Power to terminate contractors:

Termination of contractors shall follow in any of the following circumstances:

I. Automatically on approval of Ombudsman for following:

For any violation of the company's Transparency & Ethics policy, where such violation is probed and upheld by the Ombudsman. In such cases, Ombudsman shall inform concerned PD/PMH, COO and HoD-Procurement of the circumstances and then intimate the vendor about the said termination.

II. Automatically on approval of PD/PMH for following:

(See '**Debits to Contractors'** policy): In the event that any contract ends up with more than 12.5% (10% x 125%) of the contract value being debited to the Contractor for the following reasons:

a) Employing extra resources (labour / material / equipment) to get works done as required.

b) Getting incomplete work completed in contractor's scope through Lodha or from 3rd party contractors.

It shall mean an automatic termination of the contract.

III. Automatically on approval of COO, with recommendation of Level 0/1 of that site, for following:

a. Contractor does not mobilize, with atleast 50% of required manpower and material/equipment, at site within 30 days of written note (email/letter) from CM asking him to do so (such note should only be sent if work front is available or will become available within the said period of 30 days).

b. If billing in any 2 consecutive months (or 3 months out of last 12 months) is less than 'Contract Value / Contract Period (in month) x 50%' eg. If contract value of a 25 month contract period if 10 cr, and if monthly billing is < 10 cr / 25 x 50% = 20 Lakhs for any 2 consecutive months (or 3 months out of last 12 months) (Note: excludes period of work stoppage asked for by company due to liaison or land reasons).

IV. With joint approval of COO & PD/PMH, on recommendation of head of the site from Const Mgmt (level 2 or upwards) for other reasons of non-performance:

a. In such cases:

i. The CM team will first give a warning in writing, along with copy to Procurement team, with specific time period and plan for improvement (min. 7 - max. 45 days). This may be dispensed with if contract value is less than Rs. 25,00,000/-.

ii. In case of lack of desired improvement in stated period, the head of the site from Const Mgmt (level 2 or upwards) shall have the power to recommend termination. This recommendation will also be accompanied by a make up plan, clearly stating the time and cost impact of termination and how the Const Mgmt team plan to make up for the same.

iii. Based on this recommendation, termination decision will be made jointly by COO and concerned PD/PMH. This decision shall be made no later than 7 days from 2). In case of Contracts having value less than Rs. 25,00,000/-, this decision may be made by the PD/PMH of the CM team heading that site, without COO approval. If no PD/PMH on the site, all termination decisions require COO approval.

Process to be followed once decision to terminate is taken:

1. While exercising the power to terminate, competent authority (i.e. COO, PD/PMH, Ombudsman) should bear in mind that any termination has adverse time (time taken to appoint new contractor and thereafter to mobilize) and cost (higher cost for new contractor) impacts and hence, should be taken with the knowledge of the potential adverse impact on the project plan, which PD/PMH is responsible to deliver. Termination is a non-trivial action and should be taken after taking full cognizance of the repercussions, including long-term relationship of co with the said contractor.This is to be used solely to ensure that the project's targets (time, quality, costs, safety) are achieved. Under no circumstances, will this (termination of contractor) be allowed to be used as an excuse for deviation from project targets. Hence, having a reasonable and workable makeup plan as per b) above is of extreme importance.
2. Once decision to terminate is taken, the relevant package team in Procurement (with cc to HoDProcurement and IPD (Vendor Management team)) should immediately be informed and they will begin the process of finding a replacement. Procurement will ensure appointment of a replacement contractor within lead time specified for the said contract (max. 30 days) and mobilization at site in 15 days thereafter. Alternatively, for the balance scope of works, if there is pre-empaneled contractor willing to do the same scope of work and the same/lower rate, the said contractor can be finalized by PD/PMH and forwarded to Procurement who will issue necessary Work Order for the said contractor within 3 working days.
3. CM should immediately start taking following steps:
    a. (if possible) Hold a meeting and minutes signed off on the spot. During the meeting it is often possible to bear upon the defaulting contractor to leave the work on his own. If termination letter is to be issued, it shall be issued by the Commercial Manager on the

site with signature of PD/PMH and such letter shall contain reasons for terminatiom, reference to notice given under 1. Hereinabove (if applicable) and the underlined portions of clause 9 a. and b. hereinbelow.

b. After termination decision is communicated, take joint measurement of completed works and material at site. If contractor does not show up for joint measurement inspite of notice (by email or by Speed Post) of min. 3 working days (after delivery of the notice), the measurement can be done by CM with sign off by PD/PMH and a copy of the same is emailed to the Contractor, with cc to Lodha Estimation, within 24 hours of the measurement being done with notice that 'you have failed to remain present for the joint measurement inspite of notice given to you. Measurement has now been completed and a copy of the same is attached and the same shall be binding on all concerned.'

4. It should be noted that is a blacklisted vendor is working on other sites of thecompany, the COO will make a decision whether to also terminate at those sites or not, in discussion with HOD-Procurement after assessing the risks/costs involved.

5. IPD (VMT) shall enter the blacklisting status into the Vendor Management system:
   a. For termination due to I. (TEP violation), the blacklisting shall be permanent.
   b. For termination due to II, III or IV, the blacklisting shall be for a period of 12-24 months (as recommended by competent authority (COO, PD/PMH). If no recommendation, it shall be presumed to be 12 months. In such cases,
      - after the termination period, the vendor can join back; however the vendor's eligibility will be reduced by one level e.g. a contractor initially eligible for Aspi projects will be eligible for Casa projects in case of termination and re-joining.
      - The financial capacity of a terminated vendor will also stand reduced by 10% at the time of re-joining
      - Both the eligibility and the financial capacity of the vendor will be reviewed and changed if required after 6 months
      - In case the vendor is terminated for a second time,blacklisted shall be forever.
   c. All group's firms/companies, where the key person of the blacklistedcontractor plays a key role or has an equity interest of 25% or higher, shall also be simultaneously blacklisted for the same period by IPD (VMT).
   d. IPD (VMT) shall inform Director-Operations, via email, about any blacklisting along with reasons thereof.

6. **Procurement should seek to ensure that atleast for the key 'critical' contracts viz. Civil, Façade (Windows, External Paint, Cladding), Plumbing, Electrical, Elevators and Flooring, the quality of contractors chosen is sufficient to meet the stated objectives (based on Time, Cost and Quality criticality) and the stage of terminating any contractors in these 6 areas is avoided as far as possible. Hence, in these appointment, quality and intent of contractor is very important and should be considered at time of appointment, rather than just seeking lowest cost.** In case of Cladding/glazing/curtain walling contractors, termination should be avoided in all but most

extreme circumstances, since there are huge losses in terms of time and cost due to inability to use design of original contractor, in case the contractor is changed.

7. **It is clarified that 'descoping' is the same as 'termination' and all provisions of this policy shall apply.**
8. Procurement should ensure that:
   a. Work orders are specific regarding what constitutes contractor's default for which provision of termination clause can be invoked.
   b. Work order / agreement needs to have an arbitration clause.
9. In case of termination,
   a. the contractor shall continue to be responsible for the entire scope of works (not just what he has completed)(retention moneys shall be first be used towards this and only at end of retention period shall it be applied towards any other claims that the company has from the said contractor).
   b. the contractor shall be responsible for the 125% levy/penalty on the value of the balance works, as per the rate at which the new contract is awarded for the balance works. The debit for this value should be done prior to short-closing, hence, short-closing of the existing contract can be done only when the value of the new contract for the balance works is known. The debit has to be done as follows:
      - C: Total Contract Value (at time of termination)
      - B: Value billed till time of termination (including termination bill as approved)
      - N: Value of new contract for balance works
      - Debit = N x 125% - (C – B))
   c. This debit shall be recovered as follows:
      i. First, from the performance guarantee (BG/updated Cheque) of the contractor.
      ii. Then, if any amount is still unrecovered, from any unpaid (current or future) bills of the contractor at any other plant of the company.
      iii. Then, if any amount is still unrecovered, through demand notice to the contractor and filing of suit in Court (decision on filing of suit to be made by Level1 or higher of Procurement; mandatory for all unrecovered amounts > 1* cr.)
      iv. Then, if any amount is still unrecovered, from the retention amount of the contractor wrt the said plant at the end of the retention period (till retention period is over, retention moneys are to be kept aside for any rectifications related to the works done)

* to be increased by 25% on 1st April of each leap year starting 2016.