

PROJECT: 1194 – HERITAGE PROJECT

LOCATION: Brgy. Heritage Park Area 2 , Bayani Road Cor C5, Taguig City

SCOPE OF WORK: Supply and Installation of Wooden Doors and Spiral Stairs

CONDITIONS OF CONTRACT

ARTICLE 1 – DEFINITIONS

1. ARCHITECT – the person or entity responsible for the interpretation and development of the Design during the various stages of the PROJECT.
2. CONSTRUCTION WORK/S (“WORK/S”) – all Works in relation to the PROJECT, including but not limited to Structural, Architectural, Plumbing and Electrical. These further include the following:
 - Works to erect, construct, extend, alter, convert, fit-out, commission, renovate, repair, refurbish, disassemble, demolish and/or decommission a structure/building/services infrastructure;
 - Works connected with site preparation, earthworks, piling, provisions of services infrastructure, or part of a structure/building services infrastructure for the PROJECT; and
 - Works in connection with the assembly as well as the disassembly, or installation of prefabricated components to form a structure/building/services infrastructure for the PROJECT.
3. CONTRACT DOCUMENTS – documents referred to in Article 2 of this AGREEMENT.
4. CONTRACT DRAWINGS — The Contract Drawings referred to in the Articles of Agreement.
5. CERTIFICATE OF COMPLETION - The certificate signed by the OWNER upon the completion of the Works in a given CONSTRUCTION AGREEMENT.
6. CERTIFICATE OF FINAL ACCEPTANCE” shall mean the certificate signed by the OWNER upon the acceptance of the Works.
7. CONTRACT - The written construction agreement entered into by and between the CONTRACTOR and the SUBCONTRACTOR.
8. CONTRACT PRICE - The total amount which the CONTRACTOR is oblige to pay the SUBCONTRACTOR upon the execution and completion of the works which includes the cost of supply of materials, labor, profit, overhead, operating expenses, insurance, bonds, premiums, contingencies, delivery charges, warehouse and purchasing costs, personal and corporate taxes, employment of SUBCONTRACTOR owned or provided tools, equipment and vehicles and all costs incurred by the SUBCONTRACTOR for the faithful and satisfactory completion of the project.
9. CONTRACT PERIOD - The period of time which the SUBCONTRACTOR agreed and undertake to complete the WORKS of a given project or construction agreement to the satisfaction of the CONTRACTOR.
10. CONTRACTOR – a person, an organization, their employees or a nominated representative engaged to undertake the WORKS
11. CONTRACT PERIOD - the period for Completion established by reference to the Commencement Date and the Completion Date.
12. CONTRACT BILLS – The Bill of Quantities included in the Contract Documents including any modification thereto made under the conditions of Contract

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13. **CONTRACT SPECIFICATION** — The Contract Specifications referred to in the Articles of Agreement, including any modifications made thereto under the Conditions of Contract.
14. **DESIGN ENGINEER** – person or entity responsible for the interpretation and development of the Technical Design during various stages of the PROJECT.
15. **DESIGN** - the graphic representation of the detailed plan of the PROJECT.
16. **DESIGNER** - the Party commissioned by the CONTRACTOR to perform services under the relevant DESIGN of the PROJECT.
17. **DEFFECTS AND LIABILITY PERIOD** — The period stated in Appendix "A," which shall be twelve (12) months from the issuance by the CONTRACTOR of the Taking Over Certificate for the Works, during which the CONTRACTOR can require the SUBCONTRACTOR to return to the Site to complete any omissions, and/or to make good any defects in the Works and/or Materials that was discovered and/or appeared within the period.
18. **FINAL ACCOUNT** - refer to the amount due to the CONTRACTOR, as certified by the PM and issued to the CONTRACTOR, upon final acceptance of the WORK.
19. **FINAL CERTIFICATE** — The Final Certificate referred to in Clause 8.6 of the Conditions of Contract.
20. **FINAL CONTRACT PRICE** — The contract price as finally adjusted by agreement of the Parties in accordance with the Conditions of Contract.
21. **FORCE MAJEURE** - An act of nature, God or man which is beyond the control of the CONTRACTOR AND SUBCONTRACTOR. For the purposes of the Contract documents, Force majeure shall include: (i) rebellion, armed uprising, riot, civil commotion or any act of terrorism; (ii) a court or government order enjoining or prohibiting the execution of the Works; (iii) natural calamities, such as widespread flooding, typhoons for the period when typhoon signal No. 3 is hoisted in the area where the site is located; and (iv) strikes, lockouts or work stoppages of a city-wide or regional scale affecting any of the trades employed upon the Works or any of the goods or materials required for the Work or caused by concerted mass action on the part of the SUBCONTRACTOR'S employees which are declared illegal by the appropriate government agency.
22. **GENERAL CONSTRUCTION AGREEMENT** (the "AGREEMENT") – the agreement identified as such and executed by the Parties whereby the SUBCONTRACTOR undertakes to complete the Works and which contains the Basic Terms and Standard Terms and Conditions stated therein and any attached Schedule/s thereof.
23. **INTERIM PAYMENT CERTIFICATE** — The certificate issued signifying the amount allowed to be paid to the Subcontractor for progress of work carried within the period stated in the certificate, which shall be issued to the Subcontractor at monthly intervals.
24. **LIQUIDATED DAMAGES** – an amount equivalent to one-tenth (1/10) of one percent (1%) of the CONTRACT PRICE for each calendar day of delay (Sundays and Legal Holidays included), which shall not exceed ten percent (10%) of the CONTRACT PRICE.
25. **PROJECT** - the name, specifications, and type of building to be constructed at the instance of the CONTRACTOR as denominated in the Basic Terms.

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26. PRELIMINARIES — The Preliminaries referred to in the Contract Bills, also known as the General Conditions and Preliminaries.
27. QUALITY, ENVIRONMENT, HEALTH and SAFETY PLAN - refer to the CONTRACTOR'S guide or manual to ensure the quality and safe working practices and procedures are adopted, which comply with the requirements of the environment, health and safety legislation and best practices in the Philippines.
28. RETENTION MONEY - refer to the amount to be retained or withheld by the CONTRACTOR from payment to be made on the basis of Progress Billings.
29. SITE - refer to a parcel of land as described in and covered by the original/transfer certificate of title and which location is stated in the construction agreement where the Work or particular project will be carried out.
30. SITE INSTRUCTION — The written instruction issued by the CONTRACTOR to the Subcontractor to perform a specific work.
31. TAKING OVER — The taking over of the Works or any part thereof by the CONTRACTOR.
32. VARIATION – The Addition or Omission or alteration to the kind, quality, quantity of the works.
33. VENDOR - The person or entity entering into agreement with the CONTRACTOR for the performance of work or works not included in the Subcontractor's obligation.
34. WARRANTY PERIOD - The period stated in a particular construction agreement counting from the issuance of the Certificate of Final Acceptance of the Works by the Contractor during which the SUBCONTRACTOR warrants the WORKS against all defects and errors or omissions in or of workmanship and materials furnished by the SUBCONTRACTOR, and as part of the warranty, the SUBCONTRACTOR agrees to undertake or commence remedial or corrective measures to correct all defects, errors or omissions from receipt of a written notice from the CONTRACTOR.
35. WORK - The work or project to be performed and completed by the SUBCONTRACTOR under a given Construction Agreement and any revisions, alterations and extra work ordered to be done by the SUBCONTRACTOR as will be provided in the construction agreement.
36. WORKING DRAWINGS — The shop drawings, details, or specifications provided by the Subcontractor.

ARTICLE 2 – CONTRACT DOCUMENTS

- 2.1 The following Letters and documents shall constitute an integral part of the Contract including those agreements and documents which hereafter may be mutually agreed upon and duly signed by the parties.
 - a. Purchase Order NO. 214558
 - b. Letter of Award / Notice to Proceed
 - c. Subcontractor's Best and Final Offer
 - d. Conditions of Contract
 - e. Minutes of meeting
 - f. Plans and Technical Specifications
- 2.2 The CONTRACTOR shall have the right to furnish the SUBCONTRACTOR additional drawings, instructions, and documents as it may deem necessary for the proper and adequate execution of the PROJECT.

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ARTICLE 3 – CONTRACT PRICE

- 3.1 Unless the CONTRACT provides otherwise, the CONTRACT PRICE shall be deemed to be a **FIXED LUMP SUM PRICE** which constitutes the complete consideration or payment for the quantity and quality of Work specified in the CONTRACT DOCUMENTS. No adjustment shall be made to the CONTRACT PRICE for any fluctuation in exchange rate, any material escalation in prices of services, goods and equipment, or for any delay of whatever period, or for any causes directly or indirectly attributable to or caused by any national, provincial, city or municipal government action.
- 3.2 In the event that a competent governmental authority mandates the increase in the minimum wage at any time within the CONTRACT PERIOD, the CONTRACTOR agrees to adjust the CONTRACT PRICE to take into account the increase in minimum wage required to be given by the SUBCONTRACTOR to the persons employed or under contract with the SUBCONTRACTOR for the execution of the Work who will be affected by such increase in minimum wage, subject to the condition that all work activities of the SUBCONTRACTOR are within the approved schedule by the CONTRACTOR on the date the increase in minimum wage takes effect. For the avoidance of doubt, this would mean that labor escalation for all Work which should have been completed (in accordance with the approved schedule) prior to the effectivity of the wage increase will not be allowed. Any additional cost to be incurred by the SUBCONTRACTOR arising from the increase in minimum wage shall be subject to evaluation by the CONTRACTOR.
- 3.3 The quantity and quality of work in the bill of quantities is based on the Plans and as described in the Specifications. Any error or omission shall not relieve the SUBCONTRACTOR from any obligations, duties, responsibilities or liabilities under the contract. Such errors will be corrected and treated as a variation by the CONTRACTOR, provided however that, no adjustment in the CONTRACT PRICE or Completion Date will be made due to any errors in rates, calculations or computations made by the SUBCONTRACTOR.

ARTICLE 4 – TERMS OF PAYMENT

4.1 ADVANCE PAYMENT

- 4.1.1 Unless the NOA/ NTP provides otherwise, upon signing of the NOA/ NTP, an Advance Payment will be released upon submission of **Down payment Surety Bond** to guarantee the return of the down payment to the CONTRACTOR in the event that the SUBCONTRACTOR fails or refuses, for any reason whatsoever.

Prior to the release of down payment, the SUBCONTRACTOR shall also submit the following documents;

1. PERT-CPM Construction Schedule;
2. Bar Chart;
3. Manpower Schedule;
4. Equipment Utilization Schedule;
5. Project Organization;
6. Performance Bond;
7. Comprehensive All-Risk Insurance (“CARI”) Policy; and

4.2 PROGRESS BILLING

- 4.2.1 The SUBCONTRACTOR shall submit the Progress Billing to the CONTRACTOR to be valued based on the Billing Schedule (see Annex “C”). The CONTRACTOR shall process, certify to the correctness of,

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and make appropriate recommendations as to the said billings. The CONTRACTOR shall pay the SUBCONTRACTOR for at least thirty (30) working days upon receipt of said billings from the CONTRACTOR together with the latter's Subcontractor's Certificate of Payment.

4.2.2 Progress billings shall be supported by documents as stated in the Checklist of Subcontractor's Progress Billing (see Annex "A-1").

4.2.3 Progress payments are subject to retention of ten percent (10%) and two percent (2%) withholding tax.

4.2.4 Final billing shall be supported by documents as stated in the Checklist of Subcontractor's Final Billing (see Annex "A").

4.3 RETENTION BILLING

4.3.1 Retention will be released upon issuance of the Certificate of Final Inspection & Acceptance by the CONTRACTOR and upon submission of Guarantee Bond equivalent to ten percent (10%) of the contract price to answer for faulty and/or defective materials or workmanship. Said bond shall be effective for one (1) year from the date of acceptance of the Contract works (see ANNEX "A").

ARTICLE 5 – BONDS AND INSURANCES

The SUBCONTRACTOR shall post the following bonds **CALLABLE ON DEMAND**;

5.1 DOWN PAYMENT SURETY BOND - For any advance payment or deposit to be received by the SUBCONTRACTOR from the CONTRACTOR pursuant to this Contract, the SUBCONTRACTOR shall obtain and deliver to the CONTRACTOR a bond equivalent to the amount of the advance payment or deposit (herein referred to as the "Advance Payment Bond"). The Advance Payment Bond shall be issued by a bonding company or bank acceptable to the CONTRACTOR. The cost of obtaining and maintaining the Advance Payment Bond shall be borne by the SUBCONTRACTOR. The Advance Payment Bond shall be maintained until the entire amount of the advance payment or deposit has been recouped by the CONTRACTOR.

5.2 PERFORMANCE BOND

5.2.1 Upon the signing of this AGREEMENT or within ten (10) calendar days therefrom, the SUBCONTRACTOR shall, at its expense, furnish the CONTRACTOR a Performance Bond in the form of a Surety Bond obtained from an insurance or bonding company duly approved by the CONTRACTOR. The Performance Bond shall answer for the faithful performance of the SUBCONTRACTOR of its obligations under this AGREEMENT.

Said Performance Bond shall also answer for any liability that may be suffered by the CONTRACTOR resulting from the violation of the SUBCONTRACTOR of the Labor Code and all other labor and social legislations. In case the CONTRACTOR grants the SUBCONTRACTOR an extension of contract term in cases permitted under Article 8 herein, the effectivity of the Performance Bond shall be renewed by the SUBCONTRACTOR upon the expiration of the same.

5.2.2 The SUBCONTRACTOR shall also provide the CONTRACTOR with updated certificates on the renewal of all policies required hereunder thirty (30) days prior to the maturity of the bond.

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5.2.3 The premiums and other charges that may be due in connection with the renewal or extension shall be for the account and expense of the SUBCONTRACTOR. In the event of the rescission or termination of the AGREEMENT for breach thereof, the CONTRACTOR may immediately proceed against the bond for any or all claims against the SUBCONTRACTOR. The bond shall remain and continue to remain in full force and effect until complete and faithful compliance of the AGREEMENT and that the penalty, damages, and cost of labor and materials shall have been fully satisfied, discharged, settled and paid by the SUBCONTRACTOR.

5.2.4 Any changes in this AGREEMENT, including any increase or decrease in the amount of the contract price, any change in time or payment to the SUBCONTRACTOR, or any changes, extensions, alterations, modifications or innovations mutually agreed upon in writing, shall in no way annul, release, or effect the liability of the SUBCONTRACTOR and the surety or sureties on the bonds given by the SUBCONTRACTOR.

5.3 GUARANTEE BOND – The performance of the warranty obligations of the SUBCONTRACTOR. The posting of this bond shall be a pre-requisite to the release of the Retention Money earlier than the expiry of the Warranty Period at the discretion of the CONTRACTOR. It shall remain in force for the entire duration of the Warranty Period.

5.4 CONTRACTOR'S ALL-RISK INSURANCE (CARI) - The SUBCONTRACTOR shall, for its account and at all times during the construction of the work and until completion of the PROJECT, arrange for and secure the CARI that shall protect it and the CONTRACTOR from any and all claims arising under the Labor Code of the Philippines and other pertinent labor and social legislations and from any other claims for injury to persons, death, and damages to or loss of property which may arise in the course of operations by the SUBCONTRACTOR or by anyone directly or indirectly employed by the SUBCONTRACTOR.

Likewise, the SUBCONTRACTOR shall ensure that such insurance policy is effective during the execution of the Work.

ARTICLE 6 – CONTRACTOR'S LIABILITY

6.1 The SUBCONTRACTOR shall furnish and provide for its account all the necessary materials, supplies, labor, tools, support equipment, supervision, and other facilities as may be needed in the satisfactory performance and accomplishment of the PROJECT without delay and in accordance with and as directed by the CONTRACT DOCUMENTS.

6.2 The personnel to be employed or engaged by the SUBCONTRACTOR shall be sufficient in number, skill and expertise to carry out the various phases of work diligently and efficiently in order to complete the WORKS in accordance with the agreed work program / Schedule, subject to any exceptions which may be mutually agreed upon by the parties in writing.

6.3 It is adequately and properly financed to meet all the financial obligations which it may be required to assume under this AGREEMENT.

6.4 The SUBCONTRACTOR shall not assign, sublet or sub-contract any portion of the PROJECT covered by this AGREEMENT except upon prior written approval of the CONTRACTOR. Any such assignment, sub-lease or sub-contracting shall be subject to the pertinent provisions of this AGREEMENT. Violation of this condition shall be a ground for the termination of this AGREEMENT by the CONTRACTOR.

6.5 The SUBCONTRACTOR shall, during the term of this AGREEMENT, coordinate with the CONTRACTOR, and shall be directly responsible for the work of all men under its control and supervision to ensure the

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expeditious and satisfactory completion of the PROJECT. The SUBCONTRACTOR shall employ qualified Project In-charge and Foreman for coordination and supervisory works.

- 6.6 It is mutually understood that the SUBCONTRACTOR is not an employee of the CONTRACTOR but is engaged as an independent SUBCONTRACTOR. Neither shall the employees, workers, laborers, agents or the subcontractor, as may be allowed in accordance with this AGREEMENT. Hence, the CONTRACTOR shall not in any way be liable or responsible for any and all claims for or personal injuries or damages to third persons or their property, caused by any such employee, worker, laborer, agent or subcontractor, nor for any claims for or personal injuries, sickness or damages to their property suffered by them in the performance of their duties. The SUBCONTRACTOR shall, at all times, be directly responsible and liable for the enforcement of, and compliance with all existing laws, rules, and regulations particularly in respect of any and all claims brought by its personnel for the enforcement of the provisions of the Labor Code of the Philippines and other pertinent labor and social legislations. The SUBCONTRACTOR hereby holds the CONTRACTOR free and harmless from all such claims and liabilities thereto.
- 6.7 The Works shall be free from all Defects in terms of workmanship and materials. Any Defect discovered during the Warranty Period shall be repaired or replaced, as necessary, by the SUBCONTRACTOR, without any cost or expense to the CONTRACTOR. The SUBCONTRACTOR hereby recognizes the position of trust and confidence reposed on it by the CONTRACTOR under the Contract Documents, and agrees to exercise its best skill and judgment to cooperate with the CONTRACTOR's authorized representatives in furthering efficient business administration and superintendence in the Project and to secure the performance of the Contract Documents in the most expeditious and economical manner, consistent with the interest of the CONTRACTOR. The SUBCONTRACTOR shall provide everything necessary or appropriate towards the proper accomplishment and completion of the Works according to the Intent and meaning of the Shop Drawings, Plans and Specifications and other Contract Documents taken together, whether or not the same may be particularly shown or described therein.
- 6.8 The SUBCONTRACTOR shall coordinate and cooperate fully with the CONTRACTOR.
- 6.9 The SUBCONTRACTOR shall likewise be responsible for maintaining the general cleanliness and sanitation of the site and shall undertake clearing of site and removal of construction debris from the PROJECT during the entire contract period. After the final completion but before acceptance of the work and final settlement had been made between parties, the SUBCONTRACTOR shall forthwith remove all surplus materials, scaffoldings, apparatus, machinery, tools and equipment, not a part of the work, furnished or supplied by it, and shall remove all debris and leave the site free and clean of all obstruction and hindrances.
- 6.10 The SUBCONTRACTOR shall be responsible for any and all damages to, and for the necessary repair of, public streets, sidewalks, curbs and paving and other properties, whether public or private, occasioned by their use or opening in connection with or as a consequence of the PROJECT. It shall make good the same to the lawful satisfaction of the proper authority or party, and hereby holds the CONTRACTOR free and harmless from liability for any such damage or repair.

ARTICLE 7 – FAILURE TO COMPLETE THE WORKS

- 7.1 It is understood that time is of the essence in this AGREEMENT. Should the SUBCONTRACTOR fail to complete the PROJECT within the period herein stipulated or within the period of extension granted by the CONTRACTOR, the CONTRACTOR shall certify in writing that the work could reasonably have been completed within the period specified herein or within the extended time, and the SUBCONTRACTOR hereby agrees:

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7.1.1. To pay the CONTRACTOR the sum of one-tenth (1/10) of one percent (1%) of the stipulated CONTRACT PRICE for each calendar day of delay, including Sundays and holidays, as liquidated damages but not to exceed ten percent (10%) of the CONTRACT PRICE; provided that, the payment of penalty shall not in any manner relieve the SUBCONTRACTOR from its obligations and responsibilities under the AGREEMENT.

7.1.2 That immediately upon notice to the SUBCONTRACTOR, the CONTRACTOR may take-over and complete the WORKS either by the CONTRACTOR or by engaging another SUBCONTRACTOR/s. In such case, the temporary facilities, materials, equipment, tools, and resources of the SUBCONTRACTOR on the site shall be at the disposition of the CONTRACTOR until the WORKS are completed by the SUBCONTRACTOR.

7.2 To terminate this AGREEMENT pursuant to this AGREEMENT.

7.3 It is further agreed and understood that the right of the CONTRACTOR to collect or to receive penalty charges and liquidated damages as compensation for delay in the circumstances herein stated, is in recognition by the parties of the expense and inconvenience likely to be incurred from any need to prove the loss and damage that will be suffered by the CONTRACTOR in the event of any such delay on the part of the SUBCONTRACTOR. The collection and/or payment of such sums as penalty charges or liquidated damages shall be without prejudice to rights and remedies of the CONTRACTOR against the SUBCONTRACTOR provided elsewhere in this AGREEMENT or to which the CONTRACTOR may be entitled in law or equity.

7.4 To give full force and effect to the foregoing, the SUBCONTRACTOR hereby, without the necessity of any further act and deed, authorizes the CONTRACTOR to deduct the amount that may be due as liquidated damages pursuant to Section 7.1 above, from any and all moneys or amounts due or which will become due to the SUBCONTRACTOR by virtue of the AGREEMENT and/or to collect such amounts from the performance bond filed by the SUBCONTRACTOR.

7.5 Upon the completion of the PROJECT, the SUBCONTRACTOR shall immediately remove all surplus materials, waste, and rubbish from the premises, unless prevented by any unavoidable cause or causes in which case the CONTRACTOR shall give the SUBCONTRACTOR a reasonable period within which to remove such materials. The SUBCONTRACTOR shall indemnify the CONTRACTOR for any damages or losses incurred by the latter by reason of the failure of the SUBCONTRACTOR to remove such materials.

ARTICLE 8 - CONTRACT TIME EXTENSION

8.1 Upon becoming reasonably apparent that the progress of the Work is delayed or is likely to be delayed, the SUBCONTRACTOR shall immediately give written notice to the CONTRACTOR together with fully substantiated details of the effects of the delay to the progress of the Work, the schedule of completion and the CONTRACT PRICE, if any. If in the opinion of the CONTRACTOR has actual delay on the progress of the Work, then the CONTRACTOR shall issue an assessment on the SUBCONTRACTOR's substantiation. Any claim for the extension of time shall be made and allowed ONLY on the basis of the following events:

1. Force majeure directly affecting the site;
2. Issuance of instruction affecting Variation works under Article 10 (Variation);
3. Delay on the part of the CONTRACTOR;
4. Delay on the part of the other SUBCONTRACTOR employed by the CONTRACTOR.

8.2 Provided, however, that the SUBCONTRACTOR shall always exercise its/his best endeavor to mitigate delay; provided further, that the SUBCONTRACTOR shall submit to the CONTRACTOR within seven (7) days

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from its issuance of a written notice a full substantiation of the request for extension of completion including associated costs, if any. A timely submission of the full substantiation is a condition precedent to the entitlement of the extension of time.

ARTICLE 9 - CONTRACT PRICE

- 9.1 Lump Sum Price. — The Contract shall be a **LUMP SUM** based on the Contract Drawings and Specification. Where the price for a section of the Works is based on the Contract Drawings and/or Contract Specifications, without Contract Bills, the quality and quantity of the works for such section included in the Contract Price shall be deemed to be that which is shown in the Contract Drawings and/or described in the Contract Specifications, provided that:
- 9.2 In case of discrepancy between the Contract Drawings and the Contract Specifications, the Contract Specifications shall take precedence over the Contract Drawings, unless otherwise specifically stated in the Contract Specifications.
- 9.3 Any error in the description or quantity, or omission of items from the Contracts Drawings and/or Contract Specifications shall not invalidate this Contract, but instead shall be corrected and shall be deemed as a Variation required by the CONTRACTOR.

ARTICLE 10 – VARIATIONS

- 10.1 Any variation in the scope of the Work shall be deemed an alteration. The CONTRACTOR may alter in the form of quality or quantity of the Work or any part thereof that may, in its opinion, be necessary and desirable, and shall have the power to order the SUBCONTRACTOR to do, and the latter to undertake to perform any of the following: increase or decrease the quantity of any item of Work; omit any portion of the Work; change the levels, positions and dimensions of any part of the Work; and execute alterations of any kind necessary for the completion of the Work. The SUBCONTRACTOR shall immediately provide the CONTRACTOR with a written notice of the effect of Variation on the progress of the Work, if any, complete with fully substantial details within seven (7) days upon receipt of written instructions from the CONTRACTOR.
- 10.2 For additive and deductive works involving work items which are exactly the same or similar to bill of quantities, the unit rates shall be used in the valuation of such variation.
- 10.3 No claims for increase or decrease of the CONTRACT PRICE by reason of extra work or alterations shall be valid unless ordered in writing by the CONTRACTOR. The value of any extra work or alterations shall be separately agreed upon by the CONTRACTOR and the SUBCONTRACTOR in writing and **NO WORK** shall be carried out unless APPROVED by the CONTRACTOR.
- 10.4 Any value of extra work or alterations as reflected in the approved change orders shall be considered as part of the AGREEMENT to be billed separately by the SUBCONTRACTOR.
- 10.5 In the event that the CONTRACTOR opts or decides to supply any materials for the PROJECT, the cost of such materials shall be based on the agreed itemized cost breakdown.
- 10.6 All instructions of Variations given by the CONTRACTOR shall be in writing. The SUBCONTRACTOR shall not carry out Instructions or order given verbally, unless the circumstances are such that failure to carry out the Instruction(s) would endanger life or limb.

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10.7 Where the affected scope of work under a Variation cannot be properly measured and valued in accordance with the foregoing rules, the SUBCONTRACTOR shall be allowed for a day work rates at the rates specified by the SUBCONTRACTOR in the BOQ, or when no such rates have been specified, the actual cost of the SUBCONTRACTOR plus a percentage (%) margin shall be applied which include the use of tools, scaffolding, supervision and profit; provided that the day work sheets in executing the Variation which includes the workmen's names, position and the materials supplied, shall be submitted for verification of the CONTRACTOR

10.8 In cases of "PROVISIONAL" quantities included in the BOQ, these quantities shall be replaced by the actual measured quantities and shall be evaluated in accordance with the contract unit rates.

ARTICLE 11 – CERTIFICATE OF FINAL INSPECTION AND ACCEPTANCE (CFIA)

11.1 Upon receipt of the written notice from the SUBCONTRACTOR that he has completed the WORKS in accordance with this AGREEMENT and is ready for final inspection and acceptance, the CONTRACTOR shall send their respective representative/s for site inspection. When the CONTRACTOR determine that the WORKS are acceptable under the terms of this AGREEMENT and that the AGREEMENT has been fully performed, they shall promptly issue a Certificate of Final Inspection and Acceptance (CFIA) stating that the WORKS provided for in the AGREEMENT had been completed.

11.2 The CONTRACTOR, if the work warrants acceptance, shall append their signatures to the Certificate of Final Inspection and Acceptance (CFIA) subject to the guarantee bond required in Article 5.3 herein. The SUBCONTRACTOR prior to the payment of the balance, however, shall be required to submit to the CONTRACTOR the documents in Checklist for Contractor's Final Billing (Annex "A") and;

ARTICLE 12 – TERMINATION CLAUSE

12.1 The SUBCONTRACTOR fails to commence the Works within thirty (30) days from issuance of the Notice to Proceed, or;

12.2 The SUBCONTRACTOR repeatedly fails to supply the sufficient number of skilled workmen or suitable materials or equipment based on the construction schedule.

12.3 The SUBCONTRACTOR: (1) becomes insolvent; (2) is adjudged to be bankrupt; (3) attempts to make any composition or scheme of arrangements with its creditors or any of them;

12.4 The SUBCONTRACTOR suspends the accomplishment of works for fifteen (15) fifteen continuous days, without justifiable cause and/or abandons the work or assigns the execution of the work to others without prior written consent of IPMCDC.

12.5 Slippage of the SUBCONTRACTOR of more than ten percent (10%) of the approved/agreed work schedule of the PROJECT.

12.6 The SUBCONTRACTOR refuses or persistently neglects to comply with a written notice from the CONTRACTOR requiring him to remove defective work or improper materials or goods and by such refusal or neglect The Works are materially affected.

12.7 Permit or procure permission for the CONTRACTOR or third parties acting on behalf of the CONTRACTOR to enter the jobsite to remove and/or complete the WORKS.

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12.8 The CONTRACTOR may terminate the SUBCONTRACTOR's services, take possession of the SUBCONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same and incorporate into the work all materials and equipment stored at the site including those stored elsewhere for which the CONTRACTOR has paid the SUBCONTRACTOR, and finish the work as CONTRACTOR may deem expedient. In such case, the SUBCONTRACTOR shall not be entitled to receive any further payment until the work is finished.

12.9 The CONTRACTOR discovers that the SUBCONTRACTOR has violated or is violating any of the conditions or provisions of the CONTRACT DOCUMENTS; (a) is not performing his obligation in good faith and in accordance with the CONTRACT DOCUMENTS; (b) is not making substantial progress in the execution of the Work so as to ensure its completion within the CONTRACT PERIOD; or (c) has shown itself/himself to be incapable of completing or incompetent to complete the Work/Project.

ARTICLE 13 – OPTION TO COMPLETE PROJECT/TAKE OVER

13.1 The CONTRACTOR shall have the option to take over the PROJECT and complete the same if, at any time during the construction of the PROJECT, the SUBCONTRACTOR should:

13.2 Fail, refuse, or neglect to supply and provide the required tools, materials, supplies, equipment facilities, and labor workmen in accordance with the work schedule;

13.3 Abandon or fail to continue with the construction of the PROJECT or to complete the same within the prescribed work schedule;

13.4 Sub-contract or assign this AGREEMENT or any part thereof without the previous written consent of the CONTRACTOR; or

13.5 Willfully violate any of the condition, covenants, agreements or technical requirements of the PROJECT.

13.6 The CONTRACTOR may take over and continue the WORKS and all contracts entered into by the SUBCONTRACTOR in the pursuit of its obligations under this AGREEMENT which the CONTRACTOR may want to assume. For this purpose, the SUBCONTRACTOR agrees and obligates itself to include in such contracts provisions allowing it to assign the contract to the CONTRACTOR at the option of the CONTRACTOR. The CONTRACTOR may likewise engage the services of a third party contractor. All expenses incurred by the CONTRACTOR shall be charged to the SUBCONTRACTOR, and any additional cost incurred in finishing the WORKS in excess of the CONTRACT PRICE shall be at the expense and for the account of the SUBCONTRACTOR. The right of the CONTRACTOR to take over the WORKS shall be without prejudice to its other rights provided elsewhere in the AGREEMENT.

13.7 When in the judgment of the CONTRACTOR, the SUBCONTRACTOR has been unreasonably delayed or has incurred slippage of more than ten percent (10%) of the approved/agreed Construction Schedule or in meeting any of the milestone dates indicated in the Contract. The SUBCONTRACTOR is required to submit to the CONTRACTOR within three (3) calendar days from demand a confirmed catch-up schedule which shall include the required resources to be deployed by the SUBCONTRACTOR at its own expense to perform its obligations and to eliminate the delay or slippage incurred. The catch-up is not intended to extend project completion but for the SUBCONTRACTOR to be able to perform and complete the balance of work within the contract Period.

Should the SUBCONTRACTOR fail to perform in accordance with the catch-up schedule, including the deployment of the required resources to perform the said catch-up schedule and to eliminate the delay

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or slippage incurred, the CONTRACTOR has the immediate right, and with no further obligation to observe any notice requirements of time periods, to take any or all of the following courses of actions:

- 13.7.1 Take-over such portions of the contract works as the CONTRACTOR in its sole discretion deems necessary; or
- 13.7.2 Stop any work by giving notice to this effect to the SUBCONTRACTOR, and take over the remaining Contract Works. The take-over of the Contract works by the CONTRACTOR may be performed by employing a third party contractor or in house organization to undertake and complete the balance of the Contract Works. All resources of the SUBCONTRACTOR shall be at the disposition of the CONTRACTOR for use in the Project, or;
- 13.7.3 Terminate the Contract in accordance with Article 12 of this contract with no further need to comply with the notice requirements prescribed therein.
- 13.7.4 Avail itself of any other remedies allowed including calling on the Performance Bond or withholding payment of the Retention Amount.
- 13.7.5 Notwithstanding the above, the full amount of the advance payment shall be recouped before the Taking Over of the Works.

ARTICLE 14 – WARRANTY

- 14.1 The SUBCONTRACTOR guarantees its work against qualitative defects in materials, poor workmanship and the like for a period of one (1) year reckoned from the date of the Certificate of Final Inspection and Acceptance (CFIA) of the PROJECT by the CONTRACTOR. In case of defect, failure, and poor workmanship on any part or parts of the WORKS is discovered during said period, the SUBCONTRACTOR shall be bound to make good such defect, failure or poor workmanship, without any cost or expense to the CONTRACTOR. In any case, during the same period, the SUBCONTRACTOR shall hold the CONTRACTOR free and harmless from any and all liability or damages that may be incurred as a result of any breach of SUBCONTRACTOR'S guarantee of work.
- 14.2 In the event that the Work or any part thereof is found defective and/or not in compliance with the Contract Documents within the Warranty Period, the SUBCONTRACTOR shall at its/his own expenses, promptly carry out remedial/ corrective measures to correct the defect, errors or omissions pointed out by the CONTRACTOR to the satisfaction of the latter, within such period as indicated in the written notice of the CONTRACTOR.
- 14.3 If the SUBCONTRACTOR fails to undertake the said remedial/ corrective work within the period provided in its written notice, the Owner shall have the option to perform such remedial/ corrective measure to correct the defects, errors or omissions and the costs and expenses incurred to carry out the same shall be deducted from any amount due to the SUBCONTRACTOR under the Contract Documents and/or from the Retention Amount, without prejudice to such other remedies as may be available to the CONTRACTOR.
- 14.4 The SUBCONTRACTOR shall furnish the CONTRACTOR a GUARANTEE BOND issued by an insurance or bonding company acceptable to and approved by the CONTRACTOR in the sum equivalent to ten percent (10%) of the CONTRACT PRICE, effective for a period of one (1) year from the date of final acceptance by the CONTRACTOR of the WORKS, to guarantee the performance by SUBCONTRACTOR of its obligations to remedy any defect in the materials or workmanship which may arise during the said one (1) year period.

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The SUBCONTRACTOR shall promptly make repairs of defects in materials or workmanship within ten (10) days from receipt of the CONTRACTOR'S notice.

ARTICLE 15 – ARBITRATION

- 15.1 Should there be any dispute, controversy or difference between the parties arising out of this AGREEMENT that may not be resolved by them to their mutual satisfaction despite earnest efforts, then the matter shall be submitted to the Construction Industry Arbitration Commission ("CIAC") for arbitration under the Rules of Procedure Governing Construction Arbitration as promulgated pursuant to Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.
- 15.2 An Arbitration Committee, composed of three (3) members, shall be formed as follows: the first member chosen by the CONTRACTOR; the second member chosen by the SUBCONTRACTOR, and the third member to be mutually chosen by both CONTRACTOR and SUBCONTRACTOR. Either party may initiate the arbitration process by serving upon the other party a written demand for arbitration in accordance with this AGREEMENT within fifteen (15) calendar days from the occurrence of any dispute, difference or controversy. The demand shall set forth the nature of the controversy; the amount involved, if any; the relief sought; and the name of the arbitrator appointed by the party making the demand, and shall require the other party to whom the demand is served to name its arbitrator. The arbitrators so named and appointed by the parties must agree upon the third arbitrator within ten (10) days from notice of appointment. The decision of the board of arbitrators shall be rendered within ten (10) days from the first meeting of the board, which decision when reached through the affirmative vote of at least two (2) members shall be final and binding upon the CONTRACTOR and SUBCONTRACTOR. Matters not otherwise provided herein for shall be governed by the provisions of the Construction Industry Arbitration Law and all relevant rules and regulations. The cost of arbitration shall be borne by the defaulting party. The decision of the arbitral tribunal shall be final and binding on the parties. It is hereby agreed that arbitration or the process thereof shall not be reason for the SUBCONTRACTOR to suspend work as contemplated by the AGREEMENT nor affect the time of completion set forth in the AGREEMENT, except when the decision of the board is in favor of the SUBCONTRACTOR and the same will require extension of the contract term.

ARTICLE 16 – TAXES, DUTIES AND FEES

- 16.1 All taxes, including the Extended Value Added Tax ("E-VAT"), duties and fees of whatever nature connected with, or related to this AGREEMENT and which may be due and payable, or for withholding, on tools, equipment, labor, materials, supplies, and other facilities necessary for the performance and accomplishment of the PROJECT, shall be the sole responsibility and for the exclusive account of the SUBCONTRACTOR, except taxes due on owner-supplied materials (if any) which shall be for the account of the CONTRACTOR. The CONTRACTOR shall be entitled to withhold from the payment to the SUBCONTRACTOR any amount it is required to withhold by law or by any governmental authority.
- 16.2 The SUBCONTRACTOR hereby holds the CONTRACTOR free and harmless from all such taxes, duties, and fees including the fines, penalties and other charges accruing by reason of its non- payment.
- 16.3 The SUBCONTRACTOR shall pay and ensure that any authorized subcontractor engaged for the PROJECT shall pay all income, corporate revenue or similar taxes howsoever described and all penalties and interest thereon assessed on the income, profits and gains accruing to the SUBCONTRACTOR arising from this AGREEMENT. The SUBCONTRACTOR shall be responsible to indemnify, defend and hold harmless the CONTRACTOR against any claims whatsoever arising in connection with liability of the SUBCONTRACTOR for any such taxes, penalties and interest. Further, the SUBCONTRACTOR shall be responsible to,

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indemnify, defend and hold harmless the CONTRACTOR against any claims whatsoever arising in connection with all taxes assessed or levied against or on account of wages, salaries, benefits, or deemed benefits paid to the SUBCONTRACTOR'S personnel or personnel connected with its subcontractor or any other person employed in connection with the performance of this AGREEMENT.

ARTICLE 17 – QUALITY, ENVIRONMENTAL, HEALTH AND SAFETY REGULATIONS

- 17.1 The SUBCONTRACTOR shall comply with and implement all applicable quality, environmental, health and safety regulations required by law and by the CONTRACTOR'S Quality, Environment, Health and Safety Plan.
- 17.2 The SUBCONTRACTOR shall prepare a list of environmental, health and safety (EHS) aspects and hazards based on the nature of the Work and the site (including location and condition). Control measures and programs to address these identified aspects and hazards shall be submitted to the CONTRACTOR. The SUBCONTRACTOR shall ensure that these operation controls shall be fully implemented during project execution. The SUBCONTRACTOR shall be responsible for providing all the necessary resources to implement these controls i.e. safety and personal protective equipment for its employees, agents, or personnel, warning signs, barricades, tools etc. The SUBCONTRACTOR shall also ensure that its employees, agents or personnel have received appropriate training in health and safety awareness.
- 17.3 The SUBCONTRACTOR shall provide the CONTRACTOR with a list of toxic/hazardous substances brought into the site. Toxic/hazardous substances shall be accompanied by a Material Safety Data Sheet (MSDS). An EHS plan on how these hazardous materials shall be handled, stored and used, as well as an emergency preparedness and response program to address these hazardous/toxic materials shall also be submitted.
- 17.4 The SUBCONTRACTOR shall assign a qualified safety representative acceptable to the CONTRACTOR for the entire duration of the PROJECT.
- 17.5 The SUBCONTRACTOR shall also be responsible in maintaining the safety of its personnel and equipment as part of the safety program at the PROJECT site. For the Safety and Health Rules and Regulations (see ANNEX "B").
- 17.6. Report immediately to the CONTRACTOR all fatal or serious occupational injuries or illnesses (requiring hospitalization).
- 17.7. Conduct and participate in weekly Health and Safety inspections and meetings.

ARTICLE 18 – WITHHOLDING OF PAYMENT

- 18.1 Notwithstanding Article 4 (Terms of Payment), the CONTRACTOR shall have the right to withhold any payments to the SUBCONTRACTOR in case of any claim against the SUBCONTRACTOR for unpaid labor, services, supplies, materials and rentals for the use of tools and equipment.

ARTICLE 19 – MISCELLANEOUS PROVISION

- 19.1 CONFIDENTIALITY. The parties shall hold the terms of this Agreement and any work order issued hereunder confidential, and shall only disclose the same as required by law. Information obtained by contractor in the conduct of work under this Agreement, including, but not limited to, depth, formations penetrated, the results of coring, testing and surveying, shall be considered confidential and shall not be

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divulged by SUBCONTRACTOR or its employees or agents, to any person, firm, or corporation other than CONTRACTOR'S designated representatives.

19.2 NO WAIVER. No waiver by either party of any of the terms, provisions or conditions of this Agreement shall be effective unless the waiver is in writing and signed by an authorized representative of both parties.

19.3 ASSIGNMENT. Neither party shall assign this Agreement, either in whole or in part, without the express prior written consent of the other party hereto. Any such attempted assignment shall be void.

19.4 SEVERABILITY. In the event any provision of this Agreement is inconsistent with or contrary to any applicable law, rule, or regulation, the provision shall be deemed to be modified to the extent required to comply with the law, rule, or regulation, and this Agreement, as so modified, shall continue in full force and effect.