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| **CONSTRUCTION SERVICES AGREEMENT** |
| **PHC BY SWASTHYA SWARAJ** |
| Construction work incuding Civil and MEP Services |

**11-Feb-22**

**CONSTRUCTION SERVICES AGREEMENT**

This MASTER SERVICES AGREEMENT (hereinafter called (“**Agreement”)** is made on this day Click here to enter a date. at Bhawanipatna.

**BY AND BETWEEN**

**Swasthya Swaraj Society** a registered organisation under the Societies Registration Act, 1860 with its registered office at 2/379, Ramnagar Pada, P.O. Bhawanipatna, District- Kalahandi, Odisha-766001, bearing **PAN: AAKAS8424M,** hereinafter referred to as ‘**Client**’, which expression unless repugnant to the context shall mean and include its heirs, assigns, successors in interest) forming the **ONE PART**

**AND**

**(Add Name of Contractor)………………………………………………………………………….**, a Company incorporated under the provisions of the Companies Act, 1956, with its registered office …………….. …………………………………………………………………………………….. bearing **PAN: …………………………..** (hereinafter called ‘**Contractor**’, which expression shall, unless repugnant to the context there to, mean and include its heirs, successors in interest and permitted assignees) forming the **OTHER PART**.

Both ‘**Client**’ and the ‘**Contractor**’ shall individually be referred to as ‘**Party**’ and collectively as the ‘**Parties**’.

**WHEREAS**

1. **Client** requires a hospital building for providing healthcare to all age groups having a super built-up area of 2308 sq.ft for stage 1 of phase 1, and for this purpose have in their possession / have availed of space located at Kaniguma, Thuamul Rampur, Kalahandi, Odisha, having an approximate land area of 43,997 sq.ft (hereinafter referred to as ‘**Site**’).
2. **Client** requires the implementation of Construction, (hereinafter referred to as the **‘Project**’ in the Land and is desirous of engaging the services of **Contractor**.
3. The Parties have agreed on the Scope of the Work for the Project to be executed by the **Contractor** and the same has been approved by the **Client**.
4. **Contractor** has proposed a price for the project (hereinafter referred to as ‘**Contract Price**’) along with breakdown of Costs as listed in **Annexure - 2** that is to be claimed by **Contractor** upon achieving agreed milestones set forth in this Agreement.
5. The **Client** has agreed to the **Contract Price** proposed by **Contractor** and the Parties now wish to enter into an Agreement.
6. The **Client** has provided tentative dates by which the Construction /Interior Fit Out work in the Site shall be completed by **Contractor** and the space made ready for occupation. **Contractor** has provided a detailed program schedule and the same has been agreed by both the Parties.

**NOW THE CLIENT AND THE CONTRACTOR DO HEREBY AGREE AS FOLLOWS:**

1. **In this Agreement, unless the context otherwise requires:**
   1. References to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder.
   2. The tables of contents, headings or sub-headings in this Agreement are for the convenience of reference only and shall not be used in, and shall not affect, the operation or interpretation of this Agreement.
   3. The meanings specified in this Clause 1 are applicable to both the singular and plural. As used in this Agreement, the terms “herein,” “herewith,” “hereunder” and “hereof” are references to this Agreement taken as a whole. The words "include" and "including" are to be construed without limitation, and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases.
   4. This Agreement, once executed, constitutes the entire agreement between the Parties hereto with respect to the matters dealt with herein and supersedes any previous agreement (written or verbal), or any other documents between the Parties in relation to the Project.
   5. Words and expressions shall have the same meanings as assigned to them in all documents forming a part of this Agreement.
   6. The following documents shall be deemed to form a part of this Agreement:
      1. General Conditions of Contract
      2. Special Conditions of Contract
      3. Annexures and Appendices
      4. Client requirements document
      5. Drawings and specifications
      6. Agreed Cost plan
      7. Agreed Schedule document
      8. Any other documents as deemed necessary to form a part of this Agreement mutually agreed between the parties
2. **Client, Contractor and Sub-Contractor Relationship**
   1. **STATUS OF CONTRACTOR**

The relationship of **Contractor** to the **Client** shall be that of an independent Contractor in relation to the provision of services where **Contractor** is acting as principal. Nothing herein shall be interpreted to create an employer-employee or a joint venture or a partnership between the **Client** and **Contractor**/ or its employees, representatives, personnel or any of its third-party consultants.

* 1. **Sub-Contractors**

The **Client** requires, acknowledges and agrees that portions of the Project may be accomplished by Sub-Contractors pursuant to written Agreements between **Contractor** and such Sub-Contractors. Such Sub-Contractors shall be appointed only after the prior written approval of the **Client.**

* 1. **Contractor Representative, Key personnel and Organization Chart**

**Contractor** shall at its own cost provide and ensure continued effective supervision of the Project with the help of **Contractor**’s Representative deployed on site as approved by the client.

**Contractor** shall ensure that the facilities, if any, provided by the **Client** for use by the Personnel are utilized with an appropriate degree of care and attention.

**Contractor** shall at all times be fully responsible for the direct acts, omissions, defaults and neglect of all of its representatives, agents, servants, workmen and suppliers and those of its Sub-Contractors, associated with the Project.

1. **Contractor’s obligations and responsibilities**
   1. **SCOPE OF WORK**

The Work shall be performed and delivered in accordance with the requirements of this Agreement, Drawings and specifications set forth in **Annexure – 1.** These are reference and guidance and the main scope is fit for the purpose.

* 1. **DESIGN, DRAWINGS AND SPECIFICATIONS**

**Contractor** understands that designs, drawings and schematics shall remain the property of the **Client** and are only licensed to **Contractor** for the purpose of fulfilling its obligations under this agreement. Specifications and technical information for items of the Work that are provided by the **Client** or are developed exclusively developed for proprietary business requirements shall similarly remain the property of the **Client**. **Contractor** also acknowledges that these remain property of the **Client** or its assigns and are subject to recall by the **Client**.

**Contractor** or its employees or agents shall not make use of the Drawings, or Specifications and technical information for any purpose, at any time, except in relation to the Project under this Agreement, and shall not disclose the same to any person, firm or corporate body, without written permission of the **Client**. All such details shall be kept confidential.

* 1. **SHOP DRAWINGS**

**Contractor** shall submit Shop Drawings for certain elements work and installation as agreed between the Parties. The **Client** shall review the submitted drawings and accord approval in writing. The approved shop drawings shall form the final basis of the supplies and installation and shall supersede all previous submittals, drawings, layouts, etc. and the said shop drawings, specifications / data sheets shall be binding on the parties

* 1. **CONTRACTOR PERMITS AND LICENSES**

**Contractor** shall procure, at its expense, all necessary **Contractor** permits and licenses required by virtue of all Applicable Laws for the purpose of performance of the Project. **Contractor** shall provide the **Client** with copies of such **Contractor** Permits as soon as reasonably practicable after they are obtained. The **Client** shall provide all supporting, assistance and required documentation to enable **Contractor** to avail of the permits.

**Contractor** shall also provide assistance, information and documentation as reasonably requested by the **Client**, to enable the **Client** to obtain the **Client** related Permits.

* 1. **STATUTORY COMPLIANCE**
     1. **Contractor** shall comply with all statutory requirements including labour law compliances as applicable in connection with the Works and Services and particularly any procedural agreement and/or specific industrial relations provisions applicable on **Contractor** for performing the Services under this Contract.
     2. **Client** shall in no event and under no circumstances, be liable or responsible for any default by way of non-observance/non-compliance of the said law/rules on **Contractor**s part and **Contractor** shall indemnify **Client** against any liabilities and costs/expenses from all proceedings in respect thereof unless caused or contributed due to any act, omission, conduct of the **Client**, its employees or agents.
  2. **Contractor Construction Equipment, tools and Machinery**

**Contractor** shall submit a list of all the construction equipment along with all valid permits necessary and appropriate for the timely and safe execution of the Project. **Contractor** shall provide and install all equipment, materials, cranes, hoists, ladders, scaffolding, manpower, trucks, tools and other infrastructure that may be necessary for the execution of the Project in conformity with this Agreement.

* 1. **Temporary Stores, Logistics and other infrastructure facilities**
     1. **Contractor** shall be permitted to construct a temporary store, subject to feasibility, at a mutually agreeable space, within the premises of the Site, during the construction of the Project. The **Client** shall provide all support and assistance required in the selection of a suitable space for efficient logistics, safe movement and handling of material.
     2. **Contractor** has full responsibility for maintaining the Site in good and clean condition and removing all trash and debris on a regular basis to the satisfaction of the **Client**.
  2. **Construction toilet and dining areas**

**Contractor** is responsible for providing adequate toilet and dining facilities for its personnel and workmen within the project site at the locations indicated and permitted by the **Client**.

**Contractor** shall operate and maintain the facilities in a clean and hygienic condition, as per The Guidelines laid down by BOCW Laws and the **Client** guidelines. If **Contractor** fails to comply with the above the **Client** shall have the authority to get the same cleaned by an external agency and debit the same to **Contractor**’s account. All temporary facilities [3.7 & 3.8 as well as any others] need to be dismantled and the land reclaimed as per the intended usage is the scope of the contractor

* 1. **Construction power**

**Contractor** shall make its own arrangements for power supply through captive Diesel Generator sets of adequate capacity to meet the peak construction power requirements. The **Client** shall agree to provide a suitable place in the project site to locate the DG set. All further arrangements for installation, earthing, Fuel storage, power distribution management and DG exhaust shall be the responsibility of **Contractor**. In case a temporary EB power is available all necessary arrangements and cost need to be borne by the contractor.

* 1. **Construction water**

**Contractor** shall make its own arrangements by installing temporary storage tanks and with pumping arrangements. Water can be brought site through water tankers for construction consumption.

* 1. **Safety requirements**

**Contractor** shall assume and solely bear all costs associated with compliance of all applicable safety requirements. Non-compliance of Regulations: If the **Client** and/or its Representative notifies **Contractor** of non-compliance with any of the safety requirement under this Agreement, **Contractor** shall immediately, if so directed, or in any event not more than Eight (8) working hours after receipt of such notice, make all efforts to correct such non-compliance. If **Contractor** fails to do so, the **Client** may suspend all or any part of the work of the Project. When **Contractor** has undertaken satisfactory corrective action, the **Client** shall satisfy itself that the corrective methods adopted by **Contractor** are adequate and shall immediately issue in writing a notice to resume construction work on the project site.

**Contractor** shall not be entitled to claim any extension of time to complete the work or additional fees due to any such work suspension.

* 1. **Site security**

**Contractor** recognizes and agrees that Site Security is of paramount importance in the performance of the Work in the Project and that **Contractor** is responsible for performing its obligations hereunder in a secure manner. At a minimum, **Contractor** hereby undertakes to adhere to the agreed Security measures between the Parties as detailed in the agreement.

Non-compliance of Security Regulations: If the **Client** and/or its Representative notifies **Contractor** of non-compliance with any of the security requirement under this Agreement, **Contractor** shall immediately, if so directed, or in any event not more than Forty-Eight (48) working hours after receipt of such notice, make all reasonable efforts to correct such non-compliance. If **Contractor** fails to do so, the **Client** may undertake corrective actions and the costs so incurred by the **Client** shall be debited to **Contractor**.

* 1. **labour**
     1. **Contractor** shall be responsible for maintaining labor relations in such manner that, so far as reasonably practicable, there is harmony among workers on the Site. **Contractor** and its Sub-Contractors shall conduct their labor relations in accordance with the recognized prevailing local area practices. **Contractor** shall inform the **Client** promptly of any labor dispute, anticipated labor dispute, which may reasonably be expected to affect the Project. **Contractor** further agrees to inform the **Client**, before any commitments are made, during the negotiations of any agreements or understandings with local or national labor organizations, if it is expected to potentially have an impact on the Project.
     2. **LABOUR REGULATIONS:**

**Contractor** shall be wholly and solely responsible for full compliance with the provisions under all applicable labour laws and/or regulations, with respect to all the persons directly or indirectly deployed by **Contractor** at the Project Site/ on the Project, including and not limited to Payment of Wages Act 1948, Employees Liability Act 1938, Workmen's Compensation Act 1923, Industrial Disputes Act 1947, the Maternity Benefit Act 1961, the Contract Labour (Regulation and Abolition) Act 1970, Building and other construction workers act 1978 and the Factories Act 1948, requirements of ESI/PF or any other law relating thereto and rules there under, introduced from time to time. **Contractor** shall also comply with all the rules framed by the Statutory Authorities concerned, from time to time, for protection of the health and welfare of the workers.

* 1. **Progress reporting**

**Contractor** shall provide the **Client** with electronic copies of such reports as set forth in this Agreement as agreed between the Client and Contractor in agreed formats between the Parties as listed in **Annexure -3**. Physical hard copies can be provided on a request in writing.

* 1. **Documents, books, records and audits**
     1. **Contractor** shall keep full and detailed record books, construction logs, records, daily reports, schedules, accounts, payroll records, receipts, statements, electronic files, correspondence and all other documents and/or records relevant to the performance of this Agreement and/or in relation to the work under this scope, in accordance with the standard practices and statutory requirements consistently applied in accordance with Applicable Laws (hereinafter “Books and Records”).
     2. All relevant documentation related to the Project shall be handed over to the **Client** team for archiving and for any future reference. Safe custody and a detailed handover shall form part of the Project closure.
  2. **ownership of materials found in project site**

The Ownership of all material found on the project site such as dismantled material, soil, rock, sand, timber and any other materials like antiquities etc. shall solely rest with the **Client**. The right to use, dispose of the said material is exclusively reserved by the **Client**. The **Client** may request **Contractor** to use any suitable material for the Project without any charge and the Parties shall mutually agree on the usable quantity and rates thereof. Royalties if any required to be paid shall be paid to competent authorities by **Contractor** and the receipts submitted to the **Client** for reimbursement along with **Contractor** invoices.

1. **Client’s responsibilities**

The **Client** shall comply and perform the following provisions stipulated at no cost to **Contractor**:

* 1. **Client information**

The **Client** hereby agrees to provide the details and complete information of the project to **Contractor** as may be reasonably expected and required for proper performance and execution of the work in the project and services under this agreement.

* 1. **access to site**

On issue of the Letter of Appointment to **Contractor**, the **Client** agrees to grant to **Contractor** and **Contractor** representatives unlimited access to the Project Site, to perform activities required to fulfill its obligations under this Agreement.

* 1. **Client permits**

The **Client** shall be responsible for obtaining all the relevant pre-construction and post-construction permits to be availed by the **Client** as mandated by applicable laws and policy guidelines for work of this nature. The **Client** shall maintain and, to the extent applicable renew such permits. The tenure of all such permits shall be compatible with **Contractor**’s performance of the project and/or project schedule; the **Client** shall promptly notify **Contractor** of any changes to the terms of any such **Client** permit that impacts **Contractor**’s performance of the work under this agreement.

* 1. **Client representative**

**Client** shall designate a person as the **Client**’s Representative. The **Client**’s Representative shall be the single point of contact (SPOC) for communication and instructions between the **Client** and **Contractor**.

The **Client**’s Representative shall:

* + 1. Provide all reasonable assistance and do all things reasonably necessary to enable **Contractor** to deliver the Services.
    2. Provide to **Contractor** its requirements in writing with respect to the Scope of work including but not limited to all surveys, Specifications, Drawings, easements, encumbrances and other information related to the Project, the Project Schedule and the Scope of Work. The information provided by **Client** must be provided as soon as is reasonably practicable after the requirements are determined, known or amended.
    3. Within a prior agreed period of time provide in writing, all approvals, decisions, response to queries, directions to **Contractor** expeditiously, so as not to cause any delays to **Contractor** performance of the Services under this Agreement.
    4. Ensure that third party service providers engaged by the **Client** perform all work and services in coordination with **Contractor**’s program and sequence of activities.
  1. **payments**

The **Client** shall, subject to the terms and conditions of this agreement, make timely payments of all undisputed monies due and owing, in accordance with the provisions of **Clause 10.1** hereof.

1. **tenure, complettion period, project milestone schedule & submittals**
   1. **tenure**

For the purposes of this Agreement, the following expressions shall mean as:

* + 1. This Agreement shall be valid for a period of .days/months/years commencing from Click here to enter a date. (“Date of Commencement”) and expiring on Click here to enter a date. (“Tenure”) [Currently only for phase 1], subject to any mutually agreed extensions of time between the Parties, unless terminated earlier in accordance with the conditions stipulated in this Agreement.
    2. **THE DATE OF COMMENCEMENT OF THE WORK**

Shall be the date on which this agreement is executed by the Parties or issue of Notice to Proceed with the Work, whichever is later.

* + 1. **TENURE EXTENSION**

On or before the expiry of the Tenure, this Agreement may be renewed for further periods and such terms and conditions in writing as mutually agreed between the Parties.

* + 1. **NOTICE TO PROCEED WITH THE WORK**

The **Client** shall issue in writing to proceed with the Work (“Notice to Proceed”) on ensuring the project site is ready to receive the work and handover the site to **Contractor**.

* + 1. **MOBILIZATION PERIOD**

The mobilization period for the Work shall be Seven (7) calendar days from the date on which this agreement is executed by the Parties or issue of Notice to Proceed with the Work, whichever is later.

* + 1. **COMPLETION PERIOD**

The completion period for the Work, i.e. to achieve substantial completion including testing and commissioning shall be …………. CalendarChoose an item. from the date of execution of this Agreement / Notice to proceed with the Work whichever is later.

Fifteen (15) calendar days before the expiry of the Completion Period of the Work, Extension of time may be granted further periods and such terms and conditions in writing as mutually agreed between the Parties.

* + 1. **EXTENSION OF TIME**

Extension of time shall be allowed beyond the original completion dates for such periods as may be agreed between the parties without any liability to **Contractor** for the following reasons:

* + - 1. A cause beyond the reasonable control of **Contractor** not attributable to **Contractor**.
      2. Changes in scope accepted by the **Client** resulting in requirement of additional time.
      3. Delays in **Client** supplied materials
      4. Statutory approvals and clearances
      5. Force Majeure.

Any extensions of time due to any other reasons that cannot be categorized under any of the above require specific approvals from the **Client**.

* 1. **project milestone schedule**
     1. **Contractor** agrees that timely performance of its obligations under this scope of work is the essence of this Agreement. Subject to the **Client** fulfilling its obligations as listed under **Clause 5** above, **Contractor** shall perform and complete all work including handover of the Work in accordance with the milestones and dates listed below:

|  |  |  |
| --- | --- | --- |
| **SL NO** | **MILESTONE** | **COMPLETION DATE** |
| 1 | Execution of Contract Agreement | Click here to enter a date. |
| 2 | Issue of Notice to proceed with the Work | Click here to enter a date. |
| 3 | Completion of Construction (including all services) | Click here to enter a date. |
| 4 | Completion of Testing and Commissioning | Click here to enter a date. |
| 5 | Handover and Acceptance | Click here to enter a date. |
| 6 | Project Completion | Click here to enter a date. |

* + 1. **Contractor** shall submit to the **Client**, a detailed breakdown of all project construction and installation activities in the sequence of which they are executed at site, highlighting achievement of critical milestones in MSP / MS Excel / Primavera format as agreed. This Project Schedule **Annexure – 4** shall form the baseline tracking schedule for the project and shall be periodically updated based on the progress of work at site. The updated schedule shall be shared with the **Client** at the end of every second week after the commencement of the project.
    2. **Contractor** shall also submit a summary of critical activities that are lagging and likely to impact the completion date along with a recovery plan to make up for lost time (for delay in activities attributable to **Contractor**).
    3. **Contractor** shall also advise the **Client** on impact of delays in activities not attributable to it (ex: delays caused by other service providers impeding the progress of **Contractor**’s Work) and suggest possible mitigation measures. Acceptance or rejection of the mitigation actions shall be sole prerogative of the **Client**.
  1. **Contractor submittals**

**Contractor** shall make the following (but not limited to) submittals to the **Client** within ten (10) calendar days from the date of execution of this Agreement:

* + 1. Project Master Schedule with critical milestones
    2. Copy of acknowledgement from Labour department for having submitted the request for labour license
    3. List of drawings
    4. List of Shop Drawings
    5. Specifications
    6. Compliance to BOCW requirements
    7. All required insurances
    8. List of Sub-Contractors
    9. List of mockups
    10. List of samples and sample boards
    11. Finalised list of key personnel to be deployed
    12. Manpower Histogram
    13. Project Risk register with mitigation actions
    14. EHS plan with specific reference to the project
    15. Requirements for Construction power and water
    16. Site Logistic plan
    17. List of Support actions and assistance required from the **Client**

All the submittals shall be of specific relevance to the project and should be in adequate detail to provide enough clarity to the **Client**, such that the number iterations of submission are minimized and **Client** approvals are prompt and decisive.

1. **insurance**
   1. **insurance polices**
      1. Before commencing work on the Project under this Agreement, **Contractor** shall, without limiting its obligations and responsibilities hereunder, obtain all insurance including and not limited to third party, Contractors’ All Risk Policy, against any **Contractor**’s liability, for any material or physical damage, loss or injury which may occur to any property, including that of the **Client**, **Contractor**, Sub-Contractors, or any other vendors or to any person including any employee of the **Client**, **Contractor** or Sub-Contractor or any member of the general public, by or arising out of the provision of Services in relation to the Project or otherwise in performance of this Agreement. It shall be obligatory for **Contractor** to obtain and retain, for all relevant times, the insurance cover, at its own cost all the insurance coverage as required for the project.
2. **indemnity and limitation of liability**
   1. **indemnity by Contractor**
      1. Notwithstanding anything contained elsewhere in this Agreement, **Contractor** shall indemnify the **Client** against and hold the **Client** and its employees and representatives harmless from and against any loss, expenses or damages (including court fees and reasonable attorneys’ fees and expenses) arising directly out of or in relation with and that are solely attributable to **Contractor** under the following instances:
      2. Breach of its obligations and/or representations and/or warranties and/or any other terms of this Agreement including **Contractor**’s personnel, workmen, agents and its representatives.
      3. Claims by any person (including **Contractor**’s personnel, workmen, agents, representatives and Sub-Contractors) with respect to personal injury or death or damage to property, solely attributable directly to acts or omissions or negligence of **Contractor** including **Contractor**’s personnel, workmen, agents and representatives.
      4. Any claim for payment of compensation, salary, retirement benefits, or any other fringe benefits asserted by any of **Contractor**’s personnel or their heirs or representatives.
      5. Any claim that the Work Product provided by **Contractor**, or any part thereof, infringe a patent, trademark or other Intellectual Property right of any third party.
      6. Breach of Applicable Law by **Contractor**’s personnel, workmen, agents and representatives;
      7. Breach of confidentiality attributable directly to **Contractor** including **Contractor**’s personnel, workmen, agents and representatives; and/or.
      8. Any claim from any Statutory Authority arising out of or in relation with the acts and/or omissions of **Contractor** including **Contractor**’s personnel, workmen, agents and representatives.
         1. **Client**’s right to indemnity under this section is in addition to and not in derogation of any other rights and remedies available to the **Client**, under this Agreement and or under Applicable Laws.
         2. Notwithstanding anything contained in this Agreement, **Contractor**’s total liability under this Agreement shall not exceed the total fees paid by the **Client** as agreed under this Agreement.
   2. **limitation of liability**

Under no circumstances shall either party be responsible and/or liable with respect to loss of profit, loss of revenue or loss of business opportunity. This clause shall survive any termination or expiry of this agreement.

1. **warranty, guarantee and retention money**
   1. **Warrantees and guarantees**

* + 1. The supply and installation work in the project under this Agreement executed by **Contractor** shall carry a warranty / guarantee of ………. Year(s) from the date of commissioning of the project. In the event some parts thereof are commissioned earlier, then the warranty / guarantee shall commence from the date of commissioning of the said parts of the project as agreed with the **Client**.
    2. In the event **Client** notices that the work completed under the project or parts thereof is not performing as per the conditions of this Agreement and rectification is required at the Site, **Client** shall notify **Contractor** in writing giving full details of the said non-compliance or deficiency. The Contactor shall visit to the Site within two (2) days of receipt of such notice to meet and agree with representatives of **Client**, on the action required to correct the deficiency. The costs so incurred for the rectification work shall be borne by **Contractor**.
    3. Should **Contractor** fail to attend the meeting at Site within the time specified above / rectify the defect within the agreed timelines, **Client** shall be at liberty to rectify the work and deduct the costs from the retention money payable to **Contractor** on completion of defects liability period.
  1. **retention money**
     1. **Five (5%) percent** of each certified progress payment / running account bill submitted by **Contractor** shall be deducted from the bill value in cash and retained by the **Client** as Retention Money. The cumulative sum so deducted from all such progress payments shall not exceed **Five (5%) percent** of this Agreement price or modified sums (additions / reduction to Agreement price) thereof.
     2. The total Retention money so deducted from **Contractor**’s bills shall be returned to **Contractor** on successful completion of Defects Liability period.

1. **payments, advances, variations, scope change management and applicable taxes**
   1. **payments**
      1. In consideration of **Contractor** performing its obligations under this Agreement, the **Client** shall pay to **Contractor** a sum equivalent to the Contract Price of INR \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/- (Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ only) or modified sums thereof. The parties have agreed that this amount will be released to **Contractor** as Progress Payments payable against submission of certified progress invoices by **Contractor** to the **Client**. Each progress payment shall be quantified against achievement of payment milestones as listed in **Annexure - 5.** The sum total of all such payments shall be equivalent to this Agreement price or modified sums thereof.
      2. **Certification of invoices**

The **Client** on receipt of the invoice from **Contractor** shall certify the invoice on verification of the milestone achieved within Seven (7) calendar days from date of submission of invoice with all information. Payments to **Contractor** shall be released no later than thirty (30) calendar days from the date of certification of invoice by the **Client**.

* + 1. **MODE OF PAYMENT**

Payments to **Contractor** shall be made through interbank transfer / intra bank transfer to bank.

* + 1. **SUBMISSION OF INVOICE AND CERTIFICATION**

**Contractor** shall submit invoices in electronic form in an approved format along with attachments as agreed with the **Client** to the **Client**’s approved email ID followed submission in hard copy so as to reach the **Client** within Three (3) working days. Each successive invoice shall be cumulative, aggregating all the previous and present values of progress in the format agreed between the parties. The **Client** shall communicate to **Contractor** the certification of invoice as agreed to **Contractor**’s email ID from which the invoice was originally received followed by hard copy of the certified invoice by courier / regular mail.

* 1. **advances**
     1. Mobilization advance of an amount of INR \_\_\_\_\_\_\_\_\_\_/- (Rupees \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_ only) equivalent to a value of **Ten (10%) percent** of the Contract Price shall be paid to **Contractor** by the **Client** within **Seven (7) working days** from the date issue of Letter of Appointment .
     2. This advance amount shall be treated as first payment and is non recoverable.
  2. **variations and scope change management**
     1. The **Client** has a right to request for changes in the scope of work under this Agreement and **Contractor** is obligated to execute these changes so requested, subject to confirmation of feasibility, unless such changes vitiate this Agreement in the opinion of **Contractor**.
     2. The Contract being a lumpsum turnkey the client don’t expect any quantity variation and the BOQ or any document provided is only for guidance. The **Contractor** is expected to derive all required information including provisions for future expansion as well as all MEP work [like sleeves, conduits etc].
     3. **Contractor** is expected to submitall shop drawings and clarification seven [7] days prior to the constriction and get an approval from the client representative
     4. **CATEGORY OF CHANGES**
        1. **Client Initiated Changes**

Upon receiving the request for change from the **Client** in writing, **Contractor** shall evaluate the feasibility of the same and on such confirmation, submit to the **Client** the details of the extent of work involved along with time and cost impacts of such changes. **Contractor** shall proceed with the execution on receiving the **Client**’s approval.

* + 1. **CHANGE ORDER PROCESS**
       1. On initiation of a change request by the **Client**, **Contractor** shall evaluate the Time and Cost impact of undertaking such changes and communicate the same to the **Client** for approval.
       2. Implementation of the change shall be taken up by **Contractor** only after receiving approval from the **Client** in the form of a signed change order in the approved format.
       3. The above rule shall be followed except in the case of Emergency Change Order that can be communicated over email / cell phone. (Ex: in situations of fire, flooding, major pressure leaks, etc. not attributable to **Contractor**).
  1. **Applicable TAxes**
     1. Each Party shall be responsible for levy and remittance or otherwise depositing any tax on manufacture, import, sales, use, value added, goods and services as per law and procedure prescribed under the relevant laws provided any tax as mentioned above which **Contractor** intends to recover from the **Client** shall be duly charged on the invoice issued at the time of sale, transfer of goods or supply or provision of service.
        1. Where the Taxes are imposed by law and statute upon **Contractor**, without statutory provision for recovery from the **Client**, **Contractor** shall bear the Taxes in full and without reimbursement.
        2. Where the Taxes are imposed by Law and statute upon the **Client**, **Contractor** shall separately itemize the Taxes on each invoice for which the Taxes are applicable.
        3. All irrecoverable taxes including cess if any incurred by **Contractor** in performing its obligations under this Agreement shall be reimbursed by the **Client** on submission of the requisite proof and documentation of having paid such taxes.
        4. Where the **Client** is exempt from payment of taxes, the **Client** shall provide **Contractor** with the requisite and complete documentation in a timely manner to **Contractor** for such exemptions on the goods or services from the taxes or to documentary evidence requiring the **Client** to remit the Taxes directly to the authorities.
        5. **Client** Site Located in Special Economic Zone (SEZ): In case the **Client** desires to seek exemption from Duties and Taxes allowed as per SEZ Act & Rules and Section 16 of Integrated Goods and Services Tax Act, 2017 (IGST, 2017) and any amendments thereof, the **Client** shall provide **Contractor** with necessary lists and approvals of such exemptions to enable **Contractor** to claim the respective benefits in their invoices on behalf of the **Client**.
     2. The **Client** shall withhold income tax (TDS) from payments to **Contractor** to the extent that such taxes are required

1. **substantial completion, testing, commissioning, final completion, final acceptance & handover**
   1. **substantial completion**

The Project is said to have achieved Substantial Completion when **Contractor** notifies the **Client** that all works have been completed, Testing and Commissioning is complete, all critical snags attended to and closed and the **Client** agrees by issuing a certificate of Substantial Completion.

* + 1. The Work is substantially complete and fit for use as agreed under this Contract,
    2. All relevant tests (if any) have been carried out and passed as agreed under this Contract;
    3. Defects or omissions are noncritical in nature, the existence of which does not significantly cause inconvenience to the **Client** and which will not cause any legal impediment to the **Client**’s beneficial use of facility in which the Project has been completed.
    4. The immediate resolution and rectification of making good the defects is not time critical, provided that the **Client** has provided consent in writing.
    5. The Certificate shall be issued by the **Client** to **Contractor** in the format as shown in **Annexure -13**
  1. **Testing and commissioning**
     1. All installed work in the Project shall undergo a Testing and Commissioning process as laid down by the code/ provision and/or by the Consultants / Client**.**
     2. The **Contractor** is required to submit all test certificates as required for all materials and construction as per the relevant IS Codes [ example – sieve analysis, cube strength, material test certificates for steel cement etc.]
     3. The **Client**’s operations / facilities team shall be trained in the operation and maintenance of the facility to ensure a seamless continuity of operations.
     4. On successful completion of the testing and commissioning program, the project shall be declared as Substantially Complete as described in **Clause No. 11.1,** Fit for Occupation and Defects liability period has commenced from the date of the day succeeding this day.
  2. **final completion**
     1. The Project is stated to have achieved **Final Completion** on completion of the defects liability period as defined in **Clause 12.1** of this Agreement.
     2. **Contractor** has fulfilled all its obligations as per the conditions of this agreement and is relieved of the same from this day.
     3. The **Client** shall return the retention Money deducted from the **Contractor** / or release the retention money through bank transfer within Seven (7) days from the date completion of Defects Liability.
  3. **final acceptance and handover**
     1. **Contractor** shall, on completion of Substantial Completion notify the **Client** to accept the Project.
     2. The **Client** shall declare Final Acceptance and Handover of the project from **Contractor** and shall also accept the following:
        1. Commissioning Report
        2. All As Built Drawings and Documents
        3. Warranties and Guarantee bonds and documents
        4. Critical spares and Attic stock
        5. Operation and Maintenance manuals
        6. Training documentation
        7. Other project documentation as deemed necessary.

1. **defects liability, liquidated damages, force majeure and termination**
   1. **defects liability**
      1. **Contractor** shall provide overall Defects Liability that includes components, materials and manufacturing /engineering and overall workmanship for **TWELVE (12)** Months with effect from the date of Substantial Completion (hereinafter the **“Defects Liability Period”**). During the Defects Liability Period, **Contractor** shall, at no cost whatsoever to the **Client**, undertake all works of repair, rectification and make good latent defects, imperfections or other faults in the work, as the case may be and/or as may be directed by the **Client**, but however, always subject to the specifications of such work agreed in terms of this Agreement and the **Client** exercising due care in using and operating the installed work and equipment in accordance with guidelines mentioned in the warranty/ guarantee conditions and operation manuals.
      2. **Contractor** on receiving an intimation from the **Client** of defect noticed shall within a turnaround time of **Forty eight (48) hours** shall visit the site and on confirmation that **Contractor** is liable for defect so noticed, shall provide a plan within **Seventy Two (72) hours** detailing the actions and time required to rectify / repair the defect.
      3. Should **Contractor** fail rectify the defect within the time specified in the rectification plan above, the **Client** shall immediately rectify the same and **Contractor** shall be liable reimburse the **Client** for all costs and expenses incurred in connection with such rectification, upon submission of the supporting documents to this effect.
   2. **liquidated damages**
      1. In case **Contractor** is not able to achieve commission or hand-over the Project by the timelines mentioned in the Project Schedule, the **Client** shall be at liberty to levy liquidated damages upon **Contractor** at the rate of **One half (0.5%) percent** of the value of incomplete activity of the Work per day of delay subject to a ceiling limit, such that the cumulative sum of such deductions shall not exceed **Five (5%) percent** of the Contract Price.
      2. The amounts due against liquidated damages by **Contractor** to the **Client** shall be recovered by the **Client** from any amounts due / payable to **Contractor** in relation to this project.
   3. **force majeure**
      1. In the event of a Force Majeure, **Contractor** shall advise the **Client** via an email followed by a registered letter, stating the exact nature of Force Majeure, within **Forty Eight (48) hours** of the occurrence of the Force Majeure. In the event a delay directly arising out of a Force Majeure lasts for **Thirty (30) days** or more, each Party shall have the right to terminate this Agreement in accordance with terms hereof.
      2. For delays arising out of Force Majeure, **Contractor** shall be entitled to:
         1. An extension in the Completion Date for a period that is attributable directly to the Force Majeure including any additional period required to rectify damage or other consequences directly caused by the Force Majeure as may be mutually agreed between the Parties, provided it is mutually established that Force Majeure conditions did actually exist.
      3. Notwithstanding anything contained elsewhere, in the event delay directly arising out of Force Majeure, neither Party shall be liable for delays in performing their obligations under this Agreement and the delivery dates under the Project Schedule or Time Schedule will be extended without **Contractor** being subject to price reduction or damages or any other consequence of delayed deliveries, as stated in this Agreement.
   4. **termination**
      1. **TERMINATION FOR DEFAULT**

Notwithstanding anything contained elsewhere, the **Client** shall have the right to terminate this Agreement, by a written notice of at least thirty (30) days to **Contractor**:

* + - 1. if **Contractor** fails to commence work of the Project in accordance with the terms of this Agreement; or
      2. if **Contractor** fails to adhere to critical activity timelines stipulated in the Project Schedule or Time Schedule; or
      3. if **Contractor** fails to perform any other obligation(s) under this Agreement, or commits a breach of any other material terms and conditions of this Agreement including the representations, warranties and covenants incorporated in this Agreement;
      4. and fails to commence cure / remedy the said breach within three (3) days of its issuance of a written notice from the **Client**, alleging the breach and asking it to cure the same.

Either Party may terminate this Agreement, by written notice to the other Party, pursuant to **Clause 12.3** Force Majeure.

* + 1. **FORTHWITH TERMINATION FOR CAUSE**

Notwithstanding anything contained in this Agreement:

* + - 1. Either Party may immediately terminate this Agreement, by giving written notice to the other, if the other Party takes any step or action or institutes any legal proceedings for its winding-up, liquidation, bankruptcy, reorganization or dissolution or a court issues a winding up or bankruptcy order in respect of the other Party;
      2. **Client** may terminate this Agreement forthwith in case of material breach on the part of **Contractor** of its warranties and representations and/or where **Contractor** is held or found guilty and/or liable by a Court of law, Tribunal or executive organ, rendering **Contractor** unfit, in the opinion of the **Client**, to execute the Project.
    1. **TERMINATION FOR CONVENIENCE**

Notwithstanding anything contained in this Agreement, either Party shall have the right, without any obligation to assign any reason, at its sole option, to terminate this Agreement for convenience by giving two (2) month prior written notice to the other Party.

* + - 1. The exercise of the right of termination hereunder shall be in addition to and without prejudice to any other rights that the Parties may have under this Agreement or under Applicable Laws.
    1. **EFFECT OF TERMINATION**

In the event of termination of this Agreement, for any reason whatsoever **Contractor** shall

* + - 1. immediately discontinue the work on the Project; (ii) place no further orders for materials, or any other items or Services;
      2. promptly make every reasonable effort to procure cancellation upon terms satisfactory to **Client** of all Agreements with Sub-Contractors, unless **Client** elects to take assignment of any such Agreements;
      3. assist **Client** in the maintenance, protection, and disposition of work in progress on the Project, including Goods at the Site or in transit to the Site;
      4. cooperate with **Client** for the efficient transition of the work of the Project to another Contractor or to the **Client**; and
      5. cease to have the access or right to use granted under this Agreement and shall remove itself from the Project Site, without any demur or delay, irrespective of any outstanding mutual claims between the Parties or claims of any person.

In the event of termination of this Agreement under C**lause 12.3.1** above, the **Client** shall pay **Contractor** all the outstanding undisputed payments for the Services performed by **Contractor** until such date of termination.

Upon expiry or termination of this Agreement for any reason, each Party shall return to the other Party, all documents, Confidential Information and other material belonging to the other Party that it has in its possession or may destroy them if so requested by the other Party. Notwithstanding anything contained in this Agreement, **Contractor** is entitled to maintain one copy of the Confidential Information as required by law for legal and compliance purposes or in the event of a dispute.

Except for breach of this Agreement by **Contractor**, should this Agreement be terminated for any reason whatsoever by any Party, **Contractor** shall be paid the full fee (including termination and cost incurred to handover project) for the Services rendered until such date of termination notice expires, as stated in this Agreement in accordance with terms of this Agreement.

During the Term of this Agreement, in the event the **Client** suspends any portion of the Services, Project works this Agreement for any reason, the **Client** agrees to pay **Contractor** the idling costs and other associated costs of labour, materials, resources, and equipment etc., that may incurred by **Contractor** during such period of suspension upon mutually agreed terms. In the event the said period of suspension by the **Client** beyond a period of sixty (60) days, **Contractor** shall have a right to terminate this Agreement and claim such amounts for the Services and/or Works executed, along with the costs stipulated in the preceding portion of this clause.

1. **disputes resolution, governing law and jurisdiction**
   1. **disputes resolution**
      1. In the event of a dispute between the Parties in connection with, or arising out of, this Agreement or the execution of the Project, the Parties shall strive to resolve the dispute amicably through good faith, consultation and negotiation by representation of their senior leadership for or within a period of thirty (30) days. Efforts to resolve disputes shall be initiated promptly after either party has made a written request for the same.
      2. If at the end of the said thirty (30) days after such a written request has been made and the dispute has not been resolved, at the request of either Party the dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any subsequent enactments or amendments thereof.
      3. Each Party shall be entitled to appoint one arbitrator with the third arbitrator to be elected by the two arbitrators appointed by the Parties, whom shall serve as the presiding chairman of the arbitral proceedings.
      4. The place of arbitration shall be held at Choose an item. ; and the language of arbitration shall be English.
      5. During the process of arbitration, the Parties shall continue to perform their obligations under this Agreement, with the exception of those items of work that are undergoing arbitration proceedings.
   2. **governing law**

This Agreement shall be construed, interpreted and applied in accordance with and be governed by the laws of India.

* 1. **jurisdiction**

The courts at **Choose an item.** shall have the exclusive jurisdiction to entertain any dispute or proceeding arising between the Parties, out of or in relation to this Agreement.

* 1. **claims**
     1. If **Contractor** considers itself entitled to a claim against the **Client** either for extension of time or additional payment or both under any clause of this Agreement or in connection with this Agreement, **Contractor** shall within thirty (30) days after becoming aware of such a situation, notify the **Client**, providing sufficient detail of the circumstances leading to the intention of Claim.
     2. If **Contractor** fails to notify the **Client** well in advance as mentioned in the para above, the **Client** shall be at liberty reject such claims either in full or in part as it deems fit and shall be deemed to be discharged from all liabilities arising out of this claim.
     3. **Contractor** shall maintain and preserve all records as may be necessary in support of its claim, to be available for inspection by **Client** and submit copies of the same when requested.
     4. The **Client** shall within Twenty One (21) days from the date of submission of the claim with all supporting documentation respond to **Contractor** and communicate its evaluation of the claim. The **Client** may accord its approval or disapproval or may request for any additional information to evaluate the claim further.
     5. The parties under all reasonable circumstances mutually agree on the final value of the claim amounts payable to **Contractor**. The approved amount of claim shall be released along with next progress payment to **Contractor**.
  2. **entire agreement**

This Contract Agreement constitutes the entire agreement between the parties to it and supersedes all prior agreements, understandings and negotiations in regard to the subject matter of this Contract.

* 1. **assignment**

This Agreement or any of the rights and obligations arising hereunder shall not be transferred or assigned, either wholly or partly, by either party to a third party, without the prior written consent of the other party.

* 1. **waiver and severability**

This Agreement represents the complete and final understanding between **Contractor** and the **Client** with respect to the subject matter hereof and may not be waived, amended, or modified by either party, unless such waiver, amendment or modification is in writing and signed by authorized signatories of both parties. If any provision of this Contract is invalid under applicable law, such invalidity shall not affect the other provisions of this Agreement.

* 1. **modification**

Any amendments, variations, modifications and/or alterations shall be made in writing and duly executed by the duly authorized signatories of both parties.

# ANNEXURE – 1 - SCOPE OF WORK

1. Building site preparation and pouring the foundation

1. Clear rocks debris

2. Leveling of site if required before foundation works

3. Foundation works including excavation, PCC, RR works and RCC works, plinth etc.

4. Pest control treatment

B. Construction of walls masonry

1. Including installation of windows and doors.

2. Plastering of internal and external walls

3. Electrical conduits, wiring, switch boxes, plug points, switches and electrical fittings etc.

4. Flooring tiles, bathrooms tiles.

5. Granite slab works.

C. Roofing works

1. RCC roof as per the specified structural drawings, including shuttering and reinforcement works

2. MS Roof with tiles.

3. Water proofing and sunken slabs for toilets

D. Plumbing works

1. Hot and cold pipe lines.

2. Sanitary fittings like wash basins, water closets and other plumbing fittings.

E. Painting

1. Interiors- 2 coats of putty and a coat of primer and 2 coats of paint.

2. Exteriors- 2 coats of primer and a single coat of paint.

F. External driveways and walkways

G. Sewage treatment plant and waste management.

# ANNEXURE – 2 - CONTRACT PRICE (BREAKDOWN OF COSTS) – TO BE SUBMITTED BY THE CONTRACTOR

# ANNEXURE – 3 - PROGRESS REPORTING FORMATS

* 1. **Daily progress reports**
  2. **Weekly progress reports**
  3. **Monthly progress reports**
  4. **Manpower tracker**
  5. **Safety log**
  6. **Procurement tracker**
  7. **Schedule tracker**
  8. **Material testing reports**
  9. **Quality check lists**
  10. **Material/Long lead items list**
  11. **Mock up and Sample list**
  12. **Drawings list**
  13. **Decision ageing log**

*(can add more as required)*

# Annexure – 4 – CRITICAL MILESTONE SCHEDULE / PROJECT MASTER SCHEDULE

***(to be added)***

**TO BE SUBMITTED BY THE CONTRACTOR**

# ANNEXURE – 5– (FORMAT FOR MILESTONE PROGRESS PAYMENTS)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Milestone No. | Description of Milestone | % Payable | Value in INR | Date Achieved | Remarks |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

In consideration of the payments made by the **Client** to **Contractor** as hereinafter mentioned, **Contractor** hereby covenants to execute The Project as defined in and in conformity with the provisions of, the Contract.

In consideration of **Contractor** executing the Project, the **Client** hereby covenants to pay **Contractor**, the Contract Price of INR \_\_\_\_\_\_\_\_\_\_\_\_/- (Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ only) in the manner prescribed in detail in the Contract.

**IN WITNESS WHEREOF the parties have hereunto executed this agreement on this the …………day of ………………. 2022.**

|  |  |
| --- | --- |
| Signed and Delivered  For and On behalf of  ………………………………………..    (Space for Seal)  ……………………………………………………………………..  (Authorised Signatory)  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Signed and Delivered  For and On behalf of  ……………………………………..  **Contractor**  (Space for Seal)  ……………………………………………………………………..  (Authorised Signatory)  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |