



CIDB Conditions of Contract for Minor Works

First Edition 2013

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Foreword

These Conditions of Contract have been published by Construction Industry Development Board to provide a Form of Contract which takes into consideration the local context within which construction works are undertaken in Mauritius. The aim has been to provide a very simple document to make it more user-friendly as employers are often lost in complex terms and legal jargons.

This Form has been structured differently to make it more simple thus giving a new perspective to Standard Form of Contract. It provides an additional choice among the different Forms available for works.

These Conditions of Contract are recommended for Minor Works. The interpretation of Minor Works however, remain subjective but those involved in the drafting of this Form considered construction works worth around Rs 25m to be Minor Works. Nevertheless, nothing prevents a user to use this Form for contracts of greater value if he considers it appropriate in that case.

The Form provides for the administration of the contract by a Contract Administrator who shall be the representative of the employer and in some cases can also be the employer himself especially for very small contracts where it may not be deemed necessary for a professional to manage the contract.

The Form also provides for the resolution of disputes in a very structured manner comprising of negotiation, conciliation and arbitration.

This Form is a standard document and has important legal implications. Therefore, it cannot be modified as this can have serious implications on the other provisions. However, if for any reason modifications are required for the contract, then it is recommended that the additional conditions be included as specific conditions to the Contract.

This Form of Contract has been endorsed by the industry stakeholders through a structured consultative process.

This Form in general sets out the conditions that will govern the manner in which the work would be undertaken by the contractor and paid by the employer. It also provides relevant information in its Appendix. It clearly states the rights and obligations of the parties involved in this contract. Both the parties must therefore before signing the agreement ensure that they have read and understood all the conditions and their respective rights and obligations therein. Once the agreement is signed both the contractor and the employer will be bound by the conditions of this Form of Contract.

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AGREEMENT AND TERMS OF CONSTRUCTION CONTRACT

BETWEEN

[Employer]

AND

[Contractor]

For

[Short Title of the Project]

PART A – AGREEMENT AND GENERAL PROVISIONS

1 Contract and Date of Contract

This is a construction contract between the Employer and the Contractor. The date of this contract is stated at **C.1 (Part C of Appendix)**.

2 Parties to the Contract

The parties to the contract are the Employer and the Contractor. Signatures confirming their agreement to the terms of this contract, names and other details are stated at **C.2 (Part C of Appendix)**.

3 Contract Administrator

The Contract Administrator will be responsible to administer this contract. The Contract Administrator may be the Employer himself. However, in such cases, the appointment of the Conciliator under Clause 7.2 shall be mandatory as from the date stated at **C.6 (Part C of Appendix)**. The Contract Administrator's name and details are stated at **C.3 (Part C of Appendix)**.

4 The Project

The project is the work that the Employer has contracted with the Contractor. A short title of the overall project is stated at **C.4 (Part C of Appendix)**.

5 Contractor's Work

This contract as a whole, sets out the scope of the work to be carried out by the Contractor.

6 Contract Documents

The following documents form part of this contract:

- (i) Part A: Agreement and General Provisions;
- (ii) Part B: Terms of Contract;
- (iii) Part C: Appendix to Part A and Part B;
- (iv) Breakdown of works and prices (if any);
- (v) Bills of quantities (if any);

PART A – AGREEMENT AND DEFINITIONS

- (vi) Schedules of rates (if any);
- (vii) Drawings (if any);
- (viii) Specifications (if any);
- (ix) Employer's Requirements (if any);
- (x) Contractor's proposal (if any); and
- (xi) Other documents stated at **C.5 (Part C of Appendix)**.

7 Date for Starting the Work

The Contractor must start the work on the date stated at **C.6 (Part C of Appendix)**.

8 Date for Completing the Work

The Contractor must complete the work not later than the date stated at **C.7 (Part C of Appendix)**. The date for completing the work may be revised in accordance with the provisions of this contract.

9 Price for the Contractor's Work

The price for the Contractor's work inclusive of VAT is stated at **C.8 (Part C of Appendix)**. The price for the work is the sum payable by the Employer to the Contractor. If the price is not stated, the Contract Administrator must calculate the price for the Contractor's work based on the breakdown of work and prices for the Contractor's work. If there is no breakdown of work and prices, then the Contract Administrator must calculate the price for the Contractor's work based on the actual work done using rates in the following order of priority:

- (i) rates in the Bills of Quantities; or
- (ii) rates in the Schedule of Rates; or
- (iii) fair and reasonable rates.

10 Law Governing this Contract

This contract is governed by the laws in force in the Republic of Mauritius.

PART B – TERMS OF CONTRACT

1 General Obligations

1.1 *The General Obligations of the Employer*

1.1.1 The Employer's general obligations include the following:

- (i) To give timely access to the whole of the site to the Contractor or as otherwise agreed;
- (ii) To provide all relevant information and facilities in a timely manner to enable the Contractor to complete the work;
- (iii) To pay the Contractor as provided in this contract; and
- (iv) To appoint a Contract Administrator to administer this contract and to appoint a replacement whenever necessary.

1.2 *The General Obligations of the Contractor*

1.2.1 The Contractor's general obligations include the following:

- (i) To complete the work not later than the date specified for completing the work;
- (ii) To complete the work in accordance with the provisions of this contract; and
- (iii) To take out and maintain insurances until final completion of the works.

1.3 *The General Obligations of both the Employer and the Contractor*

1.3.1 The Employer's and Contractor's general obligations include the following:

- (i) To co-operate with each other and all those involved in the overall project and not to disrupt anyone or cause anyone to incur any of the following:
 - (a) physical injury or damage to property; and/or
 - (b) financial loss or expense.

2 Administration of the Contract and Changes to the Work

2.1 Administration of the Contract

- 2.1.1 The Contract Administrator must provide all relevant information to the Contractor in a timely manner to enable the Contractor to complete the work.
- 2.1.2 Except where stated otherwise in this contract, the Contract Administrator must make all decisions under this contract.
- 2.1.3 All the decisions of the Contract Administrator must be based on the provisions in this contract. The Contract Administrator must make all decisions in a timely manner and carry out his role as certifier impartially.
- 2.1.4 The Contract Administrator may delegate his powers under this contract. The Contract Administrator must inform the Contractor in writing of any such delegation of powers.

2.2 Instructions, Decisions, Certificates and Notices

- 2.2.1 The Contract Administrator may issue instructions to the Contractor on matters relating to the work.
- 2.2.2 All instructions issued by the Contract Administrator must be:
 - (i) in writing; duly signed and dated; and
 - (ii) clearly identified as the Contract Administrator's instructions.
- 2.2.3 Any instruction issued verbally by the Contract Administrator shall be confirmed by him in writing within 7 days.
- 2.2.4 The Contractor shall comply with all instructions issued by the Contract Administrator in a timely manner.
- 2.2.5 All decisions, certificates and notices issued by the Contract Administrator under this contract must be in writing, duly signed and dated.
- 2.2.6 The Employer and Contractor must comply with all decisions and certificates issued by the Contract Administrator in a timely manner.
- 2.2.7 Communication among the Contract Administrator, the Employer and the Contractor may be made by post, fax or email but all instructions, decisions, certificates and notices must be:
 - (i) sent by registered post; or

- (ii) delivered by hand with acknowledgement by the receiving party or his Office.

2.3 *Changes to the Work*

2.3.1 The Contract Administrator may issue instructions to change the work.

2.3.2 If the Contract Administrator:

- (i) instructs the Contractor to change any of the works, and
- (ii) the change has a financial implication on the original Contractor's price,

the Contract Administrator must certify the value of the changes to the work in the payment certificates.

2.3.3 The Contractor shall promptly provide the Contract Administrator with financial details and particulars for the purpose of valuing any such changes to the work.

2.3.4 The necessary adjustment to be made to the price for the work as a result of any change to the work must be determined by the Contract Administrator in consultation with the Contractor.

2.4 *Performance Security*

2.4.1 The Contract Administrator may by notice request the Contractor to provide security for performance of his obligations under the Contract from a bank or an insurance company for an amount equivalent to 10% of the price of the work. The security for performance must be valid until the issue of the final completion certificate.

2.4.2 The Contractor must, within 10 working days of receiving a notice to provide security for performance of his obligations, provide the said security to the Contract Administrator.

2.4.3 If the Contractor does not comply with any of his obligations under the contract, the Contract Administrator may then issue a notice to the Contractor informing him of the default and also of the intention to call on the performance security if he does not rectify the default within 14 days from the date of notice.

2.4.4 If the Contractor does not rectify the default within the 14 days' notice then the Contract Administrator may call on the security for performance.

2.5 Personnel

- 2.5.1 The Contractor must ensure that all personnel involved in the performance of the Work are suitably skilled and experienced to perform properly the tasks assigned to them.
- 2.5.2 The Contract Administrator shall have the right to require the immediate removal and replacement of any member of the Contractor's personnel for negligence, incompetence or misconduct.
- 2.5.3 The Contractor must at his own cost and expense furnish a suitably skilled and experienced substitute within the time specified by the Contract Administrator.
- 2.5.4 The Contractor shall at all time, maintain good order and discipline amongst his personnel and those of his Subcontractors and also ensure that such individuals behave responsibly and in a manner acceptable to the Contract Administrator.

2.6 Sub-contracting

- 2.6.1 The contract may expressly provide for parts of the work to be subcontracted. The scope of work to be subcontracted may be for design, consultancy, supplies, or it may be for construction works or labour to be subcontracted. These may be specified in the bills of quantities or elsewhere in this contract.
- 2.6.2 The provision for subcontracting may be provided through any one or more of the following ways:
 - (i) by identifying the scope of work separately within the contract documents together with a list of names of designers, consultants, suppliers, or work Subcontractors or labour Subcontractors who may do the work. The Contractor must then select, from the list, a Subcontractor for each part of the work to be subcontracted.
 - (ii) by providing a provisional sum within the total price for the work. Following a subsequent selection by the Contract Administrator, if specified in this contract or instructed by the Contract Administrator, the Contractor must contract with the selected Subcontractor on terms of contract, scope of work, and price specified by the Contract Administrator and agreed by the Contractor.
- 2.6.3 Apart from these express provisions for parts of the work to be subcontracted, the Contractor may only subcontract portions of the work if prior written approval has been obtained from the Contract Administrator for each portion of the work to be subcontracted.

2.7 *Obligations for Subcontract Work*

- 2.7.1 The Contractor must enter into terms of subcontract specified by the Contract Administrator.
- 2.7.2 The Contractor remains fully responsible for all the scope of work subcontracted whichever way the Subcontractor is procured and whichever type of work is subcontracted. All breaches by the Subcontractors will be treated as if they were breaches of this contract by the Contractor.

2.8 *Other Contractors*

- 2.8.1 The Contractor must cooperate with all other Contractors that may be working on the overall project whether contracted by the employer or others.

2.9 *Working Hours*

- 2.9.1 Unless otherwise stated elsewhere in the contract, no work shall be carried out during the night or on Public Holidays without the written permission of the Contract Administrator except when such work is rendered unavoidable or necessary for the saving of life or property or for the safety of the works.

3 *Time Obligations*

3.1 *Date for Starting the Work*

- 3.1.1 The Contractor must start the work on the date stated at **C.6 (Part C of Appendix)**.
- 3.1.2 If a date is not stated, the Contract Administrator must inform the Contractor in writing of the date for starting the work.

3.2 *Programme of Works*

- 3.2.1 Prior to commencement of work, the Contractor must submit to the Contract Administrator a programme of works. The programme must clearly show:
- (i) a breakdown of the work to be carried out;
 - (ii) the order, sequence and timing in which the Contractor proposes to execute the activities; and
 - (iii) work to be done by Subcontractors.
- 3.2.2 Whenever there are significant changes which affect the progress of works, the Contractor shall update the programme of works (without delay). A copy of the updated programme must be given to the Contract Administrator.

3.3 *Work Progress*

3.3.1 The Contractor must carry and complete the work in a regular and timely manner taking into consideration:

- (i) the date for completing the work;
- (ii) any instruction by the Contract Administrator or specific work to be completed by a certain date;
- (iii) actual progress of work; and
- (iv) any disruption already incurred.

3.3.2 The Contractor must use reasonable endeavours to prevent and minimise any delay to the progress of the work howsoever caused.

3.4 *Date for Completing the Work*

3.4.1 The Contractor must complete the works not later than the date stated at **C.7 (Part C of Appendix)** or the revised date for completing the work.

3.5 *Starting and Completing the Work in Sections*

3.5.1 If the work is to be started and completed in sections:

- (i) the description of the sections of the work and the dates for starting and completing the various sections of the work must be stated at **C.6 (Part C of Appendix)** and **C.7 (Part C of Appendix)**; and
- (ii) all provisions in this contract shall apply to each of the sections of the work.

3.6 *Notice of Delay and Extension of Time*

3.6.1 If the Contractor is of the opinion that the progress of works has been or will be delayed, he must notify the Contract Administrator in writing within 14 days of the occurrence of the event causing the delay. The Contractor must:

- (i) show the impact of all delays on the programme of works; and
- (ii) provide the estimated duration of the delays and the extension of time that would be required.

3.6.2 The Contract Administrator must assess the impact of all delays on:

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- (i) the work programme;
- (ii) the work to be done; and
- (iii) the date for completing the work.

3.6.3 The Contract Administrator must notify the Contractor in writing within a reasonable time, whether in his opinion the event causing the delay is one which, in principle, entitles the Contractor to an extension of time.

3.6.4 The Contract Administrator must adjust the date for completing the work, if progress of the work is affected and is directly caused by:

- (i) the act or failure to act by any one or more of the following persons mentioned below or anyone within their control:

- (a) the Employer;
- (b) the Contract Administrator; or
- (c) other parties engaged by the Employer.

- (ii) exceptionally inclement weather;

- (iii) changes in the scope of work;

- (iv) if the Contractor suspends the work based on provisions in this-contract; or

- (v) a force majeure.

3.6.5 After assessing the impact of the disruption, the Contract Administrator may adjust the date for completing the work to be earlier or later than a previous date for completing the work, but the date so adjusted must not be earlier than the original date for completing the work as stated at **C.7 (Part C of Appendix)**.

3.6.6 The Contract Administrator must revise the date for completing the work and fix the new date for completing the work in a written certificate clearly identified as an Extension of Time Certificate.

3.7 *Practical Completion and Practical Completion Certificate*

3.7.1 When the Contractor considers that he has achieved completion of the work sufficient to enable the Employer to take possession thereof, he must notify the Contract Administrator to that effect.

3.7.2 Within 7 days of receipt of such notice, the Contract Administrator must carry out an inspection of the works and must either:

- (i) inform the Contractor that in his opinion, the Contractor has achieved practical completion; or

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- (ii) give instructions to the Contractor specifying all the works which in his opinion are required to be completed in order to achieve practical completion.

3.7.3 When the Contract Administrator is satisfied that the Contractor has achieved practical completion, he must within 7 days issue a Practical Completion Certificate to certify the date of practical completion.

3.7 Completion of Outstanding Works and Remedying Defects

3.8.1 The Contractor must complete any outstanding works and remedy any defect within a period of 12 months from the date stated in the practical completion certificate.

3.8.2 The Contractor must complete all such works in a timely manner or within such time as may be specified by the Contract Administrator.

3.9 Defect Liability Period and Final Completion Certificate

3.9.1 The Contract Administrator must issue a certificate clearly identified as a Final Completion Certificate:

- (i) when all the defects notified by him to the Contractor have been made good to his reasonable satisfaction; or
- (ii) at the end of the defects liability period stated at **C.9 (Part C of Appendix)**, whichever is later.

3.10 Sectional Completion

3.10.1 Before practical completion of the work, the Contract Administrator may certify practical completion of sections of the works:

- (i) If the description of the sections of the work and the dates for starting and completing the various sections of the work are stated at **C.6 (Part C of Appendix)** and **C.7 (Part C of Appendix)**, or elsewhere in this contract; or
- (ii) If the Employer, with the consent of the Contractor, decides to take over any part sections of the work.

3.10.2 If the Contract Administrator certifies practical completion of such sections of the work, all provisions in this contract (except the provisions on performance

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security deposit and insurance) will apply to each section of the work adjusted accordingly as if each section was a separate contract.

3.11 *Non-Completion and Compensation for Late Completion*

- 3.11.1 If the Contractor does not complete the work on or before the date for completing the work as specified, the Contract Administrator may issue a “Certificate of Non-Completion” to that effect.
- 3.11.2 If subsequently the date for completing the work is adjusted by the Contract Administrator, any earlier “Certificate of Non-Completion” becomes void. The Contract Administrator must then issue a new “Certificate of Non-Completion”.
- 3.11.3 Upon the issue of a “Certificate of Non-Completion”, the Employer is entitled to recover from the Contractor, financial compensation for late completion.
- 3.11.4 Financial compensation for late completion is calculated for delay between the time when the Contractor’s work should have been completed and the time when the work is actually completed as confirmed by the Contract Administrator in a Certificate of Practical Completion.
- 3.11.5 The Employer and the Contractor may pre-agree on the rate for financial compensation for late completion as liquidated and ascertained damages at the rate stated at **C10 (Part C of Appendix)**.

3.12 *Shortage of Materials*

- 3.12.1 The Contractor shall ensure that during all phases of the performance of the Contract, he has adequate materials on site and shall ensure that adequate supplies of materials will be available to him for execution of the Contract.
- 3.12.2 If despite all precautions taken by the Contractor, he encounters a shortage of materials on the local market which affects directly the execution of the works, then the Contractor may upon submission of all supporting evidences to the Contract Administrator, be exceptionally entitled to an extension of time, provided that the Contract Administrator is convinced that there was in fact such a shortage.
- 3.12.3 Such extension of time does not entitle the Contractor to any claim for additional payment.

4 Payment

4.1 *Advance Payment and Advance Payment Security*

- 4.1.1 The Contractor may request for an advance payment up to an amount of 10% of the Contract Price exclusively for the costs of mobilization and materials procurement in respect of the works.
- 4.1.2 The Employer must effect payment of the advance stated at **C.11 (Part C of Appendix)** within the time stipulated from the date of issue by the Contract Administrator of the Advance Payment Certificate. Before the advance payment is made, the Contractor must carry out the execution of the contract and submit the Performance Security.
- 4.1.3 The Contractor must provide an unconditional guarantee from a local bank or insurance company acceptable to the employer as security in respect of the advance payment in a form acceptable to the Employer. Such guarantee must remain effective until the Advance Payment has been repaid in full.
- 4.1.4 The Contractor must repay the advance as stated at **C.11 (Part C of Appendix)** in monthly installments and the full amount must be repaid prior to the issue of the practical completion certificate. The repayment must be effected by deductions from interim payment due to the Contractor.

4.2 *Payment Applications, Payment Certificates, and Payment*

- 4.2.1 At the end of each month, the Contractor must submit an application for payment for the work done and all other claims as provided in this contract.
- 4.2.2 By the 15th of the following month, the Contract Administrator must value and certify the work done and all other amounts as provided in this contract in a payment certificate.
- 4.2.3 If the parties agree to any other payment arrangements such as fortnightly payments or stage payments, the payment structure outlining the amount and time for payment must be clearly stated and attached as part of the contract.
- 4.2.4 Where other payment arrangements have been agreed, the Contract Administrator must then certify the payment based on such arrangements.
- 4.2.5 The Employer must pay the Contractor the Net Amount Due stated in the payment certificate not later than the time stated at **C.12 (Part C of Appendix)**.

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4.2.6 If payment of any sum payable under the contract is delayed, the Contractor shall be entitled to receive Simple Interest on the amount unpaid during the period of delay.

4.2.7 The Simple Interest shall be calculated on a daily basis at the rate of 2% per annum above the Repo Rate applicable during the period of delay.

4.3 Contents of Payment Certificates

4.3.1 Except if agreed differently, all payment certificates must include additions, deductions and net amount due as described below.

4.3.2 **Additions.** The values of the following items must be added:

- (i) Cumulative value of the work properly done.

The Contract Administrator must value the cumulative value of the work properly done based on the actual work done using the “Breakdown of Works and Prices”. If there is no Breakdown of Works and Prices, then the work must be valued using rates in the following order of priority:

- (a) rates in the bills of quantities;
- (b) rates in the schedule of rates; and
- (c) fair and reasonable rates.

- (ii) (a) The net value of the changes to the work including additions and omissions properly instructed by the Contract Administrator and properly done by Contractor.

If the changes to the work is similar to that provided in this contract, the Contract Administrator must value the changes to the work based on the Breakdown of Work and Prices for the Contractor’s work. If a Breakdown of Work and Prices is not available, then the Contract Administrator must value the changes to the work using rates in the following order of priority:

- rates in the bills of quantities; or
- rates in the schedule of rates; or
- fair and reasonable rates.

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- (b) If the changes to the work is not similar to that provided in this contract, the Contract Administrator must value the changes to the work using:
 - fair and reasonable rates; and if the work cannot be measured then,
 - day work rates for the provision of materials, plant, equipment, overheads and profits.
- (iii) A percentage, as stated at **C.13 (Part C of Appendix)**, of the value of materials for the work delivered on site.
- (iv) A percentage, as stated at **C.14 (Part C of Appendix)**, of the value of materials for the work stored off-site, provided the materials are properly insured, clearly labelled and covered by a session of rights.
- (v) Compensation for direct financial loss and expense, if any, valued by the Contract Administrator.

4.3.3 Deductions.

Deduct the total of all of the following:

- (i) The cumulative value certified under the previous payment certificate.
- (ii) Compensation for delay in completion by the Contractor as provided in this contract, if applicable.
- (iii) Repayment of Advance Payment if any.
- (iv) The adjustment in the value of the finished work due to part of the works not done in accordance with the provisions of this contract and which is no longer required to be rectified by the Contractor.
- (vi) The cost of rectifying works not done in accordance with the provisions of this contract and which the Contract Administrator has involved others to rectify.
- (vi) Compensation for direct financial loss and expense incurred by the Employer, if any, valued by the Contract Administrator following termination of the Contractor's employment as provided in this contract.
- (vii) A percentage, as stated at **C.15 (Part C of Appendix)**, of the value of work done included in the payment certificate as a retained amount.

4.3.4 *Net Amount Due*

The net amount due is the difference between total Additions and total Deductions. This amount must be stated in all payment certificates. The net amount due is the amount that the Employer must actually pay to the Contractor.

4.4 *Final Account, Release of Retained Amount and Final Payment Certificate*

4.4.1 The Contract Administrator must finalise the final account not later than 30 days after the issue of the Final Completion Certificate.

4.4.2 The Contract Administrator must certify the release of half of the Retained Amount in a payment certificate issued not later than 7 days after the Practical Completion Certificate is issued. The Contract Administrator must certify the release of the second half of the Retained Amount in a Final Payment Certificate. The Final Payment Certificate must be issued not later than 14 days after the Final Completion Certificate is issued.

4.5 *Withholding Payment*

4.5.1 The Contract Administrator shall have the right to withhold or set-off against any payment due or to become due to the Contractor, any amount due or owing to the Employer by the Contractor.

4.5.2 Where the Contract Administrator intends to withhold or set-off payment of any amount a written notice must be given to the Contractor not later than 7 days before the final date for payment. The notice shall state the amount proposed to be withheld and the ground for withholding the payment. If there is more than one ground, the amount attributable to each ground shall be clearly stated.

4.5.3 Where an amount due to the Contractor is not paid in full by the final date for payment, and no notice of intention to withhold payment has been given, the Contractor may suspend the work under this contract. This right is subject to the Contractor first giving the Contract Administrator not less than 14 days' notice in writing of such intention, stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance shall cease when the Employer makes payment in full of the amount due.

5 *Quality, Safety, Health, and Environment Obligations*

5.1 *Quality*

5.1.1 The Contractor shall use materials in accordance with the specifications or if there are no specified requirements, the materials shall be approved by the Contract Administrator.

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5.1.2 If during the performance of the Works, the Contract Administrator is of the opinion that any material or work, whether fixed or not, is not satisfactory or if he discovers any defect before the issue of the final completion certificate, the Contract Administrator must issue a notice to the Contractor clearly stating the default and may direct its removal or correction. If the rectification is not carried out immediately, or within the time instructed, the Contract Administrator, must:

- (i) Instruct the Contractor to carry out the rectification, within 14 days from the date of the instruction, or
- (ii) Instruct the Contractor not to carry out the remedial work and then adjust the value of the work done in the Payment Certificate.

5.1.3 If the Contractor does not rectify the default within 14 days from the date of receipt of the notice, the Contract Administrator may then appoint others to rectify the defects. The cost of rectifying the defects is then recovered by way of deduction from any money due or to become due to the Contractor.

5.2 *Safety, Health, and the Environment*

5.2.1 The Contractor shall:

- (i) keep the site clean and safe at all times;
- (ii) comply with all safety, health, and environment provisions in this contract if any; and
- (iii) comply with all laws relating to safety, health, and the environment.

6 Termination

6.1 *Termination of the Contractor's Employment by the Employer*

6.1.1 The Employer will be entitled to terminate the Contractor's employment under this Contract if the Contractor defaults in one or more of the following respects:

- (i) persistently does not proceed with the work in a regular and timely manner despite several notices in respect thereof;
- (ii) fails without reasonable cause to commence the work despite receiving a notice from the Contract Administrator to commence the work;
- (iii) suspends performance of the work before issue of the final completion certificate without valid grounds as provided in this contract;

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- (iv) persistently refuses or neglects to comply with a notice or an instruction from the Contract Administrator;
- (v) does not provide the Performance Security within the time provided in the contract; and/or
- (vi) subcontracts out any work without prior written consent from the Contract Administrator.

6.1.2 The Contract Administrator may give a written notice to the Contractor stating clearly the default. In the notice, the Contract Administrator must also instruct the Contractor to rectify the default and must warn the Contractor of the possibility of a termination if the default is not rectified.

6.1.3 If following the notice, the Contractor does not rectify the default within 14 days as from the date the Contractor receives the notice, the Employer may then terminate the Contractor's employment under this contract in writing within seven days after the expiry of the 14 days' notice period.

6.2 Termination of the Contractor's Employment by the Contractor

6.2.1 If the Employer does not pay the amount due to the Contractor in accordance with the provisions of this contract, then the Contractor may give a written notice to the Employer for non-payment. The Contractor may warn the Employer of the possibility of a termination or suspension if the amount due to him is not paid.

6.2.2 If following the notice, the Employer does not effect payment within 30 days from the date of receipt of the notice, the Contractor may then either:

- (i) suspend the work by giving a written notice to suspend work not later than 7 days after the 30 days' notice period; or
- (ii) terminate the Contractor's employment under this contract which must be done in writing not later than 7 days after the expiry of the 30 days' notice.

6.3 Compensation Following Suspension or Termination

6.3.1 Following suspension of the work or valid termination of the Contractor's employment, the party who is in breach of this contract must compensate the other party for all direct financial losses and expenses incurred by the other party.

6.3.2 Upon receipt of a valid claim from either the employer or the Contractor the Contract Administrator must certify all compensation for direct financial losses and expenses following suspension of the work or following termination of the Contractor's employment in payment certificates.

6.4 *Procedures Following Termination of the Contractor’s Employment*

6.4.1 Following termination of the Contractor’s employment under this contract:

- (i) the Contract Administrator must continue to administer this contract;
- (ii) the Contract Administrator must decide and issue instructions to the Contractor on all plant, equipment, material and labour that are to be retained on the site and those that are to be removed from the site. The instructions must be issued not later than 7 days from the date of termination of the Contractor’s employment under this contract;
- (iii) the Contractor when instructed in writing by the Contract Administrator must demobilise from the site and hand-over possession of site to the Employer within 7 days from the date of termination of employment;
- (iv) the Contractor must submit a final claim under this contract not later than 30 days from the date of termination of his employment under this contract; and
- (v) the Contract Administrator must, not later than 30 days from the date of receipt of the final claim, prepare a final payment certificate based on the provisions of this contract.

7 *Dispute Resolution*

7.1 *Negotiation*

7.1.1 At any time, if differences or disputes arise between the parties in connection with this contract, (including any decision or certification by the Contract Administrator) then either party shall give the other a written notice to that effect clearly identifying and providing details about the dispute. The parties must try to resolve the dispute by negotiation and reach a settlement.

7.2 *Conciliation*

7.2.1 At any time during or after the execution of this Contract, either party may request in writing that a dispute under this Contract be resolved by conciliation. The written request must state the matter of disagreements.

7.2.2 The parties may agree upon the appointment of a Conciliator. Where the parties fail to agree within 14 days on the appointment of a Conciliator, either party may write to the person named at **C.16 (Part C of Appendix)** for him to appoint a Conciliator.

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- 7.2.3 Once the Conciliator accepts the nomination, and after all his terms & conditions have been agreed, he is considered appointed.
- 7.2.4 Both parties must comply with all instructions, procedures and rules decided by the conciliator.
- 7.2.5 The Conciliator must act impartially between the parties and will act as a mediator for the resolution of the dispute. If no settlement is reached within 15 days fixed for the conciliation or other such period agreed by the parties and the Conciliator, then the Conciliator makes a recommendation which is binding on the parties.
- 7.2.6 The Conciliator may revise the Contract Administrator's decisions and certificates. The Conciliator may also make decisions and prepare any certificate which should have been done by the Contract Administrator within a fixed time frame between 15-30 days.
- 7.2.7 The Conciliator fees shall be equally apportioned between the two parties.
- 7.2.8 The Employer and Contractor must comply with all decisions made by the Conciliator. The Contract Administrator must also comply with all decisions made by the Conciliator when administering the contract.
- 7.2.9 Only an arbitration or the court can review or overrule the Conciliator's decisions.

7.3 *Arbitration*

- 7.3.1 If the Employer or Contractor is dissatisfied by the decisions or recommendation of the Conciliator, the dispute may be referred to arbitration. Any issue decided by the Conciliator may be reviewed or overruled by an Arbitrator.
- 7.3.2 Arbitration may only be started in case of any one of the following events:
 - (i) when the work has been certified to be practically complete by the Contract Administrator; or
 - (ii) if the Contractor's employment under this contract has been terminated; or
 - (iii) if one party considers that his obligations under the contract have been completed; or
 - (iv) if, at any time both parties agree to go to arbitration, even before the occurrence of any of the events referred to above.
- 7.3.3 The parties may agree on the appointment of an Arbitrator. Where the parties fail to agree within 14 days on the appointment of an Arbitrator, either party may

PART B – TERMS OF CONTRACT

write to the person named at **C.17 (Part C of Appendix)** for him to appoint an Arbitrator.

- 7.3.4 Once an Arbitrator accepts a nomination, and after having agreed on his terms and conditions he is considered appointed. Both parties may agree on the procedures and rules to be adopted in the arbitration, failing which the Arbitrator shall then decide on those matters.
- 7.3.5 Both parties must comply with all instructions, directions, and decisions of the Arbitrator.
- 7.3.6 The Arbitrator must be independent and act impartially between the parties. The Arbitrator must issue a written award based on the provisions of the contract and the law.
- 7.3.7 The Arbitrator's written award including decisions on costs of reference, costs of the Award and the proportion to be paid by each party for the Arbitrator's fees and reimbursable relating to the arbitration is final and binding on both parties.

PART C – APPENDIX TO AGREEMENT AND TERMS OF CONTRACT

Items	Reference to Part A and Part B of this Agreement	Particulars	
C.1	A.1 Date of this Contract		
C.2	A.2 Parties to the Contract	Employer	Contractor
C.2.1	Authorised Signature		
C.2.2	Name of person who signs this contract		
C.2.3	National Identity Card No.		
C.2.4	Designation		
C.2.5	Name of Organisation		
C.2.6	Office Address		
C.2.7	Telephone No.		
C.2.8	Mobile No.		
C.2.9	Fax No.		
C.2.10	E-mail Address		

PART C – APPENDIX TO AGREEMENT AND TERMS OF CONTRACT

Items	Reference to Part A and Part B of this Agreement	Particulars
C.3	A.3 Contract Administrator's Details	
C.3.1	Name of Authorised Person	
C.3.2	Name of Organisation	
C.3.3	Official Address	
C.3.4	Telephone No.	
	Mobile No.	
C.3.5	Fax No.	
C.3.6	E-mail Address	
C.4	A.4 Short Title of the Project	
C.5	A.6 (xi) Other Documents, other than those already listed at A.6 (i) to (x) which are to form part of this Contract	

PART C – APPENDIX TO AGREEMENT AND TERMS OF CONTRACT

Items	Reference to Part A and Part B of this Agreement	Particulars
C.6	A.7 B 3.1.1 B.3.5.1(i) B 3.10.1 (i) Date for starting the work Date for starting section (s) of the work (if applicable)	
C.7	A.8 B 3.4.1 B 3.5.1 (i) B 3.10.1 (i) Date for completing the work Date for completing section(s) of the work (if applicable)	
C.8	A.9 Price (inclusive of VAT) for the Contractor's work (Mauritian Rupees)	(In Words) _____ (In Figures) _____
C.9	B 3.9.1 (ii) Date provided for the issue of Final Completion Certificate	12 months from the date the Contractor completes the work as stated in the Practical Completion Certificate (Defects Liability Period)
C.10	B 3.11.5 Financial compensation for delay by Contractor pre-agreed as Liquidated and Ascertained Damages (Maximum value 15% of Contract Price)	Amount per day (MUR) (In Words) _____ (In figures) _____

PART C – APPENDIX TO AGREEMENT AND TERMS OF CONTRACT

Items	Reference to Part A and Part B of this Agreement	Particulars
C.11	<p>B.4.2.5</p> <p>Amount of Advance Payment</p> <p>Time for payment of advance payment</p> <p>Amount of repayment of advance</p>	<p>_____ (MUR)% of price for the work or pro rata with</p> <p>not later than _____ days from the date of an Advance Payment Certificate</p> <p>Equal monthly instalment of _____ (MUR) or pro rata based on work executed</p>
C.12	<p>B 4.2.5</p> <p>Time for payment</p>	<p>Not later than _____ days from the date of payment certificate</p>
C.13	<p>B 4.3.2 (iv)</p> <p>Percentage of value of materials delivered on site to be included in payment certificates</p>	<p>_____ %</p>
C.14	<p>4.3.3 (vii)</p> <p>Percentage of value of materials stored off-site to be included in payment certificates</p>	<p>_____ %</p>
C.15	<p>B 4.3.3 (vii)</p> <p>Percentage of retention money calculated as a total of work done in payment certificates</p>	<p>_____ %</p>

PART C – APPENDIX TO AGREEMENT AND TERMS OF CONTRACT

Items	Reference to Part A and Part B of this Agreement	Particulars
C.16	B 7.2.2 Person who nominates a Conciliator	The Chairperson of CIDB
C.17	Person who nominates an arbitrator	The Chairperson of CIDB or The Court

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