regard to the excepted matters referred to in the preceding clause, and to determine all matters in dispute which shall be submitted to arbitration and of which notice shall have been given as aforesaid.

The Arbitrator shall make his/ her or their award within six months (or such further extended time as may be decided by him or them as the case may be with the consent of the parties) from the date of entering on the reference. In case during the arbitration proceedings both the parties mutually settle, compromise or compound their dispute or difference, the reference to arbitration proceedings shall stand withdrawn or terminated, with effect from the date on which the parties file a joint memorandum of settlement thereof, with the arbitrators.

Upon every or any such reference, the cost of and incidental to the reference and award respectively shall be borne and paid by both the parties equally. The cost of the attorneys and cost incidental thereto shall be borne and paid by the concerned party alone. This submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

Notwithstanding anything contained in this clause and/or in the Contract the work under the Contract shall continue under any circumstances, during the arbitration proceedings and no payment due to the Contractor shall be withheld on account of such proceeding under progress.

No award of the Arbitrator shall relieve the Contractor of his obligations to adhere strictly to the Project Manager's instructions with regard to the works.

The Arbitrator shall give his award separately on each item with reason and costs. The award of the Arbitrators shall be final, conclusive and binding on all parties.

The Developer and the Contractor hereby shall also agree that arbitration under this clause shall be a condition precedent before referring any disputes and differences except appointment of Arbitrator to any other authority/Courts of Law. The provisions of this clause shall survive the expiry or sooner termination of his Contract.

Only persons in the following categories shall be eligible for appointment as arbitrators:

1. Past / Present Presidents of the Institution of Engineers.
2. Past / Present Presidents of the Institution of Surveyors.
3. Past / Present Presidents of the Institute of Architects.
4. Ex Judge of High Court or Supreme Court
5. A designated Senior Counsel and / or a senior Counsel of the High Court or Supreme Court.

#### **20.4 Continuation of work during dispute**

The developer shall not withhold the payment for an Interim Bill after the issuance of an Interim Certificate by the Project Manager. The Contractor except with the consent in writing of the Developer shall in any way delay the carrying out of the Works by reason of any such matters, question or dispute being referred to arbitration but shall proceed with the Work with all due diligence and shall, until completion of arbitration proceedings, relieve the Contractor of his obligations to adhere strictly to the Developer's instructions with regard to the actual carrying out of the Works. The Work shall however be undertaken as per time scheduled, independent of such exigencies unless the Developer desires otherwise.

#### **21 No Partnership**

The Parties agree that this Agreement is on a principal to principal basis and does not create or constitute, a partnership, agency, trust or other similar arrangement and this Contract is not to be construed as creating any such partnership, agency, trust or other similar arrangement.

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Unless otherwise expressly stated in this Contract, neither party has the authority to act for, or incur any obligation on behalf of, the other party.

## **22 Waiver and exercise of rights**

A waiver of a provision or of a right arising under this Contract must be given in writing signed by the party or an authorised officer of the party granting the waiver for it to constitute a valid waiver. A waiver is effective only in the specific instance and for the specific purpose for which it is given.

A single or partial exercise of a right by a party does not preclude another or further exercise or attempted exercise of that right or the exercise of another right.

Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

## **23 Rights cumulative**

The rights, remedies and powers of the Parties under this Contract are cumulative and not exclusive of any rights, remedies or powers provided to the Parties by law.

## **24 Declaration against waiver**

The condonation by the Developer of any breach or breaches by the Contractor or a sub-contractor of any of the stipulations and conditions contained in the Contract shall in no way prejudice or affect or be construed as a waiver of the Developer 's rights, powers and remedies under the Contract in respect of any breach or breaches aforesaid.

## **25 Title and Intellectual Property Rights**

Developer shall retain its Intellectual Property Rights in any programs, data software, hardware or other material which constitute proprietary items of the Developer and which are submitted by Developer to the Contractor for the provision of the services under the Agreement, with respect to which no right, title or interest will be transferred or be deemed to be transferred from Developer to the Contractor.

## **26 Non-assignment**

The Contractor shall itself perform its obligation under this Contract and shall not assign, transfer or sub-contract any of its rights and obligations under this Contract except with prior written permission of Developer. Developer shall be entitled to assign/transfer its rights and benefits under this Contract.

## **27 Notices**

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All notices to be given pursuant to the provisions of this Contract shall be sent to the parties at the following address:

The Contractor:

\_\_\_\_\_ (Address)

Tel: no;

Fax:

Email:

Kind Attn: \_\_\_\_\_

If to developer:

M/s Mahindra World City Developers Limited,  
Administrative Block, Central Avenue,  
Mahindra World City, Chengalpet-603004,  
Kanchipuram (district), Tamil Nadu

Tel: no;

Fax:

Email:

Kind Attn: \_\_\_\_\_

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## **Annexure to General Conditions of contract**

### **1. Other works in progress**

The Contractor is to note that other Contractors are/will be carrying out construction works under separate contracts with the Developer. These may include:

- Earthwork Excavation, Shoring and Other Allied Works
- Civil Works
- Miscellaneous works

And other contract works/ package envisaged to complete an infrastructural development of this nature

The Contractor shall co-ordinate and organize his work and liaise closely with the other parties extending all necessary co-operation and assistance and providing suitable access where necessary.

No claims of whatsoever nature for time and/or cost arising there from will be admitted.

### **2. Direct contractor/S for other infra, civil, MEP or allied works.**

Direct Contractor/s for other infra, civil, MEP or allied works will be carrying out and completing their respective specialist items and works under separate contractual arrangements with the developer.

These contractors will commence their works as per Developer's master schedule after the commencement of Works.

Such handing over of part or parts of the Works will not constitute Taking-Over or Taking over of Sections or Parts within the meaning of the Conditions of Contract. This is to say that such possession will not involve the issue of a Taking-Over Certificate nor will it relieve the Contractor of any of his obligations with regard to liquidated damages for delay, maintenance of the works and other related matters. These matters and the release of retention monies will depend upon the issuing of an appropriate Completion Certificate for the Works.

The Contractor shall interface, programme and organize his work and liaise closely with all Direct Contractors and afford whatever assistance and access that may be necessary to ensure the satisfactory and timely sequencing and completion of all works on the Site.

### **3. Soil survey, water table and dewatering**

A soil survey also containing information about the level of the water table has been carried out. The conditions revealed are to be taken as a guide only. It is to be at the risk of the Contractor if different conditions are actually encountered.

The Contractor should be responsible for Dewatering at his own cost during execution of all works at site throughout the Time for Completion specified under Sub-Clause 8.2 [Time for Completion] of GCC.

#### **4. Variation meetings**

Variation meetings shall be held on a monthly basis or at such intervals as may be directed by the Project Manager to monitor and agree on the financial effects of Variations ordered in the Works. The Contractor (including any nominated Subcontractors as appropriate) shall attend the variation meetings.

The Contractor shall be required to submit at each variation meeting an updated financial status report on the Variations, categorized under the following headings:

- a. Variations/Change Orders issued to date
- b. Anticipated Variations/Changes
- c. Variations pending receipt of drawings and details
- d. Variations pending cost submission
- e. Variation costs pending agreement
- f. Agreed Variations/Change Orders

Each Variation cost claim submitted by the Contractor shall be supported with complete details of all measurements, rates and prices including copies of the relevant drawings with the varied work clearly marked out and/or identified, together with any documents or calculations whether relating to the Contractor's own work or that of the nominated Subcontractors as may be necessary. The Project Manager may request the Contractor to furnish such additional measurements, calculations, drawings, documentary substantiation or other information to enable the Variation cost to be assessed and agreed, and the Contractor shall within 14 days comply with such request.

#### **5. Tests**

The cost of carrying out and arranging for all tests and submission of test certificates/reports called for in the Specification shall be borne and paid by the Contractor.

The Contractor shall allow in the Accepted Contract Amount for the cost of complying with all testing and re-testing methods, procedures and requirements to the approval of the Project Manager unless otherwise specifically stated.

All Work to be performed, materials and equipment to be used by the Contractor subject to testing for compliance with the contract document and standards, shall be tested as required. The Contractor shall have well equipped laboratory at site with brand new equipment as stated in the **list Annexed to the Contract Documents** for testing of materials and samples. The Contractor shall give the Project Manager & Developer timely written notice of the dates and times when testing is to be performed at the site or at the place of manufacture or fabrication. All tests shall be conducted in a manner prescribed in relevant IS codes or in absence of the same, any other international code in the presence of the Project Manager & Developer or his representative. Materials or equipment required to be tested prior to installation shall not be installed until the Project Manager and Developer have approved the test results and the tested material or equipment in writing. The Contractor shall bear all the testing costs including the travel and the hospitality in case the testing location is in a different city than the Work site.

## **6. Scaffolding and staging**

Provide all scaffolding, staging, nets, ladders and catwalks necessary for the proper execution of the Works. Use of Scaffolding, staging ladders etc. shall be extended to the direct contractors/Interior/Exterior Finishing contractors employed by Developer and adoption of scaffolding to suite requirements of such direct contractors appointed by Developer. Contractor shall get such scaffolding and/or staging designed from the competent structural engineer and submit the evidences of the same from time to time for approval of Project Manager before erection of any scaffolding and/or staging.

## **7. (Omitted)**

## **8. labour on-costs**

Provide for all costs, payments and charges in respect of all workpeople for:-

- (a) Developer provident fund contributions and levy scheme
- (b) Annual and public holidays
- (c) Travelling time, expenses, fares and transport
- (d) Non-productive time and other expenses in connection with overtime
- (e) Incentive and bonus payments
- (f) Any other payments and charges arising from the employment of workpeople.

## **9. Workmen's compensation**

The Contractors accepted price shall be deemed to have included the full compensations for all his workmen, sub-contractors, consultants or any other agencies the Contractor may engage to execute the Work. The Developer shall be deemed to have been indemnified against any claim for wages, salaries, compensations or reimbursements of all nature whether for personal ailment, injuries or death.

The Contractor shall be solely responsible for and shall pay compensation to his workmen payable under the Workmen Compensation Act 1923 (VIII of 1923), (hereinafter called the said Act") for injuries caused to the workmen. If such compensation is payable by Government as principal under sub-section (1) of section 12 of the said act on behalf of the Contractor, this shall be recoverable by government from the Contractor under sub-section (2) of the said section.

#### **10. Provident fund**

The Contractor shall procure, number for provident fund in case he does not have the same. The Contractor shall fully comply with the statutory provisions of the Employees PF and Misc. Provision Act 1952 and shall deposit Developer's contribution regularly within time limit prescribed for depositing these amounts under the said act and shall submit the appropriate challans regularly to the satisfaction of the Developer. The Contractor further agrees that the Developer shall be entitled to withhold the payment of the amount equivalent to provident fund liabilities along with other statutory dues, in case the Developer considers the same to be necessary and shall be entitled to deposit the same directly under the code number of Contractor. The Contractor shall not raise any objection whatsoever for this arrangement.

#### **11. Site management costs**

The Contractor shall constantly keep upon the Works on a full-time basis, the following key site personnel:-

- (a) A competent and experienced Project Manager, a Graduate Civil engineer with minimum 17-20 years of experience. He should have independently handled projects of similar magnitude while serving with the Contractor for minimum five previous years. Developer shall interview and accord his approval for the candidate referred by the Contractor who shall be overall in charge of the Works.
- (b) A qualified and competent structural Project Manager with past experience in the road repair works (if applicable and to be decided by Engineer).
- (c) A qualified and competent mechanical and electrical Project Manager who shall act as the Project Manager for all mechanical and electrical works on this project. The Project Manager in this connection shall be fully experienced in the types of work to be carried out under this Contract. He shall organize and co-ordinate on the Contractor's behalf all mechanical and electrical Project Management aspects of the Works. (If applicable and to be decided by Engineer).
- (d) A qualified and competent co-coordinator with past experience in the co-ordination of architectural, structural and mechanical and electrical works.

- (e) A qualified and competent planning manager with past experience in the planning, scheduling and programming of the works.
- (f) A general foreman who shall be continuously in charge of the execution and maintenance of the Works throughout the currency of the Contract.
- (g) Adequate assistant foremen, site supervisors and all necessary "back-up" staff who are skilled, competent and experienced in their respective callings.
- (h) Designated personnel for Quality Control (a qualified graduate engineer with minimum five years of quality control/audit experience.
- (i) Designated personnel for Health, Safety and Environment (a person with Diploma in Industrial Safety and minimum five years of experience of safety enforcement are mandatory with adequate number of supporting personnel.
- (j) A qualified and competent Quantity Surveyor.
- (k) A qualified Security Officer for overall Site Security and Access Control
- (l) Adequate number of designated qualified batching plant manager with adequate number of supporting personnel like foremen, Site supervisors and all necessary "back-up" staff who are skilled, competent and experienced in their respective calling/trades at the location (outside the project site) of the batching plant, in case the Contractor proposes to use a batching plant.

The Contractor shall provide an organization chart showing the full and detailed list of his site supervisory staff for the project for the approval of the Project Manager. Such list shall include all relevant details of each staff member including his functions, position, duties, qualification, experience, age and length of employment with the Contractor.

These key personnel once employed for the Works and approved by the Developer shall not be removed from the Works without prior consent from the Developer.

The provision of such organization chart and the Project Manager's approval thereof shall not limit the Contractor's responsibilities and obligations in respect of adequate staffing at the Site. In the event additional staffs are considered necessary to properly and effectively supervise the execution of the Works, the Contractor shall provide such additional staff at no extra cost to the Developer.

All Skilled staff should be licensed holder from Local Statutory Body.

## **12. Overtime**

Should the Contractor consider that overtime working is necessary in order to attract and retain the necessary workpeople or to complete the Works or sections of the Works within the Time for Completion, he shall allow for such overtime payments for his workmen and his supervisory staff including the provision of any additional plant, facilities and the like arising out of overtime work.

Prior notification to the Project Manager shall be given before overtime work is carried out.

### **13. Transfer of plant, labour and materials**

In the event of a delay occurring on one section of the Works for any reason whatsoever, the Contractor is to transfer his plant, labour and materials as far as practicable to another section of the Works so as not to allow them to stand idle or cause delays.

If the Contractor fails to carry out a transfer when such a step is considered reasonable and practicable by the Project Manager, no claim for extra payments or extension of time will be entertained.

### **14. Access for inspection and supervision**

The Contractor shall maintain unhindered and safe access to and easy inspection of all materials and work including any special ladders, gantries, platforms, ramps or scaffolding required for the Project Manager's inspection and supervision and/or Developer and/or any other person appointed by Developer.

### **15. Environmental Management System and Green Building Norms**

The Contractor shall follow the Developer's Environment Management System established at site. The Contractor shall read Developer's- Energy & Environment Conservation Measures, relevant documents prior to execution of the activities. Developer will give necessary awareness to the contractor's team on EMS and Green building implementation requirements at site. Specific details are as stated below,

- a) Following waste material shall be re-used during execution.
  1. Excavated earth
  2. Milled bitumen
  3. Debris
  
- b) Existing numbered trees should be maintained in healthy condition till final handover of site by contractor. No damage to existing trees due to construction activities should be done. Any damage and cost implication due to damage should be borne by contractor.

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- c) No dry wood should be used in site labour camps area as burning fuel.
- d) Preserve Top Soil by:
- Preserving Top soil (min 150mm of top layer of the soil) prior to start of excavation.
  - Reusing the preserved Top Soil in Landscaping or gardening.
  - Keeping Evidences with area excavated, top soil quantity generated and reused.
- e) Monitoring of Water Consumption during execution:  
Water consumed during execution activity (potable for labours, water for construction activity) are to be monitored on monthly basis. Record of monitoring like water meter reading, Municipal corporation water bill etc. shall be maintained to show evidence of consumption.
- f) Monitoring of Energy Consumption during execution:  
Monthly electricity bill for site execution including site office, labour colony shall be maintained.
- g) Monitoring of Fuel Consumption during execution:  
Fuel Consumption for construction equipment including DG sets shall be monitored and record of consumption shall be maintained.
- h) Managing Solid Waste  
Solid waste generated from Labour Colony shall be sent to nearest Municipal garbage collection area.
- i) Avoiding spillage of oil over the soil in workplace.
- j) Clause deleted
- k) Existing well if any should be properly covered.
- l) Optimum use of bore well water – if permitted under Contract - should be done by contractor, avoiding wastage. Water meter should be installed in all bore wells and record of water drawn should be maintained on monthly basis and same should be reported to Project Manager and/or Developer.
- m) All necessary precaution should be taken by contractor to avoid ground water table contamination.
- n) Hygiene at labour camp should be maintained. Proper sanitation facility for labours should be established. Developer and/or Engineer has the right to inspect the labour colony any time and instruct contractor to modify /upgrade the condition of

- labour camp at any time during the tenure of the project. Temporary surface drainage should be provided in bathing and washing areas at labour camps.
- o) Optimum utilization of electricity should be done, by planning electricity cut off in labour camps every day when not required as labour camps are empty during working hours.
  - p) The contractor will take measures/initiatives to adhere to MWCDL Sustainability requirements as provided in the Sustainability Reference Document.

## **16. Environment, Health and Safety (EHS)**

### **16.1. Safety Management plan**

**For detailed EHS plan please refer Annexure E of technical specification**

Within 15 days of receipt of the Letter of Award, the Contractor shall submit a safety management plan to the Project Manager for approval. The safety management plan shall enlist all the hazards and risks associated with the activities to be carried out by the Contractor and measures to minimize and control risks. The contractor shall provide necessary resources to implement the safety management plan. In the absence of an approved safety management plan, provisions as detailed hereunder in this Clause shall apply. In case of any non-compliance with the safety plan, Project Manager shall be entitled to levy punitive damages as specified in this Clause.

In addition to the safety management plan, the contractor shall stand liable to adhere to and comply with all the requirements of the building and other construction workers' (regulation of employment and conditions of service) act, 1996, (BOCW act 1996) and BOCW welfare cess rules 1998. if the requirements are not explicitly mentioned otherwise in the project safety plans. The requirements shall be informed to the contractor by the safety officer of the project. Failure to comply by the contractor shall entitle the developer to establish that particular requirement on site and debit the contractor as decided by the project manager and EHS head of developer.

### **16.2. Contractor's responsibility for safety**

The Contractor has to depute one Qualified Safety Person for every 150 workers at the site or as agreed upon in the approved Organisation chart. The minimum qualification of the Safety Person should be Diploma in Industrial Safety. The person also has to have a minimum Safety Experience in the Real Estate Industry of 4 to 6 years.

The person to be deputed for the above Safety assignments should have his CV approved by the client.

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Contractors has to abide by the EHS Plan of Developer which is enclosed as annexure to this Tender Document or as per mutually agreed EHS Plan submitted by Contractor and approved by the Developer's EHS Head.

**17. Water for the works**

Party specified in **Special Conditions of Contract** will arrange for Temporary water for the works at one point within site premises. The Contractor should at his cost provide, install and maintain consumption meter, storage of water and distribution (including alter/shift) of water as required and instructed by Project Manager. If such water supply is provided by the Developer the Project Manager will recover the cost of water at prevailing tariff rate from Contractor from each monthly RA bill. Incase of non-availability of temporary water, the Contractor should arrange for the same at his cost.

**18. Temporary lighting and power for the works**

Party specified in **Special Conditions of Contract** will arrange for Temporary Power for the works at one point within site premises. The Contractor should at his cost provide, install and maintain consumption meter. The Contractor at his own cost should distribute the power and lighting to all working areas, access roads and wherever necessary for the Works as instructed by Project Manager. If such Temporary power is supplied by Developer the Project Manager will recover the cost of power at prevailing tariff rate from Contractor from each monthly RA bill. In case of non-availability of temporary power, the Contractor should arrange for the same at his cost.

All electrical installations shall be carried out under the responsibility of licensed electrical workers.

Provide meters and temporary arrangements for distribution around the Site including that required by Project Manager.

Provide, install and maintain all necessary temporary lighting during hours of darkness for construction, safety or any other purpose.

Alter, shift and adapt from time to time as necessary.

**19. Water and electricity from permanent installations for testing**

Water and electricity for test runs and commissioning of all mechanical and electrical services shall be obtained from permanent installations. The Contractor shall install meters and pay all cost to the Developer for such use.

**20. Temporary roads and temporary works**

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Provide, maintain and alter as necessary all temporary roads, tracks, paths, hard standings, pavement crossings, culverts and other Temporary Works including those required by sub-contractors and suppliers and pay all costs and charges in connection. Reinstate all ground and all work disturbed.

**21. Temporary hoardings and safety netting**

Maintain all other necessary temporary fencing, hoarding, gates, fans, planked footways, guard rails, gantries, safety netting, warning lights and notices for the proper execution of the Works, the security of the Site, the protection of the public and the occupants of any adjoining premises and for meeting the requirements of the Local Authority. Alter, shift and adapt from time to time as necessary and clear away on completion.

The hard barricading around the work area should be erected by the Contractor. The Contractor should alter, shift and adapt from time to time as necessary and clear away on completion.

**22. Signboard**

Provide and maintain in a position approved by the Project Manager a signboard of 5m<sup>2</sup> showing the title of the Works, the names of the Developer, Consultants and the Contractor and of such sub-contractors as may require it, including a perspective view of Proposed Building. Remove on completion of the Works.

**23. Advertisements**

No advertisements shall be displayed without the written approval of the Developer. Unauthorized advertisements shall be removed promptly by the Contractor.

**24. Temporary buildings and facilities for the contractor**

All temporary buildings and facilities for the proposed works are under contractor scope. The space / areas for those building is to be arranged by contractor. MWCDL may / may not provide space for the contractor.

All temporary buildings and facilities for use like site office, material storage yard, reinforcement yard by the Contractor shall be provided at the space to be approved by the Developer, but constructed, maintained and removed on completion by the Contractor. All other temporary buildings and facilities for use by the Contractor's workmen may be located within premises subject to prior written approval from Developer.

Sheds used for the storage of cement, lime and other perishable materials shall have raised floors.

All petroleum, explosives and flammable materials shall be stored in fire-proof buildings and precautions taken with regard to security and fire risks.

**25. Temporary buildings and facilities for the consultants**

Clause deleted.

**26. Programme charts and returns**

Within seven days of the acceptance of his tender, the Contractor shall submit for approval by the Project Manager, a programme related to the contract period showing the timing and sequence in which he proposes to carry out the various parts of the Works including those of all Sub-Contractors.

The programme shall include a bar chart and critical path analysis diagram and be in sufficient detail to permit a precise week-by-week comparison between the work as programmed and the actual progress.

The programme shall be kept up to date and a copy made available on Site at all times for inspection.

Report daily to the Project Manager on the number of operatives in each trade employed on the Works.

Records of progress shall be kept by the Contractor and submitted to the Project Manager at weekly intervals.

The Contractor shall submit a master schedule to the Project Manager which will be confirmed and agreed by both parties (the Developer and the Contractor). This will become the Contract schedule.

Schedule shall be resource loaded including labour, material and if possible cost. Minimum labour requirement should be maintained at site by contractor conforming to IS 7272 (part – I) 1974.

Project activities shall be tracked accordingly on daily basis.

Tracked schedule / baseline schedule shall be updated and submitted to the Developer's project site office on a weekly basis.

In case of any delay, detailed delay analysis report (root cause) shall be prepared and submitted to the Developer's project site office within 2 days time period.

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Corrective action with proper recovery plan shall be prepared and submitted with delay analysis report to achieve progress milestone as per schedule.

Activities in critical path shall be tracked separately.

Separate schedule shall be prepared and submitted to track labour and material availability and should be linked to master construction schedule.

Minimum labour requirement should be maintained at site by contractor conforming to IS 7272 (part – I) 1974.

Detail calculation of labour requirement should be worked out and submitted by the Contractor on receiving of GFC's drawings before executing the activity for review and approval of the Developer.

Alternate labour arrangement should be made by the Contractor in peak period of labour shortage in all circumstances.

No delays in work will be accepted due to non availability of labour at site.

**27. Shop drawings and co-ordination drawings**

Clause deleted.

**28. Record drawings**

The Contractor shall make accurate records of those parts of the Works which will become hidden by further progress, as may be directed by the Project Manager. Such records shall be checked and verified by the Project Manager while the work is open for inspection. Records shall be entered by the Contractor on prints of drawings which will be made available to him for this purpose, amplified by him with supplementary dimensioned sketches and handed to the Project Manager as soon as practicable. All costs and expenses in connection therewith shall be borne by the Contractor.

**29. As-built drawings**

Clause deleted..

**30. Progress photographs/reports**

Provide for Digital colour photographs (in soft copy) and progress reports in a format approved by the Project Manager to show the Works in progress. Photographs shall be taken at four week intervals throughout the construction period.

Locations of the photographs to be taken shall be agreed with the Project Manager. Each photograph shall be marked with the description of the photograph and location from which it was taken.

The ownership and copyright of all photographs and negatives shall be vested in the Developer and are not to be used without his permission under any circumstances. Negatives and prints shall be handed over to the Project Manager monthly.

### **31. Protecting the works**

Provide for carefully covering up and protecting the Works and Materials from inclement weather.

The Contractor shall provide full and adequate protection for all finished surfaces and for all Materials subject to injury or staining and shall be responsible for making good all damage done to such finished surfaces and Materials until the Works are taken over complete.

The protection shall be applied or provided as soon as a surface is finished and/or Materials arrive on the Site or as may be otherwise desirable. Such protection shall be maintained in effective condition throughout the course of the Works.

### **32. Safeguarding the works**

Safeguard the Works, Materials and Plant against damage or theft including all necessary watching and lighting for the security of the Works and the protection of the public. Provide accommodation and other facilities for any watchmen/security guards so required.

The Contractor shall be fully responsible for loss or damage to designated Subcontract Works which have been fully, finally and properly incorporated into the Works and is to cover up, case and protect their work. Except for the provisions of Clause 18 of the Conditions of Contract, the Contractor will be responsible for loss or damage to any Materials or Goods on site for the designated Subcontract Works until such materials and goods have been fully, finally and properly incorporated into the Works.

### **33. Fire protection during construction**

Provide and keep in working order adequate firefighting equipment for emergency use.

Provide all necessary electricity and water supplies for the use of fire rising mains during construction. The Contractor shall be responsible for the implementation of all temporary works in connection therewith to comply with the relevant Authorities' requirements.

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**34. Clearing up and cleaning**

The Contractor shall arrange and pay all fees for disposing of all rubbish, unwanted building debris, earth, surplus materials, rubble, chemicals, noxious or polluting matter, etc from the Site both at regular intervals and, before the Project Manager/Developer issues the Taking over Certificate, on completion of the Works.

Make good all work disturbed, clean the whole of the Works inside and out, removing stains, temporary protective films and coverings, touching up paintwork and polished work and leave the whole of the Works clean and to the satisfaction of the Developer and Project Manager.

The Contractor shall arrange and pay all fees for disposing of all waste, drain water coming out during execution of work.

**35. Validity of all bank guarantees**

Bank Guarantee shall be considered submitted and valid only after the following conditions are met-

- a. The Bank Guarantee is submitted by the Contractor in hard copy.
- b. On receipt of the second copy of the Bank Guarantee by the Owner directly from the issuing Bank or

The authenticity of the Bank Guarantee is verified by the Owner.

**Appendix to Tender**

**Appendix A**

**Draft Contract Agreement**

**(On Stamp Paper as per statutory requirement)**

**THIS CONTRACT AGREEMENT** made on this the .....day of .....20\_\_

BY & BETWEEN Mahindra World City Developers Limited, a company governed under the Companies Act, 1956, having its registered office at Mahindra World City Developers Limited, Administrative block, Central Avenue, Mahindra world city, Chengalpet-603004, Kanchipuram (district), Tamil Nadu (hereinafter called the 'Developer' which expression shall, unless repugnant to the context and meaning thereof, include its successors and assigns) of the one part, and M/s ----- whose registered office is situated at -----, (hereinafter called the 'Contractor' which expression unless repugnant to the context and meaning thereof shall include his or its heirs, personal representatives, successors) of the other part.

**WHEREAS**

the Developer desires that the execution and completion of \_\_\_\_\_, the detailed scope of work is contained in **Special Conditions of Contract** hereto (herein after called "the Works") at \_\_\_\_\_ should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein.

Contractor has represented to the Developer that it has requisite capability, expertise and experience on all aspects of the construction execution process from the design conceptualisation stage to handing over the completed Works and remedying the defects if any during defects liability period in the manner acceptable to the Developer, and can undertake the responsibility for skilful, cost effective and efficient construction practices, mobilising required manpower, plant and equipments and maintaining the same throughout the duration of Works, effective and efficient procurement of materials, mobilising and maintaining competent technical staff at site, coordination of resources as required to ensure that the Works are completed and handed over within stipulated time, quality, safety and cost parameters and remedy the defects if any during defects liability period.

The Contractor has submitted their tender containing the priced schedule of quantities to the Developer which tender has been accepted by the Developer and the Parties have finalized the Contract BOQ as defined in the Contract documents;

**The Developer and the Contractor agree as follows:**

1. In this Contract Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Contract Agreement:
  - 2.1. The Letter of Award; and Letter of Acceptance
  - 2.2. The Letter of Tender;
  - 2.3. Special Conditions of Contract;
  - 2.4. The General Conditions of Contract;
  - 2.5. Annexure to General Conditions;
  - 2.6. Technical Specifications;
  - 2.7. List of Drawings;
  - 2.8. Contract Bill of Quantities;
  - 2.9. Guarantees/Indemnities;
  - 2.10. The completed Day work Schedules and
  - 2.11. List of additional Contract Documents.
  - 2.12. Project Quality Plan
  - 2.13. Project Safety plan
  - 2.14. Construction Programme
  - 2.15. Contractor's Site Organization Chart
  - 2.16. Site Logistics Plan
  - 2.17. Addenda/ Corrigenda/ Clarifications as and when if issued
3. For the consideration hereinafter mentioned, i.e. the Contract Price, the Contractor shall upon and subject to the Contract Documents carry out and complete the Works as per the Drawings described by or referred to in the Schedules, Contract BOQ and Technical Specifications in the Contract Documents.
4. An all-inclusive total indicative contract price, as stated in Cl. 1.1.4 of the General Conditions of Contract (GCC), for the Works as defined in the GCC, shall be an aggregate sum of Rs. \_\_\_\_\_ (Indian Rupees \_\_\_\_\_ only), as rounded off to the nearest Rupee, on an Item Rate Basis including all materials, plant and labour charges, taxes, insurance, import duties, license and permit fees etc. for the Works.
5. The Contract Documents shall be read and construed as forming part of this Agreement, and the Parties hereto shall respectively abide by, submit themselves to Contract Documents and perform their respective obligations as set out in the Contract Documents.

6. The Contract Documents shall form the basis of this Contract Agreement.
7. The Contract shall be on an Item Rate Basis/ \_\_\_\_\_ for the Work done and the Contractor shall be paid for the actual quantity of Work done, as measured at site jointly by Developer and Contractor and at the rate quoted/ accepted by the Contractor in the Contract BOQ.
8. The Contractor shall provide every reasonable facility for carrying out the entire Work in the manner laid down in GCC and shall make good any damage done to completed Works and Sections before Taking Over by Developer, and remedy defects if any after completion of the Work till completion of Defects Liability Period.
9. The Developer reserves to itself the right of altering the Drawings and nature of the Work by adding to or omitting any items of Work as per the provisions of GCC. There shall be no limit on the scope and extent of changes that can be ordered by the Developer subject to the condition stipulated in Clause 10 below. The Contractor shall only be paid for the actual quantity of Work executed payable at the accepted unit rates as set out in the Contract BOQ and the provisions of GCC.
10. Quantity variation shall have no ceiling limit in respect of individual items and individual quantities can vary to any extent. The Contractor shall execute all authorized variations and the same shall be dealt with as per the provisions of Clause 13 of the GCC.
11. The Work shall be executed by the Contractor as per Good Industry Practice and, applicable relevant IS Standards / BIS / NBC. Time shall be considered as the essence of this Contract and the Contractor hereby agrees to commence the Work and to complete the Work during the Contract Period. Notwithstanding the above the Contractor shall improve on the implementation period and make every effort to complete the Project ahead of schedule.
12. All payments by the Developer under this contract shall be made in Indian Rupees (INR).
13. All disputes arising out of or in any way connected with this Agreement shall be resolved in the manner provided in Clause 20 of the GCC.
14. The Contract Documents have been read by the Contractor and fully understood by the Contractor.
15. The Contractor has confirmed to the Developer that it is neither under any restriction whatsoever nor does it require any approval or consents for the execution, delivery, performance and implementation of the Works. The Contractor also confirms to the Developer that it has the requisite capacity, knowledge, skill, expertise and experience to perform and implement Works of such magnitude.

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16. In consideration of the payments to be made by the Developer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Developer to execute and complete the Works and remedy any defects therein, in conformity with the provisions of the Contract.
  17. The Developer hereby covenants to pay the Contractor, in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price at the times and in the manner prescribed by the Contract.
  18. All Payments, fees and reimbursements to Contractor shall be subject to deduction of Income tax, GST and/or any other statutory deductions as may be applicable from time to time.
  19. No additions, alterations or amendments to any of the terms, conditions and provisions mentioned herein, shall be valid, operative, effective, binding upon or acceptable against any of the parties hereto unless the same are recorded in the form of supplemental contract in writing and signed by authorised signatories of both the parties hereto.

**IN WITNESS** whereof the parties hereto have caused this Contract Agreement to be executed the day and year first before written in accordance with their respective laws.

SIGNED by: )  
)  
..... )  
(Name of Authorised Signatory) )  
)  
for and on behalf of the Developer )  
)  
In the presence of )  
)  
Name: ..... )  
)  
Address: ..... )  
)  
..... )

\_\_\_\_\_ )  
(Signature)

\_\_\_\_\_ )  
(Stamp)

SIGNED by: )  
)  
..... )  
(Name of Authorised Signatory) )  
)  
for and on behalf of the Contractor )  
)  
In the presence of )  
)  
Name: ..... )  
)  
Address: ..... )  
)  
..... )

\_\_\_\_\_ )  
(Signature)

\_\_\_\_\_ )  
(Stamp)

**Appendix B****Format for Guarantee for Earnest Money Deposit**  
**(On Stamp Paper as per statutory requirement)****Date:****To,**

[Name and address of Employer]

Dear Sirs,

Guarantee No. \_\_\_\_\_

Amount of Guarantee: Rs. \_\_\_\_\_/-

Guarantee cover from --/--/---- to \_\_\_/\_\_\_/-----

Last date for lodgement of claim --/--/-----

In accordance with Invitation to Bid under your NIT No. \_\_\_\_\_M/s[Name of Bidder], having its Registered/Head Office at\_\_\_\_\_, (hereinafter called the 'Bidder') wish to participate in the said Bid for \_\_\_\_\_(narrate brief scope of work)\_\_\_\_\_and you, as a special favour have agreed to accept an irrevocable and unconditional bank guarantee for an amount of Rs.\_\_\_\_\_(Rupees \_\_\_\_\_ Only) valid up to \_\_\_\_/\_\_\_\_/----- on behalf of the Bidder in lieu of the Earnest money deposit (hereinafter called the 'EMD') required to be made by the Tenderer, as a condition precedent for participation in the said Bid.

We, \_\_\_\_\_(name of the Bank) at\_\_\_\_\_ - (Bank's Branch Address), having our Head Office at \_\_\_\_\_irrevocably and unconditionally guarantee and undertake to pay immediately on demand by [Name of Developer] (hereinafter referred to as the 'Employer' which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators and assigns) an amount of Rs.\_\_\_\_\_ (Rupees \_\_\_\_\_Only) without any demur, reservation, contest, recourse or protest and / or without any reference to the Tenderer. Any such demand made by the Employer on the Bank shall be conclusive and binding notwithstanding any difference between the Employer and the Tenderer or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. The Bank undertakes not to revoke this guarantee during its currency without previous consent of Employer and further agrees that the guarantee herein contained shall continue to be enforceable till Employer discharges this guarantee.

Employer shall have fullest liberty, without affecting this guarantee, from time to time to vary the terms and conditions of the Bid / Tender document, to postpone from time to time exercise of any powers vested in them or of any right which they might have against the Tenderer, and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Bid document / Tender document between Employer and the Tenderer or any other course or remedy or security available to Employer. The bank shall not be released of its obligations under these presents by any exercise by Employer of its liberty with reference to the matters aforesaid or any of them or

by reason of any other act of omission or commission on the part of Employer or any other indulgence shown by Employer or by any other matter or thing whatsoever which under law would, but for this provision have the effect of relieving the Bank.

The Bank also agrees that Employer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Tenderer and notwithstanding any security or other guarantee that Employer may have in relation to the Tenderer's liabilities.

Notwithstanding anything contained hereinabove our liability under this guarantee is restricted to Rs.----- /- (Rupees ----- Only) and it shall remain in force up to and including--/--/----- and shall be extended from time to time for such period (not exceeding one year at a time), as may be desired by Employer in whose favour this guarantee has been given.

Notwithstanding anything contained hereinabove our liability under this guarantee is limited to Rs. -----/- (Rupees ----- Only) and this guarantee is valid up to --/--/---- and we shall be released and discharged from all liabilities there under unless a written claim for payment under this guarantee is lodged on us in writing on or before --/--/---- irrespective of whether or not the original guarantee is returned to us.

Dated this \_\_\_\_\_ day of -----, 20\_\_ at -----.

For (Name of the Bank)

Officer of the Bank:  
(Address of Bank's Branch)  
Place: -----  
Date: --- /---/-----

**WITNESS:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Official Address

**Appendix C**  
**Format for advance payment guarantee**  
**(On stamp paper as per statutory requirement)**

**Date:****To,**

[Name and address of Developer]

Dear Sirs,

Guarantee No. \_\_\_\_\_

Amount of Guarantee: Rs. \_\_\_\_\_/-

Guarantee cover from --/--/---- to ---/---/-----

Last date for lodgement of claim --/--/----

In consideration of [Name of Developer] (hereinafter referred to as the 'Developer' which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s. \_\_\_\_\_ (Name of the Contractor) having its Registered/Head Office at \_\_\_\_\_ (hereinafter referred to as the 'Contractor' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), having awarded a Contract by issue of Developer's Letter of Intent / Work Order No. \_\_\_\_\_ - dated ---/---/20\_\_ and the same having been acknowledged and accepted by the Contractor, resulting in a Contract bearing No. \_\_\_\_\_ dated --/--/20\_\_ valued at Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ Only) for \_\_\_\_\_ --(mention brief scope of the contract ) and the Developer having agreed to make an interest free advance payment to the Contractor amounting to Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ Only) as an advance against an irrevocable and unconditional Bank Guarantee to be furnished by the Contractor:

We \_\_\_\_\_(Name of the Bank), \_\_\_\_\_(Address of the Bank's Branch) having its Head Office at \_\_\_\_\_ (hereinafter referred to as the 'Bank', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby irrevocably and unconditionally guarantee and undertake to pay the Developer, immediately on demand any or, all monies payable by the Contractor to the extent of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ Only) as aforesaid at any time up to --/--/---- without any demur, reservation, contest, recourse or protestant / or without any reference to the Contractor. Any such demand made by the Developer on the Bank shall be conclusive and binding on us, notwithstanding any difference between the Developer and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. We agree that the guarantee herein contained shall continue to be enforceable till the Developer discharges this guarantee.

The Developer shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee, from time to time to vary the advance or to extend time for performance of the Contract by the Contractor and / or vary the terms and conditions of the Contract. The Developer shall have the fullest liberty without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor, and to exercise the same at any time in any manner,

and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the Developer and the Contractor or any other course or remedy or security available to the Developer. The Bank shall not be released of its obligations under these presents by any exercise by the Developer of its liberty with reference to the matters aforesaid or any of them or by reason of any other act of omission or commission on the part of the Developer or any other indulgence shown by the Developer or by any other matter or thing whatsoever which under law would but for this provision have the effect of relieving the Bank.

The Bank also agrees that the Developer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Developer may have in relation to the Contractor's liabilities.

Notwithstanding anything contained hereinabove our liability under this guarantee is limited to Rs.-----/- (Rupees ----- Only) and it shall remain in force up to and including -- /--/---- and shall be extended from time to time for such period (not exceeding one year at a time), as may be desired by Developer in whose favour this guarantee has been given.

Notwithstanding anything contained hereinabove our liability under this guarantee is limited to Rs. -----/- (Rupees ----- Only) and this guarantee is valid up to --/--/---- and we shall be released and discharged from all liabilities there under unless a written claim for payment under this guarantee is lodged on us in writing on or before --/--/---- irrespective of whether or not the original guarantee is returned to us.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016 at -----.  
For ----- (Name of the Bank)

Officer of the Bank:  
(Bank's Branch Address)

WITNESS:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Official Address)

**Appendix D**  
**Draft format for retention payment guarantee**  
**(On stamp paper as per statutory requirement)**

**Date:****To,**

[Name and address of Developer]

Dear Sir,

Guarantee No. \_\_\_\_\_

Amount of Guarantee: Rs. \_\_\_\_\_/-

Guarantee cover from --/--/---- to ---/---/-----

Last date for lodgement of claim --/--/----

In consideration of [Name of Developer], (hereinafter referred to as the 'Developer' which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s. \_\_\_\_\_ (Name of the Contractor) having its Registered/Head Office at \_\_\_\_\_ (hereinafter referred to as the 'Contractor' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), having awarded a Contract by issue of Developer's Letter of Intent / Work Order No. \_\_\_\_\_ - dated ---/---/20 and the same having been acknowledged and accepted by the Contractor, resulting in a Contract bearing LOI/Work order No. \_\_\_\_\_ dated --/--/20 having value of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ Only) for \_\_\_\_\_ (mention brief scope of the contract ) and the Developer having agreed pursuant to the provisions of Contract to release the retention money amounting to Rs. \_\_\_\_\_ -/- (Rupees \_\_\_\_\_ Only) to M/s. \_\_\_\_\_ (Name of the Contractor) to cope up with the work and for utilizing it for the expeditious execution of the Contract, on his furnishing the irrevocable and unconditional Bank Guarantee acceptable to the Developer.

We \_\_\_\_\_ (Name of the Bank), \_\_\_\_\_ (Address of the Bank's Branch) having its Head Office at \_\_\_\_\_ (hereinafter referred to as the 'Bank', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby irrevocably and unconditionally guarantee and undertake to pay the Developer, immediately on demand any or, all monies payable by the Contractor to the extent of Rs. \_\_\_\_\_ -/- (Rupees \_\_\_\_\_ Only) as aforesaid at any time up to --/--/---- without any demur, reservation, contest, recourse or protest and / or without any reference to the Contractor. Any such demand made by the Developer on the Bank shall be conclusive and binding notwithstanding any difference between the Developer and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. We agree that the guarantee herein contained shall continue to be enforceable till the Developer discharges this guarantee.

We, \_\_\_\_\_ (Name of the Bank) further agree that the Developer shall be the sole judge of and as to whether the said Contractor has committed any breach or breaches of any of the terms and conditions of the said Contract and / or other terms and conditions on the basis of which

the retention money amounting to Rs.-----/- (Rupees ----- Only) has been released and extent of loss, damage, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by the Developer on account thereof and the decision of the Developer that the said Contractor has committed such breach or breaches shall be final and binding on us.

We, -----(name of the Bank), further agree that the Guarantee here contained shall remain in full force and effect during the period that would be taken for the performance of the said Contractor and till all the dues of the Developer under the said Contract or by virtue of any of the terms and conditions agreed to have been fully paid and its claims satisfied or discharged and till the Developer certifies that the terms and conditions of the said Contract and other terms and conditions on the basis of which the retention money amounting to Rs.-----/- (Rupees ----- Only) has been released, have been fully and properly carried out by the said Contractor and accordingly discharges this guarantee subject, however, that the Developer shall have no claim under the guarantee after ---/---/-----, unless a notice of the claim under this guarantee has been served on the Bank before the expiry of the said period.

The Developer shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee or indemnity, from time to time to vary any of the terms and conditions of the said Contract and or the terms and conditions on this basis of which the retention money amounting to Rs.-----/- (Rupees ----- Only) has been released or to extend the time of performance by the said Contractor or to postpone for any time and from time to time any of the powers exercisable by it against the said Contractor and either to enforce or forbear from enforcing any of the terms and conditions governing the said Contract or securities available to Developers and the said Bank shall not be released from its liability under these presents by any exercise by the Developer of the liberty with reference to the matters aforesaid or by reason of time being given to the said Contractor or any other forbearance, act or omission on the part of the Developer or any indulgence by the Developer to the said Contractor or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so releasing the Bank from its such liability.

It shall not be necessary for the Developer to proceed against the Contractor before proceeding against the Bank and the Guarantee herein contained shall be enforceable against the Bank notwithstanding any security, which the Developer may have obtained or obtain from the Contractor shall at the time when proceedings are taken against the Bank hereunder, be outstanding or un-realized.

We, -----(Name of the Bank), lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Developer in writing and agree that any change in the constitution of the said Contractor or the said Bank, shall not discharge our liability hereunder. If any further extension of this guarantee is required the same shall be extended to such required periods on receiving instructions from Developer, in whose favour this guarantee is issued.

Notwithstanding anything-contained hereinabove our liability under this guarantee is restricted to Rs.-----/- (Rupees ----- Only) and will remain in force until ---/--/----- unless we on or before --/--/-----receive a claim under this guarantee we shall be relieved and fully discharged from all liabilities hereunder.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this \_\_\_\_\_ day of ----- at -----.

For ----- (Name of the Bank)

Officer of the Bank:

Bank's Branch Address

WITNESS:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Official Address)

**Appendix E****Format of bank guarantee in lieu of retention money in individual contracts  
(On Stamp Paper as per statutory requirement)**

To,  
[Name and address of Developer]

1. In consideration of (Name of Developer) having registered office at (address of Developer) (herein after called the "Developer" which expression shall unless repugnant to the subject or context include its successor and assigns) having agreed under the terms and conditions of contract bearing LOI/Work order no. \_\_\_\_\_ for (Name of Work) made between \_\_\_\_\_ (Name of Contractor) hereinafter called "the Contractor" which his heirs, executors administrators and assigns / its successors and assigns and the Developer in connection with (Name of Work) (there in after called "the said Contract") to accept a Deed of Guarantee as herein provided for Rs. \_\_\_\_\_ from a Nationalised Bank in lieu of the retention money to be paid by the Contractor in lieu of the deduction to be made from the Contractor's bills, for the due fulfilment by the Contractor of the terms and conditions contained in the said Contract, We the Bank (name of bank) constituted and established under the Banking Companies Acquisition and Transfer of Undertaking Act 1970 (hereinafter referred to as "the said Bank") and having our Head Office at \_\_\_\_\_ at the request of \_\_\_\_\_ (Contractor(s)) do hereby irrevocably and unconditionally guarantee and undertake to pay within two days to the Developer an amount not exceeding Rs. \_\_\_\_\_ against any loss or damage caused to or suffered or would be caused to or suffered by the Developer by reason of breach or breaches by the said Contractor(s) of any of the terms and conditions contained in the said agreement, and to unconditionally pay the amount claimed by the Developer on demand and without demur to the extent expressed.
2. We \_\_\_\_\_ (indicate the name of Bank) do hereby irrevocably and unconditionally guarantee and undertake to pay the amounts due and payable under this guarantee without any demur, merely on a demand from the Developer stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Developer by reason of breach by the said Contractor(s) of any of the terms or conditions contained in the said Agreement or by reason of the Contractor(s) failure to perform the said Agreement. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. \_\_\_\_\_.
3. "We \_\_\_\_\_ (name of Bank) further agree that the Developer shall be the sole judge of and as to whether the Contractor has committed any breach or breaches of any of the terms and conditions of the said contract and the extent of loss, damage, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by the Developer on account thereof and the decision of the Developer that the Contractor has committed such breach or

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breaches and as to the amount or amounts of loss, damage, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by the Developer from time to time shall be final and binding on us'.

4. We undertake to pay to the Developer any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s)/supplier(s) in any suit or proceeding pending before any court or Tribunal relating thereto our liability under this present being absolute and unequivocal.

The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Contractor(s)/supplier(s) shall have no claim against us for making such payment.

5. We, \_\_\_\_\_ (indicate the name of Bank) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract and that it shall continue to be enforceable till all the dues of the Developer under or by virtue of the said Contract have been fully paid and its claims satisfied or discharged or till the Engineer/Project Manager (PM), of \_\_\_\_\_ (indicate the name of Administrative) certifies that the terms and conditions of the said Contract have been fully and properly carried out by the said Contractor(s) and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before the \_\_\_\_\_ we shall be discharged from all liability under this guarantee thereafter.
6. We \_\_\_\_\_ (indicate the name of the Bank) further agree with the Developer that the Developer shall have the fullest liberty without our consent and without affecting in any manner our obligations herein under to vary any of the terms and condition of the said Contract or to extend time of performance by the said Contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Developer against the said Contractor(s) and to forbear or enforce any of the terms and conditions relating to the said Contract and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Contractor(s) or for any forbearance, act or commission on the part of the Developer or any indulgence by the Developer to the said Contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provisions have effect of so relieving us.
7. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s)/Supplier(s).
8. We, \_\_\_\_\_ (indicate the name of Bank) lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Developer in writing.

9. A demand for payment under this Guarantee shall be made on us by the Developer in writing at the following address:

Name of the Bank:

Address:

and shall be deemed to have been sufficiently made after the writing containing the demand is deposited by the Developer by registered post prepaid in the post office box addressed as aforesaid or by hand delivery or fax and we shall pay the amount due within 2 (two) days from the receipt of notice in writing from and on behalf of the Developer.

Date the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

For and on behalf of the Bank

The above Guarantee is accepted by the Developer.

For and on behalf of the Developer

Date \_\_\_\_\_  
(Name and Designation) \*

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**Appendix F – Draft Declaration for Statutory Compliance**  
**On letterhead of Contractors' company to be submitted monthly**

Date: \_\_\_\_\_

To,  
[Name and address of Developer]

Kind Attn: Mr. \_\_\_\_\_

Sub: Work Order No. \_\_\_\_\_ dated \_\_\_\_\_ for \_\_\_\_\_ Project at  
\_\_\_\_\_

Dear Sir,

We hereby confirm that we take full responsibility of statutory compliance with respect to our scope of work and further confirms that we have complied with all the laws, orders, regulations and other requirement (including the rules framed under the respective legislation) of the Central, State and other Government and Local Authorities which are applicable for the period starting from the date of the above referred work order, including, but not limited to:

Acts:

The Employees Provident Fund and Miscellaneous Provisions Act, 1952  
Factories Act, 1948  
The Employees State Insurance Act, 1948  
The Industrial Dispute Act, 1947  
The Workmen's Compensation Act, 1923  
The Payment of Bonus Act, 1965  
The Payment of Gratuity Act, 1972  
The Payment of Wages Act, 1936  
The Payment of Wages (Amendment) Act 2005  
The Minimum Wages Act, 1948  
The Contract Labour (Regulation & abolition) Act 1970  
The Public Liability Insurance Act 1991  
The Equal Remuneration Act 1991  
The Maternity Benefit Act, 1961  
The Air (Prevention and Control of Pollution) Act, 1981  
Water (Prevention and Control of Pollution) Act, 1974  
The Environment Protection Act, 1986  
The Shops and Establishment Act, 1948  
The Child Labour (Prohibition and Regulation) Act 1986

The building and other construction workers welfare cess Act 1996

Rules:

Contract Labour (Regulations & Abolition) Central Rules, 1971

Industrial Disputes (Central) Rules, 1957

Minimum Wages (Central) Rules, 1950

Payment of Bonus rules, 1975

Thanking you,

Yours faithfully,

For

Partner / Proprietor / Director

In case of Partnership please check whether signing partner has an authority to do so.

In case of company resolution copy

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**Appendix G – Draft No. Claim Certificate**

To

Date:

Developer

Sub: No claim certificate

Ref:

Dear Sirs,

Kindly refer to the above mentioned work order/purchase order no. \_\_\_\_\_ dated \_\_\_\_\_ vide which you had entrusted us the work/supply of \_\_\_\_\_ at your project \_\_\_\_\_ located at \_\_\_\_\_ Pursuant to the above, we had submitted our final bill dated \_\_\_\_\_ for Rs. \_\_\_\_\_ which has been passed by you for Rs. \_\_\_\_\_ and the same is acceptable to us.

We declare that upon the payment of Rs. \_\_\_\_\_ (the final bill amount passed by MWCDL), we shall have no claim for non-payment, return of material, liquidated damages or claim of any other nature, whatsoever against MWCDL and/or its directors, employees.

Pursuant to the above work, we confirm that we have paid all statutory dues and have fulfilled all statutory compliances including dues and compliances under prevailing labour laws.

We also confirm that we shall indemnify and keep MWCDL indemnified at all times against any demand, cost, charges, losses or damages of whatsoever nature that arise or be incurred by MWCDL due to our non compliances and non payment of statutory dues, as aforesaid.

We also understand, confirm and consent that MWCDL has all rights to utilize/appropriate retention monies, performance/bank guarantee, any other security, submitted by us for the due and faithful performance of the aforesaid work including rectification of snags and defects during the defect liability period.

We have issued this No-Claim Certificate to you on our own accord.

Thank you,

Yours truly

**Appendix H**  
**Draft of declaration, undertaking and indemnity**  
**(On Stamp Paper as per statutory requirement)**

We, (Name of Contractor) \_\_\_\_\_ having its Registered/Head Office at \_\_\_\_\_ hereinafter referred to as the 'Contractor/Consultant/Architect/Service Provider' (which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) hereby declare, confirm and undertake as under:

**WHEREAS:**

\_\_\_\_\_, (hereinafter referred to as the 'Developer' which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators and assigns) has awarded to us a Contract by issue of Letter of Intent / Work Order No. ----- Dated ---/---/20\_\_ valued at Rs.----- (Rupees ----- Only) for -----(mention brief scope of the contract ).

The said Letter of Intent / Work Order No. ----- Dated ---/---/20\_\_ has been acknowledged and accepted by us, resulting in a Contract bearing No. ----- Dated --/---/20\_\_ ("the Contract")

In consideration of the award of the Contract, we (Name of Contractor) \_\_\_\_\_ hereby agree, declare and undertake on continuing basis that:

1. We are not (i) Restricted Parties and "Specially Designated Nationals and Blocked Persons" maintained by any of the Sanctions Authorities and set out at the website links as provided in the attached Schedule or (ii). listed on or owned by a Person listed on, any Sanctions List; (ii) located in or incorporated under the laws of a country or territory that is the target of country-wide or territory-wide Sanctions and listed on any Sanctions List.
2. **We shall comply with all Applicable Laws, regulations in the performance of our obligations under the Contract.**
3. We are aware that, Developer has awarded the Contract to us and executed necessary documents for the same based on the statements, representations, warranties, declarations and undertakings made herein, and that we shall indemnify and keep indemnified Developer immediately upon demand against all losses, damages, liabilities and costs, charges and expenses which the Developer may suffer or incur owing to any breach of the statements, representations, warranties, declarations or undertakings or if any of the statements, representations, warranties, declarations or undertakings are misleading, incomplete or false.

**THE SCHEDULE ABOVE REFERRED TO**

1. <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>
2. <http://sdnsearch.ofac.treas.gov/>
3. <http://www.state.gov/t/isn/c15231.htm>
4. [http://eeas.europa.eu/cfsp/sanctions/consol-list\\_en.htm](http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm)
5. [http://www.un.org/sc/committees/1267/aq\\_sanctions\\_list.shtml](http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml)
6. <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>
7. <https://www.gov.uk/government/organisations/hm-treasury/series/financial-sanctions-regime-specific-consolidated-lists-and-releases>
8. <http://www.customs.gov.sg/stgc/leftNav/san/>
9. The Company to subscribe to: <http://www.worldcompliance.com/en/compliance-database/global-pek-list.aspx>

\_\_\_\_\_  
Authorized Signatory of the Contractor/

Place:

Date

Witnesses

- 1.
- 2.

**Appendix I****1.1 Relationship Disclosure**

The contractor shall make disclosure of relationship with the Director/s or Key Managerial Personnel/s of the **Developer** or the entity/ies, in which such director/s or Key Managerial Personnel/s is/are interested, shall be reported as per format attached herewith as Annexure 1.

**Relationship Disclosure**

The contractor has to make disclosure of relationship with the director/s or Key Managerial Personnel (KMP) /s of the **M/s. Mahindra World City Developers Limited** or the entity/ies, in which such director/s or Key Managerial Personnel/s is/are interested shall be reported as per format attached herewith as Annexure 1.

**Annexure 1**

**RELATIONSHIP WITH THE DIRECTOR/S OR KEY MANAGERIAL PERSONEL/S OF THE M/S. MAHINDRA WORLD CITY DEVELOPERS LIMITED / OR THE ENTITY/S IN WHICH SUCH DIRECTOR/S OR KEY MANAGERIAL PERSONEL/S IS/ARE INTERESTED**

**Whether you are a Director or related to any of the director/s OF MAHINDRA WORLD CITY DEVELOPERS LIMITED**      Yes    /    No (Tick as applicable)

If yes, then kindly provide details in **Annexure on next page**

**Whether you are a Key Managerial Personnel or related to any of the Key Managerial Personnel/s OF MAHINDRA WORLD CITY DEVELOPERS LIMITED**      :

**Yes    /    No (Tick as applicable)**

If yes, then kindly provide details in **Annexure 2 on next page**

**Note:** Any relationship disclosure/s made in Annexure as per above, shall be promptly informed and copy of the same shall be sent to the Company Secretary at the Corporate Office of **MAHINDRA WORLD CITY DEVELOPERS LIMITED**.

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**Annexure 2****Relationship with the Director/s or Key Managerial Personnel/s of the m/s. Mahindra World City Developers Limited or the entity/s in which such director/s or key managerial personnel/s is/are interested**

- (i) Specify the name/s of the director/s with whom the Applicant/s is related along with the nature of relationship with the Applicant/s : Name/s:  
Nature of Relationship:
- (ii) Whether the Applicant/s is/are interested in the entity/s in which director/s of **MAHINDRA WORLD CITY DEVELOPERS LIMITED** is/are interested? : Yes / No (Tick as applicable)
- (iii) If yes in Sr. No. (ii) above then specify the name/s of the Entity/s in which the Applicant/s is interested. : Name/s of the Entity/s:  
Nature of Interest:

**Notes:**

1. If any Director/s or relative of such director/s of **MAHINDRA WORLD CITY DEVELOPERS LIMITED** is a partner in partnership firm then
  - such partnership firm or
  - any partner of such partnership firm shall be deemed to be interested

**OR**

2. If any director/s or relative of such Director/s of **MAHINDRA WORLD CITY DEVELOPERS LIMITED** is a Director or a shareholder in a private company then
  - such a company or its director/s or shareholder/s shall be deemed to be interested

**OR**

3. If any director/s or relative of such director/s of **MAHINDRA WORLD CITY DEVELOPERS LIMITED** is a trustee in any trust then
  - such trust or any trustee of such trust shall be deemed to be interested

**OR**

4. If any Director/s of **MAHINDRA WORLD CITY DEVELOPERS LIMITED** is a Director in other Public Company and holding along with relative more than **2%** or more equity shares in a public such company then disclose the details.

**Appendix J**  
**Performance Guarantee**

Date:  
To,  
Developer,

Dear Sir,  
Guarantee No. \_\_\_\_\_  
Amount of Guarantee: Rs. -----/-  
Guarantee cover from --/--/---- to ---/---/-----  
Last date for lodgment of claim --/--/----

In consideration of Mahindra World City Developers Limited., (hereinafter referred to as the 'Developer / Developer ' which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s. -----  
---- (Name of the Contractor) having its Registered/Head Office at -----  
----- (hereinafter referred to as the 'Contractor' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), having awarded a Contract by issue of Developer's Letter of Intent / Work Order No.----- dated ---/---/20\_\_ and the same having been acknowledged and accepted by the Contractor, resulting in a Contract bearing No. -----  
---- dated --/--/20\_\_ valued at Rs.----- (Rupees ----- Only) for ----  
----- (mention brief scope of the contract ) and the Contractor, in terms of the Contract having agreed to provide a Contract Security Deposit Guarantee as a security towards faithful performance of the entire Contract equivalent to ----% (----- percent) of the said value of the Contract to Developer :

We, the ----- (Name of the Bank) at ----- (Bank's Branch Address) having its Head Office at -----, (hereinafter referred to as the 'Bank', which expression shall, unless repugnant to the context or meaning thereof, includes its successors, administrators, executors and assigns) do hereby irrevocably and unconditionally guarantee and undertake to Developer on demand any and all monies payable by the Contractor to the extent of Rs.----- (Rupees ----- Only) as aforesaid at any time up to and including --/--/ 20\_\_ without any demur, reservation, contest, recourse or protest and / or without any reference to the Contractor. Any such demand made by the Developer on the Bank shall be conclusive and binding notwithstanding any difference between the Developer and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. The Bank undertakes not to revoke this guarantee during its currency without previous consent of Developer and further agrees that the guarantee herein contained shall continue to be enforceable till Developer discharges this guarantee.

Developer shall have fullest liberty without affecting in any way the liability of the Bank under this guarantee, from time to time to vary the terms and conditions of the Contract, to extend time for performance of the Contract by the Contractor and that Developer shall have fullest liberty, without affecting this guarantee, to postpone from time to time exercise of any powers vested in them or of any right which they might have against the Contractor, and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between Developer and the Contractor or any other course or remedy or security available to Developer. The bank shall not be released of its obligations under these presents by any exercise by Developer of its liberty with reference to the matters aforesaid or any of them or by reason of any other act of omission or commission on the part of Developer or any other indulgence shown by Developer or by any other matter or thing whatsoever which under law would, but for this provision have the effect of relieving the Bank.

We, -----(Name of the Bank) further agree that Developer shall be the sole judge of and as to whether the said Contractor has committed any breach or breaches of any of the terms and conditions of the said Contract and / or other terms and conditions and extent of loss, damage, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by Developer on account thereof and the decision of Developer that the said Contractor has committed such breach or breaches shall be final and binding on us.

The Bank also agrees that Developer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that Developer may have in relation to the Contractor's liabilities.

Notwithstanding anything contained hereinabove our liability under this guarantee is restricted to Rs.----- /- (Rupees ----- Only) and it shall remain in force up to and including--/--/----- and shall be extended from time to time for such period (not exceeding one year at a time), as may be desired by Developer in whose favor this guarantee has been given.

Notwithstanding anything contained hereinabove our liability under this guarantee is limited to Rs. -----/- (Rupees ----- Only) and this guarantee is valid up to --/--/---- and we shall be released and discharged from all liabilities there under unless a written claim for payment under this guarantee is lodged on us in writing on or before --/--/---- irrespective of whether or not the original guarantee is returned to us.

Dated this \_\_\_\_\_ day of -----, 20..... at -----.  
For (Name of the Bank)

Officer of the Bank:

(Address of Bank's Branch)

Place: -----

Date: --- /---/-----

WITNESS:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Official Address

**Appendix K**  
**Draft Escrow Account Agreement**  
**(On stamp paper as per statutory requirement)**

This Escrow Agreement made at Chennai this \_\_\_\_ day of \_\_\_\_\_ between:  
\_\_\_\_\_, a Company incorporated under the Indian Companies Act, 1866 and deemed to be a company under the Companies Act, 1956 having its registered office at .....(hereinafter referred to as the "**the Beneficiary**") which expression shall, unless it be repugnant to the subject or context thereof, include its successors), as Party of the **First Part**; and  
....., a company incorporated under the Companies Act, 1956 and having its registered office at ..... (Hereinafter referred to as "**the Contractor**" which expression shall, unless it be repugnant to the subject or context thereof mean and include its successors), as Party of the **Second Part**;

And

**HDFC Bank Limited**, a Banking Company incorporated under the Companies Act, 1956 and having its registered office at HDFC Bank House, SenapatiBapat Marg, Lower Parel (W), Mumbai – 400013 and one of its branch at, Mumbai (hereinafter referred to as "**the Escrow Agent**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors), as the **third Part**.

Beneficiary, Contractor are hereinafter collectively referred to as the "**Parties**"

WHEREAS:

- A. The Beneficiary vide work order dated \_\_\_\_\_ have awarded contract to the Contractor to carry out construction work and develop a property bearing .....and measuring .....square meters or thereabouts, situated at ..... thereinafter collectively referred to as "**the said Property**") on terms more particularly mentioned in the contract agreement;
- B. Beneficiary and the Contractor are desirous of

The Parties are desirous for opening an escrow account with the Escrow Agent for routing all the project expenses for the purpose of completion of project through the Escrow agent on terms and conditions agreed in this Agreement.

**NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED AND CONFIRMED BY THE PARTIES AS FOLLOWS:**

1. Appointment of Escrow Agent.
  - (a) The Beneficiary hereby nominate, appoint and constitute the Escrow Agent to act as an Escrow Agent for accepting the payment due to the Contractor as per the Contract agreement from Beneficiary and for releasing the same only in favor of the sub-contractor, vendor, person/s as per instruction of the Contractor and the Beneficiary.

- 
- (b) The Escrow Agent hereby agrees to act as an Escrow Agent and to accept the said payment in the Escrow Account by the Beneficiary as set out herein below, pursuant to the terms and conditions of this Agreement. The Escrow Agent shall hold and safeguard the Escrow Account, during the subsistence of this Agreement.
- (c) The Parties agree that:-
- (i) No cheque book will be issued to the escrow a/c.
  - (ii) No signatures will be linked to the escrow a/c.
  - (iii) Specimen signatures of the authorized signatories of the Beneficiary are annexed hereto as Schedule "I" for verification only or authorized signatory nominated by MD and CEO from time to time through letter

The Borrower & the Escrow Bank agree that no person shall be provided with cheque facility on the Escrow A/c and all transactions in the Escrow Accounts shall solely be undertaken by Escrow Agent only.

2. Establishment and Operation of Escrow Account as set out herein below

- (a) The Contractor have opened a special segregated and irrevocable Escrow Account bearing Account No. \_\_\_\_\_ with the Escrow Agent at its \_\_\_\_\_ Branch (hereinafter referred to as "**the said Escrow Account** ") in a form and manner satisfactory to the Parties and it shall be maintained at all times until termination of this Agreement.
- (b) The Beneficiary will transfer all the amounts due to the Contractor as per the terms of the Contract Agreement to the Escrow Account.
- (c) The Contractor by a Disbursement Letter for doing RTGS/NEFT signed by Contractor and counter-signed by Beneficiary as per the format attached in Schedule-II instruct Escrow Agent to disburse the payments to the person/s as per the said Disbursement Letter.
- (d) The Escrow Agent shall act only on the basis of the disbursement letter signed by the contractor and counter signed by the Beneficiary and release the amount to the said person/s as per the disbursement letter.
- (e) Any act to be done by the Escrow Agent shall be done only on a Business Day, during normal banking business hours, and in the event that any day on which the Escrow Agent is required to do an act under the terms of this Agreement is not a Business Day, then the Escrow Agent shall do those acts on the next succeeding Business Day.



- (b) The Escrow Agent warrants with the Beneficiary and the Contractor that the Escrow Agent is licensed under the Banking Regulation Act, 1949 and validly existing under the laws of India and has all requisite legal power, authority and resources to enter into this Agreement and to perform its duties and obligations there under.
- (c) The execution, delivery and performance of this Agreement and the said Agreement by the Beneficiary and the Contractor has been duly authorized by all requisite action and will not constitute a violation of any statute judgments, order, decree or regulation of any court, Indian Government or arbitral tribunal applicable or relating to the Beneficiary and the Contractor, their assets or their business.

## **6. Expenses**

It is expressly agreed by and between the parties hereto that the Contractor shall bear and pay upfront all the costs, charges and expenses agreed between the Parties including the fees of the Escrow Agent's Advocate/s that may be incurred by the Escrow Agent on account of any litigation arising out of or in connection with this Agreement and the Escrow Agent shall not be required or liable to bear or pay any such costs and expenses in such event. In the event the Escrow Agent, without prejudice to its rights herein, happens to incur any such costs, charges and expenses (including fees of Escrow Agent's Advocate/s) as aforesaid, the same shall be reimbursed by the Beneficiary as aforesaid to Escrow Agent immediately upon demand from the Escrow Agent without raising any dispute.

The Beneficiary further agree and undertake to pay or reimburse to Escrow Agent immediately on demand without any dispute all costs, charges and expenses arising out of or in connection with this Escrow Agreement (including but not limited to opening up of Escrow Account of the Beneficiaries and costs, charges and expenses as stated in the foregoing paragraph) or incidental to the enforcement of any of the provisions of this agreement or in connection with any stamp duty, statutory taxes, charges, duty, etc. or duty required to be paid by Escrow Agent under this agreement or with respect to amendment, waiver or consent relating to this agreement

## **7. Escrow Fee**

In consideration of the Escrow Agent agreeing to act and acting as the escrow agent hereunder, the Beneficiary shall pay to the Escrow Agent its agreed fee of Rs...TBD...../- (Rupees ..... only) at the time of execution of this agreement.

## **8. Miscellaneous.**

- (a) All notices or communications given by or made as aforesaid by registered mail or recognized courier service shall be deemed to have been duly given or made when

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received. Any party may, by notice, change the address and/or address to which such notices and communications to it are to be delivered or mailed.

- II. Except as otherwise expressly provided herein, all notices or other communications to or upon the parties hereto shall be given or made by registered mail or recognized courier service at the address mentioned in the cause title of this Agreement and (in case of urgency only by email correspondence to be sent to the respective Beneficiary on the below email id's promptly confirmed and acknowledged by registered mail or recognized courier service)
  - III. The Escrow Agent shall only close this Escrow Account upon receiving a written intimation from the Beneficiary or upon expiry/termination of this agreement as specified in termination clause 13 herein below, whichever is earlier.
9. The Escrow Agent shall not be liable for any claims arising out of any act, deed or thing done or omitted to be done by the Parties in pursuance of this Agreement or any instructions or notification save and except for willful negligence or default of the Escrow Agent.
  10. The Parties hereto agree that the obligations of the Escrow Agent under this Agreement shall be limited as expressly set out in this Agreement.
  11. The duties of the Escrow Agent are as expressly set out in this Agreement and no further implied duties or obligations shall be cast on the Escrow Agent or read into this Agreement against the Escrow Agent. The Escrow Agent shall not be deemed to be aware of or bound by the provisions of the said Contract agreement or any other agreement executed or arrived at between the Beneficiary except this Agreement.
  12. **Indemnity**

Parties hereby agree to protect, defend, indemnify and hold harmless the other Party against any and all costs, charges, losses, claims, damages, disbursements, liabilities and expenses, including legal/litigation costs and attorney's fees as specifically stated in this Agreement, which may be imposed upon or incurred by such Party in connection with its acceptance of, or appointment as, Escrow Agent hereunder, or in connection with the performance of its duties hereunder, including any litigation arising out of this Agreement or involving the subject matter hereof except in the event of Escrow Agent's gross negligence or willful misconduct. The Escrow Agent shall have no liability towards any of the Parties for any loss or damage that any of the Parties hereto may claim to have suffered or incurred, either directly or indirectly, by reason of this Agreement or any transaction or service contemplated by the provisions hereof unless occasioned by the gross negligence or willful misconduct of the Escrow Agent. In no event shall the Escrow Agent be liable for losses or delays resulting from computer malfunction, interruption of communication facilities or other causes beyond Escrow Agent's reasonable control or for indirect, special or consequential damages.

The Parties acknowledge that the foregoing indemnities shall survive the resignation of the Escrow Agent or the termination of this Agreement.

### **13. Termination**

a) The Beneficiary and Escrow Agent shall have the right to exit / resign, without assigning any reason whatsoever, from this Agreement or terminate this Agreement by giving 60 (sixty) days' notice in writing to other Party. Upon expiry of the aforesaid notice period, the Escrow Agent shall, transfer the amount/s lying in the escrow account to such account as may be designated by the Beneficiary and informed in writing to the Escrow Agent, and the Escrow Agent shall stand discharged / released from all its obligations under this Agreement

### **14. Escrow Agent Role**

In respect of any communications that are to be provided by the parties to the Escrow Agent in accordance with this transaction, the Escrow Agent shall be entitled to rely upon the contents of such communications as being true and the Escrow Agent shall not be liable to any party in the event of the contents of such communications being false or incorrect in any manner whatsoever.

In respect of any intimation to the Escrow Agent that any permission or approval has been obtained, the Escrow Agent shall be entitled to presume that such permission or approval has been duly obtained and is adequate, proper and valid and all conditions thereof have been duly fulfilled; and the Escrow Agent shall be entitled to rely upon such intimations and shall not be obliged to verify the contents, adequacy, validity or fulfillment of the conditions thereof.

The Escrow Agent shall not be liable if it acts on any instructions, which are unclear and/or ambiguous, and shall not be liable and responsible for the same. Without prejudice to the above, if any Instructions are unclear and/or ambiguous, the Escrow Agent may refer back to the Party issuing the Instructions for clarification and may not, in its absolute discretion and without any liability on its part, act upon the Instructions until any ambiguity or conflict has been resolved to its satisfaction.

### **15. Dispute Resolution:**

All disputes, controversies and claims directly or indirectly arising out of or in relation to this Agreement or the validity, interpretation, construction, performance, breach or enforceability of this Agreement (including without limitation, this clause) (collectively "Disputes") shall be initially resolved in accordance with the proceedings set forth in this clause. The Parties will initially attempt to resolve all disputes amicably between themselves at an operational level, in consultation, where appropriate, with competent representatives of each Party. If a dispute cannot be resolved at an operational level, then, any Party may submit the matter to final, exclusive, binding arbitration as provided in the arbitration clause herein by so notifying the other Parties hereto.

**16 Arbitration**

If any dispute arises between the Parties hereto during the subsistence of this Agreement or thereafter, in connection with the validity, interpretation, implementation or alleged material breach of any provision of this Agreement or regarding a question including the questions whether the termination of this Agreement has been legitimate and any dispute as to the existence or validity of this Agreement, the Parties hereto shall endeavour to settle such dispute amicably in accordance with Clause 14.

- a) In the case of failure by the Parties hereto to resolve the dispute in the manner set out above within 45 days from the date when the dispute arose, the dispute shall be referred to arbitration of a sole arbitrator to be appointed by the Beneficiary.
- b) The place of arbitration shall be Mumbai, India.
- c) The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996, as amended from time to time.
- d) The proceedings of arbitration shall be held in the English language.

**17 Jurisdiction**

Subject to the clause 15 above, the Parties agree to submit to the exclusive jurisdiction of the competent courts in Mumbai.

**18 Governing Law**

In respect of any matter arising out of this Agreement, which involves the Escrow Agent, the Parties agree that the laws of India shall govern the interpretation, validity and performance of the terms of this Agreement.3

**In witness where of the parties hereto have hereunto set and subscribed their respective hands on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.**

Signed and delivered by the  
Within named Beneficiary  
By the hands of  
Duly authorized vide Resolution Passed by its Board of Directors

Schedule I

List of Authorized Signatories of Beneficiary



**Annexure - A**  
**List of approved banks**

**List of Nationalized Bank**

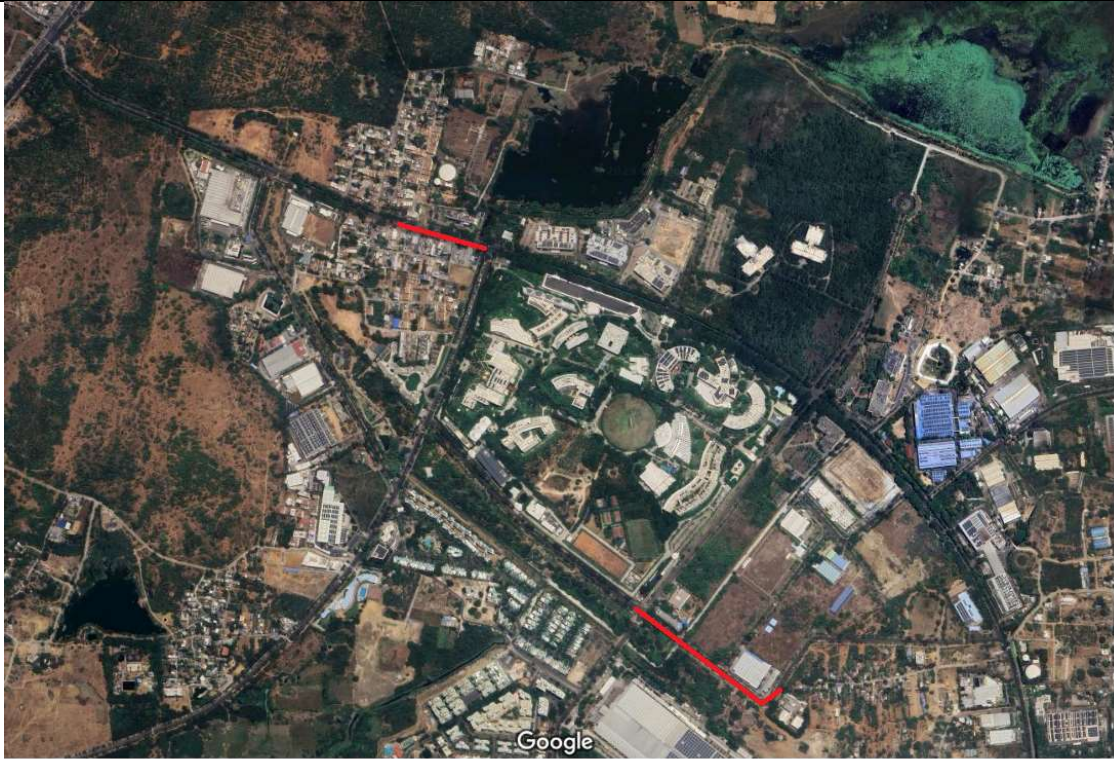
1. Bank of Baroda
2. Bank of Maharashtra
3. Bank of India
4. Canara Bank
5. Central Bank of India
6. Indian Bank
7. Indian Overseas Bank
8. Punjab & Sind Bank
9. Punjab National Bank
10. State Bank of India
11. UCO bank
12. Union Bank of India

**List of Private Banks**

1. Axis Bank
2. HDFC Bank
3. HSBC Bank
4. ICICI Bank
5. Kotak Mahindra Bank
6. Standard Chartered Bank
7. IDBI Bank

# Annexure - M Location map





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# VOLUME I - B

## **Special Conditions of Contract**

The following Special Conditions of Contract (SCC) shall supplement or amend the General Conditions of Contract (GCC).

### **A) Developer requirements**

In developing the above projects, the developer has identified a series of objectives as mentioned below:

- To create a high quality, safe and secure living environment that stimulates and encourages the occupants of the Project to achieve a high level of success,
- To design the building to maximize the value of the asset in the short and long term,
- To develop a sustainable, functionally and energy efficient building that has the flexibility to meet the changing needs of living now and in the future,
- To maintain at all times a high level of corporate responsibility through a strong commitment to ethical work practices, safety, and environment and
- To achieve budget, quality and program targets.

It is expected that the Contractor will strive proactively, at all times, to work with Developer to achieve these objectives.

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**B) Location of site:**

The Mahindra World City is spread across 1500 acres approximately of land area which is located at Chengalpet-603004, Kanchipuram(district), Tamil Nadu.

**C) Detailed scope of work:**

The works shall include but not be limited to, the any and / or all of following as more fully described in the good for construction drawings, specifications and bill of quantities (BOQ) viz.,

Mobilisation of plants, equipment's, tools, tackle, materials, transport and manpower.

The scope of work under this Tender shall include ‘

**Road repair & other allied works in Mahindra World City Developers Limited, Administrative block, Central Avenue, Mahindra world city, Chengalpet-603004, Tamil Nadu**

All other works not specifically mentioned above but indicated on the good for construction drawings and in the specifications and / or bill of quantities and temporary works as per site conditions, which is necessary for the satisfactory completion of the works, irrespective of variations in the quantities of individual items.

The requirements set forth herein apply generally to above described job at the areas demarcated on Site Plan drawing and other referenced drawings

Broadly, the scope of work includes the following:-

1) Seal Coat Works (Various locations)

Providing and laying evenly graded Bituminous concrete of 40mm thick ( Grade 60/70 & 5% of bitumen content) using mechanical means.

2) Patch / Repair / Potholes rectification Works

Excavation, providing, laying & compacting of GSB up to 150mm thick, WMM 150mm thick, application of prime & tack coat and finishing with Dense Bituminous Macadam (DBM) 50mm thick & Bituminous concrete of 40mm thick.

3) Road Line Marking

Providing and applying for Hot Thermo plastic compound 2.5mm thick including reflectorizing glass beads 250gm/sqm area.

4) Reflector Studs

Providing and fixing reflective studs as per the MWCDL instructions. (Colours: Yellow, Red , White)

**Notes to contractor:**

1. Developer reserves the right to terminate the balance Contract/s in case of Default or Poor performance of Contractor in preceding Contract/s without any compensation.
2. If the Contractor wishes to erect scaffolding or otherwise make use of adjoining land or its airspace, he shall serve notices, obtain permissions and clear away and make good any damage at his own expense and pay all costs in connection therewith.
3. Contractor to make Allowance for complying with traffic regulations both within and outside the Plot.
4. The Contractor is advised to visit the Site and fully acquaint himself as to the nature, extent and practicability of the Works. He shall include in his tender for any costs in respect of availability or lack of access, working space, storage space, accommodation for labour and staff, the nature of the ground, the proximity of adjoining structures and roads, the local regulations regarding the obstruction of public highways and any other limitations imposed by the Site and its surroundings.
5. Before commencing work, the Contractor shall check the actual levels against those shown on the drawings and in the event of any discrepancy, shall immediately notify the Project Manager.
6. Surrounding structures and buildings
  - The Contractor is to take note of the surrounding structures and buildings and ensure that no damage or nuisance is caused.
  - Before commencing the Works the Contractor should employ an approved firm of loss adjusters to undertake a comprehensive pre-construction survey of any surrounding land, buildings, structures, services and the like which may be affected. Such a survey should clearly show the existing condition, a record of defects, extent of cracks, presence of vaults and underground structures and the location of services.
  - Where appropriate, the Contractor shall make available copies of the photographs, reports and records to owners of the surrounding land, buildings, structures and the like.
  - Allow for providing tell-tale signs or by any other suitable approved means including all instruments and equipment for the periodical recording and checking of cracks or other defects of the surrounding land, buildings,

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structures, services and the like.

The Contractor shall be solely responsible for ensuring that the execution of the Works does not impair the safety and stability of any surrounding structures and buildings and where necessary allow in his tender for maintaining the shoring and strutting done by previous contractor (if applicable). Such shoring shall be so positioned or altered and adapted from time to time so as to maintain adequate working space for construction operations.

**D) Mobilisation period:**

The mobilisation period will be 15 days from the date of issue of LOI/LOA.

The Contractor shall carry out the following activities in mobilization period.

- The Contractor shall submit drawings, giving his proposed layout of locating offices, stores, godowns, yards, water, electric network etc. to the EIC for approval.
- Part temporary office of the Contractor.
- Checking lineout including establishing of grid line, levels and its approval from the EIC.
- Submitting list of proposed Sub-Contractors.
- Tapping electric and water connections.
- Godown for other materials.
- Obtaining insurance policies as per the Contract.
- Obtaining labour licenses, if any.
- Obtaining approval of local authorities or any statutory requirements prior to actual start of work.
- Submitting bar chart programme with method statement for carrying out work here of and approval by the Engineer in charge.
- Daily works management should be part of execution.
- Contractor is responsible to comply with applicable legal requirements w.r.t environment management system. Keeping hygiene condition at site and labour camp, prevent oil spillage and disposing the hazardous material like spent oil, waste batteries, and medical wastes to the registered recyclers who are approved by MoEF. And also contractor should follow employer's EMS"

**E) Temporary works**

- The Contractor is entirely responsible for the design, construction, maintenance and removal of all Temporary Works employed in carrying out the Contract. Within a reasonable time (and in any case not less than fifteen days) before he intends to commence construction of any Temporary Works, the Contractor

shall submit full particulars including drawings of the same, for the approval of the Engineer. The Engineer's approval will in no way relieve the Contractor of his responsibility for the safety of the Works, operators, adjoining property, structures or services and compliance with appropriate regulations and codes of practice. Temporary Works supporting adjoining buildings, property and public utilities and roads shall also be submitted to the appropriate authority for their approval if requested/required.

- The Temporary Works shall be designed and constructed in such a manner as to enable the permanent structures to be built around them without detriment to their effectiveness and due allowance will be deemed to have been made for all necessary adjustments thereto to enable the Works to proceed.
- Timber shoring, boards, struts or similar items shall not be left in position upon completion of the Works without the written consent of the Engineer.
- All services or utilities on or adjoining the Site which are required to be maintained operational shall be protected from movement, subsidence or damage from any cause whatsoever by adequate temporary props, struts, shores and protective screens to the approval of the Engineer and the agent of the service or utility.
- The Contractor shall make safe and reinstate all areas affected by Temporary Works.

### **Detailed special conditions of contract**

The following Special Conditions of Contract (SCC) shall supplement or amend the General Conditions of Contract (GCC). Whenever there is conflict, the provisions of the SCC shall prevail over those in the General Conditions of Contract.

### **Common terms for all projects**

<b>Clause no. of GCC</b>	<b>Clause description</b>	<b>SCC</b>
1.1.2.2	Developer	Mahindra World City Developers Limited
1.3	Communications	Mr. Rajesh – O&M Head – MWC Chennai, Mahindra World City Developers Limited, Administrative Block, Central Avenue, Mahindra World City, Chengalpet-603004, Tamil Nadu.
4.2	Performance guarantee/security	The Contractor shall Submit Performance bond in the form of bank Guarantee of 5% of the total contract value

Clause no. of GCC	Clause description	SCC
		<p>including GST (from MWCDL approved banks) Within 10 days of receipt of the Letter of Intent.</p> <p>The Contractor shall ensure that the Performance Guarantee is valid and enforceable until the Contractor has executed and completed the Works and obtained Taking Over/Completion Certificate and 60 days thereafter. If the terms of the Performance Guarantee specify its expiry date, and the Contractor has not become entitled to receive the Taking Over/Completion Certificate by the date 30 days prior to the expiry date, the Contractor shall immediately extend the validity of the Performance Guarantee until minimum of 60 days beyond the extended Time for Completion of the Works. If the Contractor fails to extend the validity of such bank guarantee as stated above then Contractor hereby signing this Contract, gives an unequivocal, unconditional and irrevocable authority to the Project Company to invoke this bank guarantee without any prior notice to the Contractor and he shall not raise any objection and have no claim, whatsoever, against such action of Project Company.</p> <p>The Project Company shall return the Performance Guarantee to the Contractor within 75 days after receiving a copy of the Taking Over/Completion Certificate.</p> <p>The Performance Guarantee shall strictly be in the form annexed to the Contract Documents and shall be executed on a non-judicial stamp paper having a jurisdiction of Chennai, Tamil Nadu. The cost of obtaining such Performance Guarantee shall be borne and paid by the Contractor alone.</p>
4.3	Contractor's representative Project Manager of Contractor	<p>Graduate Civil /Mechanical Engineer with minimum 15 years of experience. Should have independently handled projects of similar magnitude while serving with the contractor. Developer shall interview and accord his approval for the candidate referred by the contractor. Every project will have separate Project Manager. The appointed project manager should be authorized to take all techno-commercial decision for contractor.</p>

Clause no. of GCC	Clause description	SCC
4.3	Punitive damages or non-appointment of Project Manager within stipulated time	All key positions agreed in site organization chart should be deployed by Contractor within 15 days from receipt of Letter of Intent. Rs. 10,000/- per week for each position and each project to a maximum of 2% of total contract value of each Individual project.
4.4	Subcontracting	The Contractor shall not engage or permit the engagement of any subcontractor for any part of the Works without the consent of the Project Manager / Project Company.
	Testing	Third party Quality Testing for whole works will be done as per Specifications and Agency/ Laboratory (NABL accredited laboratories) will be approved by MWCDL and cost of testing will be borne by Contractor. Detailed test reports for carry out of work shall be submitted with each Running Account Bill.
4.9	Quality assurance	In case of any defect is found in your quality of work , the cost to rectify the work as per the satisfaction of the Structural Consultant, Architect, MEP Consultant etc and Developer shall be adjusted from any amount held with the Developer
4.19	Water	Water will not be provided by the Developer. It has to be arranged by the contractor at his own cost.
4.19	Power	Contractor has to make arrangement of power at his own Cost.
6.5	Working hours	The working hour for the project is 8.30 am till 7.00 pm on all working days as per the local statutory law. For working beyond working hours contractor has to take permission from the Developer's representative and also take care of all statutory requirements. No payment or claims to this account will be considered.
8.1	Commencement of works	Commencement date of the work will be the date of issue of Letter of Intent (LOI) or Letter of Award (LOA) whichever is earlier.
8.2	Time for completion	The entire work shall be completed within a period of 45 (Forty-Five) calendar days including mobilization period and monsoon period
8.3	Program and progress schedule	1. The contractor shall submit a detailed master schedule, (in line with agreed milestones) to the developer which will be confirmed, agreed and signed off by both the parties (the developer and

Clause no. of GCC	Clause description	SCC
		<p>the contractor). Kindly make sure that proper sequencing of activities are followed and all the activities covered. (Ideally all activities should have FS link and without lag. duration above 30 days and lag beyond 15 days should be completely avoided). This will become the contract schedule.</p> <ol style="list-style-type: none"> <li>2. Schedule shall be resource loaded including labour, material and machinery and should match with contract value. (Excluding OH cost, for same complied excel file to be submitted)</li> <li>3. Project cash flow to be extracted from MSP schedule.</li> <li>4. Schedule shall include all design and drawings for temporary works, shop drawings, and statutory approvals.</li> <li>5. Contractor shall submit month wise labour, resource and machinery deployment schedule for entire period of the project. Same shall be confirmed, agreed and signed off by both parties (the developer and the contractor). And to be tracked and reviewed monthly basis</li> <li>6. Project schedule shall be tracked &amp; reviewed weekly/ fortnightly and monthly basis. Tracked/ updated schedule with respect to the baseline schedule shall be updated and submitted to the developer's project site office on a fortnightly basis.</li> <li>7. Any activities /or approvals which is required from developer to be intimated within two months from the date of LOA.</li> <li>8. In case of any delay, detailed delay analysis report (root cause) shall be prepared and submitted to the developer's project site office within 2 days' time period.</li> <li>9. Corrective action with proper catch-up schedule shall be prepared and submitted with delay analysis report to achieve progress milestone as per schedule.</li> <li>10. Critical activities to be tracked separately and to be reviewed daily basis.</li> <li>11. In case the Developers want, the Contractor shall provide all details of the P.O / W.O etc. related to the Project issued by the Contractor to monitor the</li> </ol>

Clause no. of GCC	Clause description	SCC
		Project. The Developer has also right to cross verification with all the sub vendors / sub-contractors / labour contractors etc. regarding the veracity of the Contactor's intention.
	Updated construction schedule	Agreement on updated construction schedule doesn't free the contractor from its contractual obligation to perform as per Contractual schedule.
8.7	Liquidity Damages (LD)/delay damages	Liquidated Damage for non-completion of Work within stipulated time will be 0.5% of the contract price per week or part there of not exceeding 5 % of the Contract price. This LD will be imposed on the intermediate milestones approved in the construction programme; interim milestone till the completion period shall be derived mutually. Failure to achieve these milestones will attract a penalty equal to 1% of the certified bill amount for that month. In the event, contractor could accomplish the next milestone, company shall release the penalty deducted against the previous milestone.
8.9	Consequences of suspension	For likely stoppage or suspension of work in excess of total 90 days the charges for idle time will be restricted to the actual or a maximum of 15 days and shall be limited to 1% of the contract value Each contract will be accounted separately for calculation of delay
8.10	Payment for plant and machinery in event of suspension	Shall be decided by the developer and shall be included in the contract price.
11	Defects Liability Period (DLP)	Twelve months from the completion of the entire project works and after the issue of taking over certificate of the complete project. In case of taking over of project in phases, the DLP will still be valid till the completion of entire project within the ambit of that contract. All commercial conditions like retention, performance guarantee will be only after issue of complete taking over certificate.
13.6	Adjustments for changes in legislation	The contract price shall be adjusted to take account of any cost relating to the change in the legislation Tax system more particularly on implementation of GST. The contract price shall not be adjusted for any other legislation changes on any other direct/indirect taxes and duties.

Clause no. of GCC	Clause description	SCC
14.2	Mobilization advance	<p>10% of the contract price excluding taxes will be given for each individual contract after receipt of irrevocable and unconditional bank guarantee for mobilisation advance valid till completion of specific contract. Mobilisation advance will be recovered on pro rata basis from RA bill number 2 onwards and the entire advance payment made to the contractor shall be recovered when 75% of work is completed.</p> <p>10% of contract value in two stages shall be released for the net contract value (Contract value excluding GST).</p> <ol style="list-style-type: none"> <li>1. 50% on agreed mobilization advance shall be released within 15 days from the date of Bank Guarantee receipt and confirmation by the issuing bank.</li> <li>2. Balance 50% of mobilization advance shall be released within 30 days after 'Actual commencement of work at site'.</li> </ol> <p><b>Pre-Requisite for release of Mobilization Advance:</b> First Tranche/Sage of Mobilization advance shall be released only after submission &amp; confirmation of Performance Bank Guarantee (PBG) by the issuing bank.</p>
14.3/ 14.4	Application for interim payment certificates	<p>The Contractor shall submit a 'Draft Application for Payment' in two copies to the Project Manager on 21<sup>st</sup> day of each month, in the format pre-approved by the Project Manager for both RA Bill &amp; Basic Rate Claim. On approval of draft application of payment by Project Manager, contractor to submit 'Application of Payment' in 3 copies with all necessary supporting documents as per MWCDL approved check list on 25<sup>th</sup> (or) after 4 working days, which ever is later of each month.</p> <ul style="list-style-type: none"> <li>❖ 60% of Net Payable Amount (after necessary deductions) shall be paid as ad-hoc payment within 15 days from the date of submission of technically correct 'Application of Payment'</li> <li>❖ Balance 40% of Net Payable Amount shall be paid within 30 days from date of certification of 'Application of Payment' by Project Manager.</li> </ul>

Clause no. of GCC	Clause description	SCC
14.5	Issue of interim payment certificates	Omitted
14.17	Escalation	"No escalation of the prices mentioned in the Bill of Quantities or otherwise shall be allowed during the period of the Contract for any reasons whatsoever and such prices shall be deemed to be fixed and constant throughout the Time for Completion in accordance with Clause 8 and Defects Liability Period in accordance with Clause 11 of the General Conditions of Contract. The Project Company is not liable to pay any escalation or variation on all materials labour fuel plant and equipment's used by Contractor for the Works.
14.8	Retention money	Retention amounting to 5% of the amount approved for payment from each RA bill. Retention amount will be held till validity of defect liability period. 50% of retention money will be returned after receipt of bank guarantee in the prescribed format valid till defect liability period after issue of taking over certificate. Retention bank guarantee should be valid up to DLP plus 3 additional months, i.e. 15 months.  Balance amount shall be released after successful completion of DLP period.
18	Insurance	Contractor shall obtain all insurances within 14 days from the date of receipt of Letter of Intent to Proceed and maintain all other insurances including but not limited to following Insurances at his own cost: CAR policy is In Contractor's scope <ul style="list-style-type: none"> <li>• Third Party gross Liability;</li> <li>• Covid-19 insurance for all staffs and workmen's.</li> <li>• Policy with claim value of 1% of the Contract value per each occurrence and number of occurrence is unlimited;</li> <li>• Losses due to offsite storage of raw materials and equipment;</li> <li>• Transit risks arising out of transportation of raw materials and equipment from the place of procurement to the construction site;</li> <li>• Damage to Contractors Plant and Machinery;</li> </ul>

Clause no. of GCC	Clause description	SCC
		<ul style="list-style-type: none"> <li>• Workmen's Compensation and Group Personnel Accident with add on for medical claim;</li> <li>• Any insurance required other than listed above.</li> </ul>
20.3	Arbitration	The place and seat of arbitration will be Chennai, India.
	Competent court & governing law	High Court of Judicature at Chennai, Tamil Nadu, India. The laws of Republic of India shall govern the interpretation, validity and performance of the terms of this agreement
	Idle Charges	No Idle Charges related to natural disturbances, non-availability of materials, and workforce, local disturbances etc shall be entertained. No Time extension also for such issues shall be accepted.
	Local Issues	You shall keep harmony with the local community and surroundings and shall take all necessary measures to resolve any issue related to material procurement, workforce arrangement, vendor selection etc. so that the progress of the work is not hampered, No Price Escalation or Time Extension shall be accepted due any issues related to the Local Community and Surroundings.
15	Environmental management system	<p><b>Specific to MWCDL EMS :</b></p> <ol style="list-style-type: none"> <li>1. Existing numbered tress should be maintained in healthy condition till final handover of site by contractor. No damage to existing trees due to construction activities should be done. Any damage and cost implication due to damage should be borne by contractor.</li> <li>2. No dry wood should be used in site labour camps area as burning fuel.</li> <li>3. All building material like broken bricks, tiles and damaged shuttering material should be reused by contractor at suitable work areas. Unused or damaged/broken bricks, tiles, glass, wooden frames, shutters, steel etc. and shuttering material should either be reused up to max possible or donated or sold to another party for reuse. All records related to reuse/sale like challans etc. are to be kept by the contractors and submit to MWCDL. These initiatives are towards sustainable development and contractors should perform all as stated at his own cost.</li> </ol>

Clause no. of GCC	Clause description	SCC
		<ol style="list-style-type: none"> <li>4. Avoiding spillage of oil over the soil in workplace.</li> <li>5. If batching plant is established at site there should a wastewater treatment system installed along with the plant at site. Treated water should be reused in construction after approval from In-charge QA at site.</li> <li>6. Existing well if any should be properly covered.</li> <li>7. Optimum use of bore well water should be done by contractor, avoiding wastage water meter should be installed in all bore wells and record of water drawn should be maintained on monthly basis and same should be reported to PM-MWCDL.</li> <li>8. All necessary precaution should be taken by contractor to avoid ground water table contamination.</li> <li>9. Hygiene at labour camp should be maintained. Proper sanitation facility for labours should be established. MWCDL has the right to inspect the labour colony and time and instruct contractor to modify /upgrade the condition of labour camp at any time during the tenure of the project. Temporary surface drainage should be provided in bathing and washing areas at labour camps.</li> <li>10. Optimum utilization of electricity should be done, by planning electricity cut off in labour camps every day when not required as labour camps are empty during working hours.</li> </ol>
	Labour shed / Camp	<p>Labour shed / camp / accommodation / temporary shed is under contractor scope.</p> <p>The contractor is to make own arrangement for the labour camp. MWCDL will not provide any space / building for the staff / labour camp.</p> <p>Contractor shall maintain the Labour accommodation and facilities as per requirement of labour Law and Environmental 'No Objection Certificate' and EHS policy of the MWCDL, irrespective of location of labour accommodation is within the site or outside</p>