

VOLUME 4 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

SECTION XII - GENERAL CONDITIONS OF CONTRACT (GC)

1. GENERAL CONDITONS OF CONTRACT

- A. The Conditions of Contract comprise the “General Conditions”, which form part of the “Conditions of Contract for EPC/Turnkey Projects”; Second Edition 2017 published by Fédération Internationale des Ingénieurs-Conseils (FIDIC), and the following “Particular Conditions”, which include amendments and additions to such General Conditions.

Copies of FIDIC Conditions of Contact, referred to above, may be obtained from:

FIDIC Secretariat
P.O. Box 86
CH 1000 Lausanne 12
Switzerland
Fax No: +41 21 653 5432

Refer to above FIDIC document which is an integral part of this Contract.

SECTION XIII - PARTICULAR CONDITIONS OF CONTRACT

PART A - CONTRACT DATA

Part A - Contract Data

The following Particular Conditions shall supplement the General Conditions. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions.

Contract Sub-Clause	Data	Data
1.1.2.2	Employer's Name and address	Ministry of National Planning Housing and Infrastructure Aameemee Magu Maafannu, Male' 20392 Republic of Maldives
1.1.2.2	The Employer's Representative:	TBD
1.1.2.3	Address of Contractor for communications:	TBD
1.1.2.4	Engineer's Name and Address	RW Armstrong
1.1.2.4	Engineer's Representative	TBD
1.1.3.3	Time for Completion:	365 days
1.1.3.7	Defects Notification Period	365 days
1.1.4.2	Accepted Contract Amount	TBD
1.3	Agreed methods of electronic transmission	E- Mail
1.3 (d)	Address of Employer for communications:	Ministry of National Planning Housing and Infrastructure Aameemee Magu Maafannu, Male' 20392 Republic of Maldives
1.3 (d)	Address of Engineer for communications:	RW Armstrong
1.3 (d)	Address of Contractor for communications:	TBD
1.4	Contract shall be governed by the law of	Laws of the Republic of Maldives
1.4	Ruling Language:	English
1.4	Language for Communications:	English
1.8	Number of additional paper copies of Contractor's Documents	2

Contract Sub-Clause	Data	Data
2.1	After the Contract comes into full force and effect, the Contractor shall be given right of access to all or part of the Site within	14 days
2.1	The Site Possession Date shall be :	TBD
2.1	The Site is Located at :	Maafaru International Airport, Maafaru Island, Noonu Atoll
2.4	Employer's financial arrangements:	The Employer has an approved budget from the Abu Dhabi Fund for Development (ADFD). Payments will be made only at the request of the Employer in accordance with contract terms and conditions and in accordance with financial legislation in force. The payments excluding GST will be paid in USD to the contractor's bank account. GST will be paid in MVR to a bank account in Maldives.
4.2	Performance Security (as percentage of the Contract Price in Contract Currencies):	10%
6.5	Normal Working Hours on the Site	As-Suited for Works on site
8.1	Commencement of Works :	TBD
8.3	The amount to be withheld from montly interim payment for late submission of an updated program is :	10%
8.8	Delay Damages payable for each day of delay	0.25% of the final Contract Price per day, in the currencies and proportions in which the Contract Price is payable.
8.8	Maximum Amount of Delay Damages	15% of the Final Contract Price
14.2	Maximum total amount of Advance Payment (as a percentage of the final Contract Price)	15%
14.2	Maximum percentage deductions for the repayment of the Advance Payment	15%

Contract Sub-Clause	Data	Data
14.2	Currency or Currencies of Advance Payment	US Dollars (USD\$)
14.2	Number and Timing of Advance Payment installments	1 installment
14.2	Start Repayment of Advance Payment	First Interim Payment Certificate
14.3, 14.9	Percentage of Retention	10%
14.9	limit of Retention Money (as a percentage of Contract Price) per interim invoice	10%
14.15	Currencies for Payment of Contract Price	Amount excluding GST will be paid in USD\$. GST amount will be paid in MVR and reimbursed back to the contractor in MVR
14.6	Minimum Amount of Interim Payment	USD \$100,000
14.4, 14.7	period of payment (<u>After</u> Original Signed Invoice is approved by Consultant)	45 days
14.7	Period for the Employer to make interim payments to the Contractor under Sub-Clause 14.6 [Interim Payment] (Number of days After original Signed Invoice is approved by Consultant)	45 days
14.7	Period for the Employer to make interim payments to the Contractor under Sub-Clause 14.13 [Final Payment] (Number of days After original Signed Invoice is approved by Consultant)	56 days
14.7, 14.13	Period for the Employer to make final payment to the Contractor (Number of days After original Signed Invoice is approved by Consultant)	56 days
14.5, 14.6	Maximum Plant and Materials for payment when shipped with Bills of Lading, certified shipping certificate and full insurance coverage.	15%

Contract Sub-Clause	Data	Data
14.5, 14.6	Maximum Plant and Materials payment when delivered to the Site	15%
19	Period for submission of insurance	60 days
19	Minimum Insurance for Professional Indemnity	10%
19	Minimum amount of insurance required for injury to persons and damage to property	USD \$5,000,000 per occurrence, USD \$25,000,000 aggregate
1.14	Total Liability of the Contractor to the Employer under or in connection with the Contract	Contractor to hold Employer harmless

SECTION XIV - PARTICULAR CONDITIONS OF CONTRACT

PART B - SPECIAL PROVISION

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Part B - Special Provisions

The following Particular Conditions shall supplement the General Conditions. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions.

1. GENERAL PROVISIONS

This Contract is an EPC Contract and the Conditions of Contract for EPC/Turnkey Projects, Second Edition 2017 (Silver Book) apply, with the exception of the changes below.

1.1. DEFINITIONS

Add the following to the end of Sub-Clause 1.1:

“Letter of Acceptance” means the letter of formal acceptance, signed by the Employer, including any annexed memoranda comprising agreements between and signed by both Parties.

1.2. LAW AND LANGUAGE

Add the following to the end of Sub-Clause 1.4:

The Contract shall be governed by and constructed in accordance with the laws of the Republic of Maldives.

All letters and communication shall be made in English.

2. THE CONTRACTOR

2.1. CONTRACTOR'S GENERAL OBLIGATIONS

Delete Sub-Clause 4.1 and substitute with the following:

The Contractor shall design, execute and complete the Works in accordance with the Contract, and shall remedy any defects in the Works. When completed, the Works shall be fit for the purposes for which the Works are intended as defined in the Contract. The Contractor shall employ the key personnel named in the Contract Data. Such persons can be substituted only with written approval of the Engineer

The Contractor shall provide the Plant and Contractors Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

The Works shall include any work which is necessary to satisfy the Employer's Requirements, or is implied by the Contract, and all works which (although not mentioned in the Contract) are necessary for stability or for the completion, or safe and proper operation, of the Works.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works.

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

2.2. PERFORMANCE SECURITY

Delete Sub-Clause 4.2 and substitute with the following:

The Contractor shall obtain (at the Contractor's cost) a Performance Security to secure the Contractor's proper performance of the Contract, in the amount and currencies stated in the Contract Data. If no amount is stated in the Contract Data, this Sub-Clause shall not apply.

2.2.1. Contractor's obligations

The Contractor shall deliver the Performance Security to the Employer within fourteen (14) days after both Parties have signed the Contract Agreement. The Performance Security shall be issued by an entity and from within a country (or other jurisdiction) to which the Employer and ADFD gives his/her consent and shall be in the form annexed to the Particular Conditions, or in another form agreed by the Employer

(but such consent and/or agreement shall not relieve the Contractor from any obligation under this Sub-Clause).

The Contractor shall ensure that the Performance Security remains valid and enforceable until the issue of the Performance Certificate; the Contractor has complied with Sub-Clause 11.11 (Clearance of Site) and until the end of the DLP.

If the terms of the Performance Security specify an expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date twenty-eight (28) days before the expiry date, the Contractor shall extend the validity of the Performance Security until the issue of the Performance Certificate and the Contractor has complied with Sub-Clause 11.11 (Clearance of Site).

Whenever Variations and/or adjustments under Clause 13 [Variations and Adjustments] result in an accumulative increase or decrease of the Contract Price by more than twenty percent (20%) of the Contract Price stated in the Contract Agreement:

- a) in the case of such an increase, at the Employer's request the Contractor shall promptly increase the amount of the Performance Security in that currency by a percentage equal to the accumulative increase. If the Contractor incurs Cost as a result of this Employer's request, Sub-Clause 13.3.1 (*Variation by Instruction*) shall apply as if the increase had been instructed by the Employer; or
- b) in the case of such a decrease, subject to the Employer's prior consent the Contractor may decrease the amount of the Performance Security in that currency by a percentage equal to the accumulative decrease.

2.2.2. Claims under the Performance Security

The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract in the event of:

- a) failure by the Contractor to extend the validity of the Performance Security, as described in this Sub-Clause, in which event the Employer may claim the full amount (or, in the case of previous reduction(s), the full remaining amount) of the Performance Security;
- b) failure by the Contractor to pay the Employer an amount due, as agreed or determined under Sub-Clause 3.5 (*Agreement or Determination*) or agreed or decided under Clause 21 (*Disputes and Arbitration*), within forty-two (42) days after the date of the

agreement or determination or decision or arbitral award (as the case may be);

- c) failure by the Contractor to remedy a default stated in a Notice given under Sub-Clause 15.1 (Notice to Correct) within forty-two (42) days or other time (if any) stated in the Notice;
- d) circumstances which entitle the Employer to terminate the Contract under Sub-Clause 15.2 (Termination for Contractor's Default), irrespective of whether a Notice of termination has been given; or
- e) if under Sub-Clause 11.5 (Remedying of Defective Work off Site) the Contractor removes any defective or damaged Plant from the Site, failure by the Contractor to repair such Plant, return it to the Site, reinstall it and retest it by the date of expiry of the relevant duration stated in the Contractor's Notice (or other date agreed by the Employer).

The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent that the Employer was not entitled to make the claim.

Any amount which is received by the Employer under the Performance

Security shall be taken into account:

- a) in the final payment to the Contractor under Sub-Clause 14.13 (*Final Payment*); or
- b) if the Contract is terminated, in payment due to the Contractor under Sub-Clause 15.4 (*Payment after Termination for Contractor's Default*), Sub-Clause 15.7 (*Payment after Termination for Employer's Convenience*), Sub-Clause 16.4 (*Payment after Termination by Contractor*), Sub-Clause 18.5 (*Optional Termination*), or Sub-Clause 18.6 (*Release from Performance under the Law*) (as the case may be).

2.2.3. Return of the Performance Security

The Employer shall return the Performance Security to the Contractor:

- a) within twenty-one (21) days after the issuance of the Performance Certificate and completion of the DLP; or
- b) promptly after the date of termination if the Contract is terminated in accordance with Sub-Clause 15.5 (*Termination for Employer's Convenience*), Sub-Clause 16.2 (*Termination by Contractor*), Sub-Clause 18.5 (*Optional Termination*) or Sub-Clause 18.6 (*Release from Performance under the Law*).

2.3. SUFFICIENCY OF THE CONTRACT PRICE

Delete Sub-Clause 4.11 and substitute with the following:

The Contractor shall be deemed to:

- a) have satisfied himself as to the correctness and sufficiency of the Initial Contract Price; and
- b) have based the Initial Contract Price on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters and any further data relevant to the Contractor's design.

3. DESIGN

3.1. SAMPLES

Add Sub-Clause 5.9 and include the following:

The Contractor shall submit the following samples/relevant information to the Engineer for pre-construction review in accordance with the procedure for Contractor's Documents described in Sub-Clause 5.2 (*Contractor's Documents*) above:

- a) manufacturer's standard samples of Materials;
- b) samples specified (if any) in the Employer's Requirements; and
- c) additional samples instructed by the Engineer.

Each sample shall be labelled as to origin and intended use in the Works.

3.2. PATENTS AND COPYRIGHT

Add Sub-Clause 5.10 and include the following:

The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any copyrights in connection with drawings specifications and of any patent rights, design trademark, or name or other protected rights in respect of any Constructional Plant or Material used for or in connection with the Works or any of them and from and against all claims proceedings, damages, costs, charges and expenses whatsoever specified and the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation connected with.

4. STAFF AND LABOUR

4.1. HEALTH AND SAFETY OF PERSONNEL

Add the following to the end of Sub-Clause 6.7 with the following:

Contractor shall ensure that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

5. COMMENCEMENT, DELAYS AND SUSPENSION

5.1. COMMENCEMENT OF WORK

Delete Sub-Clause 8.1 and substitute with the following:

Unless otherwise stated in the Contract Data, the Start Date shall be fourteen (14) days after the Letter of Acceptance.

The Contractor shall commence the design and execution of the Works as soon as is reasonably practicable after the Start Date, and shall then proceed with the Works with due expedition and without delay.

5.2. PROGRAMME

Delete the 1st paragraph in Sub-Clause 8.3 and substitute with the following:

The Contractor shall submit an initial programme for the execution of the Works to the Employer within fourteen (14) days after receiving the Notice under Sub Clause 8.1 (*Commencement of Works*). This programme shall be prepared using programming software stated in the Employer's Requirements (if not stated, the programming software acceptable to the Employer).

5.3. DELAY DAMAGES

Add the following to the end of Sub-Clause 8.8 with the following:

The rate per day for liquidated damages shall be calculated as follows:

The liquidated damages for the whole of the works are as: $(CP * 0.0025 * LD)$, where, CP is Contract Price and LD is Late Duration (in calendar days).

The maximum amount of liquidated damages for the whole of the works is 15% (fifteen percent) of the final contract price.

6. DEFECTS AFTER TAKING OVER

6.1. PERFORMANCE CERTIFICATE

Delete Sub-Clause 11.9 and substitute with the following:

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

The Engineer shall issue the Performance Certificate within twenty-eight (28) days after the latest of either;

- a) the expiry dates of the Defects Notification Periods, or
- b) as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects.

A copy of the Performance Certificate shall be issued to the Employer.

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

6.2. CLEARANCE OF SITE

Delete Sub-Clause 11.11 and substitute with the following:

Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site,

If all these items have not been removed within twenty-eight (28) days after the Employer receives a copy of the Performance Certificate, the Employer may dispose of any remaining items.

The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such disposal and restoring the Site and the Contractor shall pay such costs to the Employer.

7. VARIATIONS AND ADJUSTMENTS

7.1. RIGHT TO VARY

Delete Sub-Clause 13.1 and substitute with the following:

The term 'Variation' means:

- a) change in the Employer's Requirements which necessitate any alteration or modification of the design, quality of the Works as described by or referred to in the Employer's Requirements or in the Contractor's Proposals, other than that reasonably necessary for the purposes of remedial works pursuant to Sub-Clause 7.5 (*Defects and Rejection*), including:
 - (i) addition, omission or substitution of any work;
 - (ii) alteration of the kind or standard of any of the materials or goods to be used in the Works; and
 - (iii) removal from Site of any Work executed or Materials or Goods brought by the Contractor for the purpose of the Works.
- b) the addition, alteration or omission of any obligations or restrictions imposed by the Employer in the Employer's Requirements in regard to:
 - (i) access to the Site or use of any specific parts of the Site;
 - (ii) the execution or completion of the Works in any specific order.

A variation may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. A variation shall not comprise the omission of any work which is to be carried out by others.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that

- (i) the Contractor cannot readily obtain the Goods required for the Variation,
- (ii) it will reduce the safety or suitability of the Works, or
- (iii) it will have an adverse impact on the achievement of the Schedule of Guarantees. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

7.2. VARIATION PROCEDURE

Add at the end of Sub-Clause 13.3 to include the following:

The government public finance regulation should be followed for variation approval; all variations are subject to acceptance from the Employer and ADFD. (i.e.: taking written approval from employer for all variation works).

7.3. ADJUSTMENTS FOR CHANGES IN LAWS

Delete Sub-Clause 13.6

8. CONTRACT PRICE AND PAYMENT

8.1. THE CONTRACT PRICE

Delete Sub-Clause 14.1 and substitute with the following:

Unless otherwise stated in the Contract Data

- a) the Contract Price shall be the lump sum as stated in the Letter of Acceptance. The Contract Price shall be exclusive of GST.
- b) The Contractor shall pay all such indirect taxes and duties as levied under the Applicable Law.
- c) Whenever the Contractor is required to pay taxes and duties under the laws of the Republic of Maldives and the applicable laws do not permit exemption of taxes, the Government of Maldives shall reimburse the Contractor for any such taxes, and duties paid by the Contractor under the Contract.
- d) The Government of Maldives shall only reimburse the Contractor for taxes payable under the Contract as per the laws of the Republic of Maldives.
 - (i) The contractor shall pay the Maldivian Inland Revenue Authority for the GST.
 - (ii) For the project GST, the contractor shall submit two (2) invoices.
 - i. The first invoice shall be for the works performed, paid directly by ADFD.
 - ii. The second invoice shall be for the GST (converted to MVR).
 1. The second invoice will be reimbursed directly to the contractor by the MNDPI
- e) Any quantities which may be set out in the tender are estimated quantities and are not to be taken as the actual and correct quantities of the Works which the Contractor is required to check and verify;
- f) This is a lump-sum contract, the Contractor is responsible to inspect the site and verify the quantities before submitting their proposal as no additional payments will be entertained.

8.2. ADVANCE PAYMENT

Delete Sub-Clause 14.2.2 and substitute with the following:

The Employer shall make an advance payment, as an interest-free loan for mobilization and design, when the Contractor submits the bank guarantee to the value of the advance payment in accordance with this Sub-Clause (this bank guarantee should be from a bank registered in the Maldives).

However, with pre-approval from the Employer and ADFD; a bank guarantee from an international bank may be accepted). The total advance payment shall not exceed 10% of Initial Contract Price.

- a) The advance payment will be paid within forty-five (45) days after the original approved advance payment guarantee and performance guarantee has been submitted and received; and
- b) The certified Contractor's invoice has been received at the ADFD offices in Abu Dhabi.

8.3. SCHEDULE OF PAYMENTS

Delete Sub-Clause 14.4 and substitute with the following:

The Employer shall pay to the Contractor:

- a) the advance payment within forty-five (45) days after receiving the documents in accordance with Sub-Clause 4.2 (*Performance Security*) and Sub-Clause 14.2 (*Advance Payment*), whichever is later;
- b) the amount certified in each Interim Payment Certificate within forty-five (45) Days after the Engineer approves the Interim Payment certificate and after receiving the Statement and supporting documents; and
- c) the amount certified in the Final Payment Certificate within fifty-six (56) days after the Employer receives this Payment Certificate.
- d) The days shown in Sub-Clauses 14.4 (a, b, c) refer to timings starting from when the original approved documents reach the ADFD office in Abu Dhabi.

8.4. PAYMENT

Delete Sub-Clause 14.7 and substitute with the following:

The Employer shall pay to the Contractor:

- a) the advance payment within forty-five (45) days after receiving the documents in accordance with Sub-Clause 4.2 (*Performance Security*) and Sub-Clause 14.2 (*Advance Payment*), whichever is later;
- b) the amount certified in each Interim Payment Certificate within forty-five (45) Days after the Engineer approves the Interim Payment certificate and after receiving the Statement and supporting documents; and
- c) the amount certified in the Final Payment Certificate within eighty-four (84) days after the Employer receives the Payment Certificate.
- d) The days shown in Sub-clauses 14.7 (a, b, c) refer to timings starting from when the original approved documents reach the ADFD office in Abu Dhabi.

8.5. DELAYED PAYMENT

Delete Sub-Clause 14.8

8.6. RELEASE OF RETENTION MONEY

Delete Sub-Clause 14.9 and substitute with the following:

Retention will be deducted from the certified invoices until 10% of the contract value is reached.

The full retention amount will be held until the project is completed, handed over and accepted.

After acceptance and upon Completion of the whole of the Works, and

- a) the Engineer has certified that all Defects notified by the Engineer to the Contractor have been completed, and
- b) all items have been corrected, and
- c) the project is accepted by the Employer, then
- d) half of the retention will be repaid to the Contractor (5% of the contract value).

Upon Completion of the whole of the Works, and

- a) after the DLP has passed, and
- b) all items have been corrected regardless if the DLP has passed, then
- c) the remaining retention will be repaid to the Contractor (5% of the contract value)

Note: A Bank Guarantee or any similar type of security will not be accepted for release of the retention. The retention will be held until the end of the project and completion of the DLP, as explained above.

8.7. CURENCIES OF PAYMENT

Add the following to Sub-Clause 14.15.h to include:

GST component of each payment shall be paid in Maldivian Rufiyaa and to the local account given for the prevailing exchange rate at the date of bid submission.

Contract payments, excluding the GST amount, will be paid to Contractors bank account in United States Dollars (USD\$).

9. CARE OF THE WORKS AND INDEMNITIES

9.1. EMPLOYER'S RISKS

Add Sub-Clause 17.7 and include the following:

The risks referred to in Sub-Clause 17.5 (*Indemnities by Employer*) below are:

- a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country;
- c) riot, commotion or disorder within the Country by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors;
- d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity;
- e) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;
- f) use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract;
- g) design of any part of the Works by the Employer's Personnel or by others for whom the Employer is responsible; and
- h) any operation of the forces of nature which is unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions.

10. DISPUTES AND ARBITRATION

10.1. ARBITRATION

Disputes shall be referred to arbitration in accordance with the Arbitration Act of the Republic of Maldives [10/2013].

The place of arbitration shall be: Republic of Maldives

In case, an Arbitration system is not yet established, Court of Law of Republic of Maldives shall prevail.

SECTION XV - CONTRACT FORMS

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LETTER OF ACCEPTANCE

..... [Date]

To:

.....
[Name of the Contractor]

.....
[Address of the Contractor]

This is to notify you that your Bid dated for execution of the *me of the Contract and identification number, as [given in the Contract Data]* for the Contract Price of the equivalent of (.....) *[Amount in numbers and words]* US Dollars (USD\$), as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

We accept/do not accept that **National Tender Board of the Ministry of Finance and Treasury** be appointed as the Adjudicator.

You are hereby instructed to proceed with the execution of the said Works in accordance with the Contract Documents.

Authorized Signature:

Name and Title of Signatory:

Ministry of Planning and Infrastructure

* If the proposer does not accept, this paragraph it may be deleted and replaced with: We do not accept your suggestion for the appointment of the Adjudicator. We have included our suggestion in the proposal, but this suggestion is not a condition of this offer. If this suggestion is not acceptable to you, we propose that the Adjudicator be jointly appointed in accordance with the **PDS**.

FORM OF PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)

By this guarantee We, _____ whose registered office is at _____ (hereinafter called "the Contractor") are held and firmly bound unto _____ (hereinafter called "the Employer") in the sum of _____ for the payment of which sum the Contractor and the Guarantor bind themselves, their successors and assigns jointly and severally by these presents.

Whereas the Contractor by an Agreement made between the Employer of the one part and the Contractor of the other part has entered into a Contract (hereinafter called "the said Contract ") to execute and complete certain Works and remedy any defects therein as therein mentioned in conformity with the provisions of the said Contract.

Now the Condition of the above-written Guarantee is such that if the Contractor shall duly perform and observe all the terms provisions, conditions and stipulations of the said Contract on the Contractor's part to be performed and observed according to the true purport intent and meaning thereof or if on default by the Contractor the Guarantor shall satisfy and discharge the damages sustained by the Employer thereby up to the amount of the above-written Guarantee then this obligation shall be null and void but otherwise shall be and remain in full force and effect but no alteration in terms of the said Contract or in the extent or nature of the Works to be executed, completed and defects therein remedied thereunder and no allowance of time by the Employer or the Engineer under the said Contract nor any forbearance or forgiveness in or in respect of any matter or thing concerning the said Contract on the part of the Employer or the said Engineer shall in any way release the Guarantor from any liability under the above-written Guarantee. Provided always that the above obligation of Guarantor to satisfy and discharge the damages sustained by the Employer shall arise only;

- a) on written notice from the Employer that the Employer has determined that the amount of damages concerned is payable to the Employer, or
- b) on receipt by the Guarantor of a legally certified copy of an award issued in arbitration proceeding carried out in conformity with the terms of the said Contract that the amount of the damages is payable to the Employer.

The PBG shall state that upon demand in writing without proof or condition pay to you (Owner) a sum not exceeding United States Dollars \$_____ (amount in writing).

Our liability under this guarantee is limited to a maximum aggregate sum of United States Dollars \$_____ (amount in writing).

This guarantee shall not be affected by any change in your constitution or the constitution of _____ (Contractor Name).

You may not assign your rights under this guarantee without our prior written consent (such consent shall not be unreasonably withheld).

This guarantee shall remain in full force and effect from _____ (Start Date) to _____ (Finish Date) (hereinafter called the "date of expiry"), and is conditional upon all claims received by us on or before _____ (30 days past the Finish Date).

After the aforesaid date of expiry our liability hereunder shall, automatically cease and your rights here under shall be extinguished and this guarantee shall be null and void notwithstanding that this guarantee is not returned to us for cancellation save and except for claims submitted to us in writing on or before _____ (Finish Date + 30 days). We shall have no liability hereunder in respect of any claim under this guarantee which has not been received by us on or before _____ (Finish Date + 30 days).

This guarantee shall be governed by and construed in accordance with the laws of the _____ (country).

A person(s) who is not a party to this guarantee has no right under the Contracts (Rights of Third Parties) to enforce any term of this guarantee.

Signed on _____ Signed on _____
on behalf of _____ on behalf of _____
by _____ by _____
in the capacity of _____ in the capacity of _____
in the presence of _____ in the presence of _____

FORM OF BANK GUARANTEE FOR ADVANCE PAYMENT

To:

.....
 [name & address of Employer]

.....
 [name of Contract]

Dear Sirs:

Since you have awarded our Client (the Contractor) a contract for Engineering, procurement and Construction (EPC/Turnkey) of ("the contract") and since under the said Contract, an amount of is payable by you to the Contractor as an advance payment representing% of the value of the Contract. We, Bank (the "Guarantor"), waiving all objections and defences under the aforesaid Contract, hereby irrevocably and unconditionally guarantee the payment to you on your first written demand the sum of being% (.....percent) of the value of the said Contract and accordingly, covenant and agree as follows:

- A) On your first written demand to the guarantor that the above mentioned sum of or any part thereof as you shall demand, shall be paid to you, the Guarantor shall forthwith and notwithstanding any objection by the Contractor pay to you the said amount or any part thereof as you shall demand by the transfer to an account in your name at such bank as you shall stipulate or in such other manner as shall be acceptable to you;
- B) Any payment made hereunder shall be made free and clear of and without deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees deductions or withholding's of any nature whatsoever and by whosoever imposed.
- C) The covenants herein contained constitute unconditional and irrevocable direct obligations of the Guarantor. No alteration in the terms of the Contract or in the extent or nature of the work to be performed there under shall, in any way, release the Guarantor from any liability hereunder;
- D) This Guarantor shall remain valid and in full force and effect up to -----20xx by which time any claim hereunder must be received by the guarantor or until advised by you that the amount of advance payment is fully recovered, whichever is later.
- E) As and when the advance Payment is recovered against progress payments then this guarantee shall automatically stand reduced to the extent of such recovery.
- F) This guarantee is governed by and shall be constructed in accordance with laws of the Maldives (the Purchaser's country).

Yours truly,

SIGNATURE AND SEAL:

NAME & ADDRESS OF BANK/INSTITUTION

CONTRACT AGREEMENT

This Agreement made the _____ day of _____, between Ministry of Planning, Housing and National Infrastructure, Male', Republic of Maldives (hereinafter called "the Employer") the one part and _____. (Herein after called "the Contractor") of the other part.

Whereas the Employer is desirous that certain Works known as Development and Expansion of the Maafaru Airport-Phase II and should be executed by the Contractor, and has accepted a Bid by the Contractor for a lump sum fixed price of _____ (in words) as the Accepted Contract Amount by the Contractor for the execution and completion of such Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement,
 - (a) the Letter of Acceptance
 - (b) the Letter of Proposal
 - (c) the addenda Nos _____(if any)
 - (d) the Particular Conditions
 - (e) the General Conditions
 - (f) the Employer's Requirements
 - (g) the completed Schedules
 - (h) the Proposal of the Proposer, and
 - (i) any other documents forming part of the Contract including, but not limited to:
 - i. Code of Conduct for Contractor's Personnel (ES).
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned the Contractor hereby covenants with the Employer to design, execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor, in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price at the times and in the manner prescribed by the Contract.

In Witness whereof the parties hereto have caused this Agreement to be executed the day and year first before written in accordance with their respective laws.

For and Signed on behalf of:

Employer:

Contractor:

.....

.....

Name:

Name:

Designation:

Designation:

Address:

Address:

In the presence of:

Employer:

Contractor:

.....

.....

Name:

Name:

Designation:

Designation:

Address:

Address:

THIS AGREEMENT made the _____ day of _____, _____, between _____ of _____ (hereinafter “the Employer”), of the one part, and _____ of _____ (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as _____ should be executed by the Contractor, and has accepted a Proposal by the Contractor for the execution and completion of these Works on EPC/Turnkey basis and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of _____ on the day, month and year specified above.

Signed by _____ (for the Employer)

Signed by _____ (for the Contractor)

Appendix 2: Schedule of Cost Indexation *[as applicable]*

Appendix 3: Schedule of Performance Guarantees *[as applicable]*

SCHEDULE OF COST INDEXATION

[The Priced Preamble, Preliminaries, BOQ and Dayworks will be included]

CODE OF CONDUCT FOR CONTRACTOR'S PERSONNEL (ES) FORM

Note to the Employer:

The following minimum requirements shall not be modified. The Employer may add additional requirements to address identified issues, informed by relevant environmental and social assessment.

The types of issues identified could include risks associated with: labour influx, spread of communicable diseases, and Sexual Exploitation and Abuse (SEA), Sexual Harassment (SH) etc.

Delete this Box prior to issuance of the RFP documents.

Note to the Proposer:

The minimum content of the Code of Conduct form as set out by the Employer shall not be substantially modified. However, the Proposer may add requirements as appropriate, including taking into account Contract-specific issues/risks.

The Proposer shall initial and submit the Code of Conduct form as part of its proposal.

CODE OF CONDUCT FOR CONTRACTOR'S PERSONNEL

We are the Contractor, [enter name of Contractor]. We have signed a contract with [enter name of Employer] for [enter description of the Works]. These Works will be carried out at [enter the Site and other locations where the Works will be carried out]. Our contract requires us to implement measures to address environmental and social risks related to the Works, including the risks of sexual exploitation, sexual abuse and sexual harassment.

This Code of Conduct is part of our measures to deal with environmental and social risks related to the Works. It applies to all our staff, labourers and other employees at the Works Site or other places where the Works are being carried out. It also applies to the personnel of each subcontractor and any other personnel assisting us in the execution of the Works. All such persons are referred to as "**Contractor's Personnel**" and are subject to this Code of Conduct.

This Code of Conduct identifies the behavior that we require from all Contractors' Personnel.

Our workplace is an environment where unsafe, offensive, abusive or violent behavior will not be tolerated and where all persons should feel comfortable raising issues or concerns without fear of retaliation.

REQUIRED CONDUCT

Contractor's Personnel shall:

1. carry out his/her duties competently and diligently;

2. comply with this Code of Conduct and all applicable laws, regulations and other requirements, including requirements to protect the health, safety and well-being of other Contractor's Personnel and any other person;
3. maintain a safe working environment including by:
 - a. ensuring that workplaces, machinery, equipment and processes under each person's control are safe and without risk to health;
 - b. wearing required personal protective equipment;
 - c. using appropriate measures relating to chemical, physical and biological substances and agents; and
 - d. Following applicable emergency operating procedures.
4. report work situations that he/she believes are not safe or healthy and remove himself/herself from a work situation which he/she reasonably believes presents an imminent and serious danger to his/her life or health;
5. treat other people with respect, and not discriminate against specific groups such as women, people with disabilities, migrant workers or children;
6. not engage in any form of Sexual Harassment, which means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature with other Contractor's or Employer's Personnel;
7. not engage in Sexual Exploitation, which means any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another;
8. not engage in Sexual Abuse, which means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;
9. not engage in any form of sexual activity with individuals under the age of 18, except in case of pre-existing marriage;
10. complete relevant training courses that will be provided related to the environmental and social aspects of the Contract, including on health and safety matters, Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH);
11. report violations of this Code of Conduct; and
12. Not retaliate against any person who reports violations of this Code of Conduct, whether to us or the Employer, or who makes use of the grievance mechanism for Contractor's Personnel or the project's Grievance Redress Mechanism.

RAISING CONCERNS

If any person observes behavior that he/she believes may represent a violation of this Code of Conduct, or that otherwise concerns him/her, he/she should raise the issue promptly. This can be done in either of the following ways:

1. Contact [*enter name of the Contractor's Social Expert with relevant experience in handling sexual exploitation, sexual abuse and sexual harassment cases, or if such person is not required under the Contract, another individual designated by the Contractor to handle these matters*] in writing at this address [] or by telephone at [] or in person at []; or

2. Call [] to reach the Contractor's hotline (*if any*) and leave a message.

The person's identity will be kept confidential, unless reporting of allegations is mandated by the country law. Anonymous complaints or allegations may also be submitted and will be given all due and appropriate consideration. We take seriously all reports of possible misconduct and will investigate and take appropriate action. We will provide warm referrals to service providers that may help support the person who experienced the alleged incident, as appropriate.

There will be no retaliation against any person who raises a concern in good faith about any behavior prohibited by this Code of Conduct. Such retaliation would be a violation of this Code of Conduct.

CONSEQUENCES OF VIOLATING THE CODE OF CONDUCT

Any violation of this Code of Conduct by Contractor's Personnel may result in serious consequences, up to and including termination and possible referral to legal authorities.

FOR CONTRACTOR'S PERSONNEL:

I have received a copy of this Code of Conduct written in a language that I comprehend. I understand that if I have any questions about this Code of Conduct, I can contact [*enter name of Contractor's contact person(s) with relevant experience*] requesting an explanation.

Name of Contractor's Personnel: [insert name]

Signature: _____

Date: (day month year): _____

Countersignature of authorized representative of the Contractor:

Signature: _____

Date: (day month year): _____