



urbanco

CONDITIONS OF CONTRACT

**CONSTRUCTION OF URBAN FARMING (STAGE 2) AND PLAZA
IN HULHUMALÉ**

CONDITIONS OF CONTRACT

1.

General Provisions

- 1.1. In this Contract, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.
- 1.1.1. **“Contract”** means this Contract numbered [Contract Number] dated [DD-MM-YYYY], and further documents/addenda which makes up or completes this Contract.
- 1.1.2. **“Contract Price”** means the agreed price for the Works including adjustments in accordance with the Contract.
- 1.1.3. **“Laws”** means all national legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority in the Republic of Maldives.
- 1.1.4. **“Country”** means the Republic of Maldives.
- 1.1.5. **“Party”** means the Employer or the Contractor, as the context requires.
- 1.1.6. **“Commencement Date”** means the date notified under Sub-Clause 8.1 [*Commencement and Completion of Works*].
- 1.1.7. **“Time for Completion”** means the time for completing the Works calculated from the Commencement Date.
- 1.1.8. **“Notice”** means a written communication identified as a Notice and issued in accordance with Sub-Clause 3.1 [*Communications*].
- 1.1.9. **“Works”** means the execution, completion and remedying of any defects of all works required for *“Construction of Urban Farming (Stage 2) and Plaza in Hulhumalé”* in accordance to the requirement defined in Annex 2 [*Employer’s Requirement*], to be performed by the Contractor in accordance with the Contract. For avoidance of doubt, the term **“Works”** and **“Project”** are synonymous throughout this Contract.
- 1.1.10. **“Programme”** means a detailed time Programme prepared and submitted by the Contractor to which the Employer has given a Notice of No-objection under Clause 7 [*Programme*].
- 1.1.11. **“Bill of Quantities”** means the bill of quantities (if any) included in Annex 3 [*Contractor’s Proposal*] in the Contract.
- 1.1.12. **“Contractor’s Equipment”** means all apparatus, machinery, vehicles, facilities and other things required for the execution and completion of the Works and the remedying of any defects, but does not include the Materials (if any) supplied by Employer.
- 1.1.13. **“Employer’s Requirement”** means the document titled *“Employer’s Requirement”*, included in Annex 2 of this Contract and any additions and modifications to such document in accordance with the Contract. Such document specifies the

- purpose, scope, and/or design and/or technical criteria for the Works.
- 1.1.14. “**Contractor’s Proposal**” means the Contractor’s signed offer for the Works and all other documents which the Contractor submitted therewith (other than these Conditions and the Employer’s Requirements, if so submitted) and the Employer accepted, which do not contradict the Conditions of the Contract and Employer’s Requirement as included in the Contract. The term “Contractor’s Proposal” is synonymous with “Tender”.
- 1.1.15. “**Site**” means the area shown in the Site Map included in Annex 2 [*Employer’s Requirement*] where the Works are to be executed, and any other places specified in the Contract as forming part of the Site.
- 1.1.16. “**Force Majeure**” means an exceptional event or circumstance: which is beyond a Party’s control; which such Party could not reasonably have provided against before entering into the Contract; having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.
- 1.1.17. “**days**” mean calendar days, unless specified as otherwise.
- 1.1.18. “**Taking-Over Certificate**” means the certificate issued by the Employer in accordance to Clause 15 [*Taking-Over Certificate*].
- 1.1.19. “**Performance Certificate**” means the certificate issued by the Employer under Clause 16 [*Performance Certificate*].
- 1.1.20. “**Goods**” means the Contractor’s Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.
- 1.1.21. “**Plant**” means the apparatus, machinery and vehicles intended to form or forming part of the Works.
- 1.1.22. “**Permanent Works**” means the permanent works to be designed and executed by the Contractor under the Contract.
- 1.1.23. “**Temporary Works**” means all temporary works of every kind (other than Contractor’s Equipment) required on Site for the execution and completion of Works.
- 1.1.24. “**Materials**” means things of all kinds intended to form or forming part of the Works.
- 1.1.25. “**Employer-Supplied Materials**” means the materials (if any) to be supplied by the Employer to the Contractor under Sub-Clause 4.2.
- 1.1.26. “**Contemporary Records**” means records that are prepared or generated at the same time, or immediately after, the event or circumstance giving rise to the claim.

2. Documents forming the Contract

- 2.1. The following documents shall be deemed to form and be read and construed as part of this Contract (for the purposes of interpretation, the priority among the documents annexed shall be in accordance with the sequence/order of documents as mentioned below):

- a) The Letter of Acceptance dated [DD-MM-YYYY] (Annex 1),
- b) The Employer's Requirement (Annex 2),
- c) The Contractor's Proposal (Annex 3), and
- d) The Example Forms of Guarantees (Annex 4).

3.
Communication

- 3.1. All Notices, requests, demands or other communications to or upon the respective Parties to the Contract shall be deemed to have been duly given or made when delivered personally or by registered letter or by email to the other Party at the addresses set out in the Contract or at such other address as the Party concerned may hereafter specify to the other in writing or, in the case of email, to the published email of the addressees.
- 3.2. Posted letters shall be deemed to have been delivered within 7 (Seven) working days after posting (Fridays, Saturdays and Public Holidays excluded) and email messages shall be deemed to have been delivered at the time of dispatch unless they are received outside business hours of the recipient in which case they shall be deemed received at the opening of business on the next working day. If the address or email address of any Party stated in the Contract is changed, the Party shall inform the other Party within 3 (Three) working days.
- 3.3. The Employer's correspondence address is:
Housing Development Corporation Limited
3rd Floor, HDC Building,
Hulhumalé, Republic of Maldives.
Tel: (960) 3353535, Fax: (960) 3358892
Email: hello@urbanco.mv
- 3.4. The Contractor's correspondence address is:
[Contractor's Address]

4.
Employer's Obligations

- 4.1 The Employer shall give the Contractor right of access to the Site or parts of the Site within 7 (seven) days of signing the Contract.
- 4.2 The Employer shall supply the major Materials for the Works as per the Employer's Requirement. The list of Materials provided by the Employer are attached with the Employer's Requirement.

The Employer shall make such Employer-Supplied Materials available to the Contractor in accordance to the Employer's Requirement.

The Contractor shall visually inspect them, and shall promptly give notice to the Employer of any shortage, defect or default in the Employer-Supplied Materials in correspondence to the list of materials attached with the Employer's Requirement. Unless otherwise agreed by both Parties, the Employer shall immediately rectify the notified shortage, defect or default.

After the visual inspection and receipt of Materials by the Contractor, such Employer-Supplied Materials shall come under the care, custody and control of the Contractor.

- 4.3 The Employer shall (where he is in a position to do so) provide reasonable assistance, where applicable, to the Contractor at the request of the Contractor, for the Contractor's applications for permits, licenses or approvals which are required for the Works. Notwithstanding, there shall be no duty or obligation to do so upon the Employer under this clause, and any failure by the Employer to provide such assistance shall not relieve the Contractor from his obligations under the Contract.
- 4.4 The Contractor shall request for Employer's approval for all Materials used for the Works, and the Employer shall approve or reject any such request within 14 (Fourteen) calendar days from the notified date.
- 4.5 The Employer shall check and issue approval within 14 calendar days for Contractor's submitted methodology and shop drawing for each work and shall instruct to rectify if the Contractor deviates from the approved methodology.
- 4.6 The Employer may issue to the Contractor instructions which may be necessary for the Contractor to perform his obligations under the Contract. Each instruction shall be given in writing and shall state the obligations to which it relates and the Sub-Clause (or other term of the Contract) in which the obligations are specified. If any such instruction constitutes a variation, Clause 17 [Variations] shall apply.

5.

Contractor's Obligations

- 5.1 The Contractor shall execute and complete the Works properly as specified in the Annex 2 [Employer's Requirement] and in accordance with the Contract, and shall remedy any defects in the Works, and the Contractor shall ensure that the completed Works are fit for the purpose for which they are intended by the Employer, as detailed in the Annex 2 [Employer's Requirement] and the Contract.
- 5.2 The Contractor shall provide all supervision, labor, Materials (other than those provided by the Employer under Sub-Clause 4.2), tools, transportation, Contractor's Equipment, etc. necessary for the execution of the Works.
- 5.3 The Contractor shall obtain temporary electricity and water from the local authorities for his own uses. All the cost should be borne by the Contractor including initial setup costs, monthly bills and termination costs. If such services are not available in the Site area, the Contractor shall provide on his own cost alternative methods to obtain electricity, water and any other utility service required to complete the Works.
- 5.4 The Contractor shall be responsible for procuring, supplying, transporting, and providing all labor, Materials (other than those provided by the Employer under Sub-Clause 4.2), tools, equipment etc., required for completion of the Works in all respects and as per the Annex 2 [Employer's Requirement].
- 5.5 The Contractor shall exercise reasonable skill, care and diligence in the performance of the Contractor's obligations under this Contract.

- 5.6 The Works shall include any work which is necessary to satisfy the Employer's Requirement or is implied by the Contract, and all the works which are necessary for stability and for the completion and safe and proper operation of the Works.
- 5.7 The Contractor shall be responsible for the adequacy, stability and safety of all Site operations, of all the methods of construction, and of all the Works.
- 5.8 The Contractor shall submit methodologies and shop drawings for each work, and obtain Employer approval prior to commencement of work.
- 5.9 The Contractor shall, whenever required by the Employer, 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 and approved by the Employer.
- 5.10 Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works. Superintendence shall be given by a sufficient number of persons fluent in English and having adequate knowledge and experience of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.
- 5.11 The Contractor shall obtain approval from the Employer for all Materials (not including Employer-Supplied Materials) to be used for the Works. Any changes/substitutes on Materials shall only be utilized after getting the approval from the Employer.
- 5.12 The Contractor shall manage storage of Materials, equipment, tools etc. within the Site. All Materials shall be stored in a proper manner protected from natural elements so as to avoid contamination and deterioration.
- 5.13 The Contractor shall take care of the health and safety of all persons entitled to be on the Site and other places (if any) where the Works are being executed and provide safe access, adequate lighting, barriers and any other safety measures required to execute the Works.
- 5.14 The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from Contractor's failure to comply with his obligations under this Contract.
- 5.15 The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Employer as working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's personnel within the Site and these additional areas, and to keep them off adjacent land.
- 5.16 The Contractor shall take and maintain all necessary licenses and permits from the relevant authorities to carry out the Works.

- 5.17 The Contractor shall take and maintain necessary insurance relation to the Works including (but not limited to) the Works and Goods, builder's risk, equipment insurance and liability insurance.
- 5.18 The Contractor shall take all necessary measures to:
- a) protect the environment (both on and off the Site) as per all applicable laws in the Country;
 - b) comply with the environmental impact statement for the Works (if any); and
 - c) limit damage and nuisance to people and property resulting from pollution, noise and other results of the Contractor's operations and/activities.
- 5.19 The Contractor shall;
- i) prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed by the Contractor. As-built records shall be submitted to the Employer for review and one (1) set each of hard copy and soft copy shall be submitted.
 - ii) prepare electrical load calculations, voltage-drop calculations, and associated electrical design works and specifications stamped by licensed engineer and including necessary approvals from authorities.
 - iii) provide technical specifications including operation and maintenance manuals where required.

6.
Performance Security

- 6.1 The Contractor shall furnish to the Employer, within 7 days of signing the Contract, a performance security for proper performance, which shall be;
- a) in the form of a bank guarantee (refer Annex 4 for format of guarantees), which is issued either (i) by a bank located in the Country, or (ii) directly by a foreign bank acceptable to the Employer, or (iii) furnished by a financial entity acceptable to the Employer;
 - b) in case the performance security is not in the form of a bank guarantee, in a form acceptable to the Employer;
 - c) equal to 10% of the unadjusted Contract Price;
 - d) valid and enforceable for the duration of Time for Completion and Defects Liability Period, plus an additional 70 days after the expected expiry of such duration.
- The cost of providing the performance security shall be borne by the Contractor.
- 6.2 Under any circumstance, if the Contractor is unable to complete the Works in accordance to the time or duration mentioned in Sub-clause 8.2, the performance security shall be extended until end of Defects Liability Period and an additional 70 days.

- 6.3 Performance security will be released by the Employer upon successful completion of Works and issuance of the Performance Certificate. Failure to complete the Works as specified under this Contract grants the Employer the right to forfeit the performance security without any compensation to the Contractor.

7.
Programme

- 7.1 The Contractor shall submit a detailed time Programme for the execution of the Works within 7 (seven) calendar days after receiving the Notice for commencement of Works.
- 7.2 The Employer shall provide comments or Notice of No-objection for the time Programme within 7 (seven) calendar days of receiving the detailed time Programme.
- 7.3 The Contractor shall also submit a revised Programme within 7 (seven) calendar days whenever the previous Programme is inconsistent with actual progress or with the Contractor's obligations. The revised Programme shall be within the Employer's approved Time for Completion. Each Programme shall include:
- a) the Commencement Date and the Time for Completion of the Works;
 - b) The order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's documents, procurement, construction, erection and testing;
 - c) Critical path of the Project shall be identified and all relevant precursors shall be properly linked;
 - d) A supporting report which includes a general description of the methods which the Contractor intends to adopt and of the major stages in the execution of the Works, and the class of Contractor's personnel and each type of Contractor's Equipment for each major stage;
 - e) the sequence and timing of inspections and tests specified in, or required by the Contract; and
 - f) for a revised Programme and for each activity: the actual progress to date, any delay to such progress and the effects of such delay on other activities (if any); If at any time the Employer gives notice to the Contractor that a Programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall within 7 (seven) calendar days submit a revised Programme to the Employer in accordance with this Sub-Clause.

- 8. Commencement and Completion of the Works**
- 8.1 The Commencement Date shall be the date on which the Contractor obtains the right of access to Site as per Sub-Clause 4.1.
 - 8.2 The Time for Completion of the Works shall be [**maximum 150 calendar days**] from the Commencement Date.
 - 8.3 The Contractor shall commence the Works on the Commencement Date and shall proceed with the Works without delay and shall complete all Works within the Time for Completion.

- 9. Contract Price and Payment**
- 9.1 The Contract Price shall be MVR [Contract Price] inclusive of any taxes, duties, fees or charges, payable for the Works.
 - 9.2 All expenses towards the completion of the Works, mobilization at Site and demobilization, including bringing in equipment, workforce and Materials, dismantling the equipment, clearing the Site etc. shall be deemed to be included in the Contract Price.
 - 9.3 Payment for the Works shall be made on the basis of the lump sum Contract Price subject to adjustments in accordance with the Contract. Payments shall be made as per agreed schedule of payments against actual work progress, subject to completion of agreed milestones.
 - 9.4 The Contractor shall pay all taxes, duties and fees which shall be inclusive in the Contract Price, and the Contract Price shall not be adjusted for any of these costs.
 - 9.5 The Contract Price shall not be adjusted for rises or falls in inflations, currency fluctuations or any other such inputs to the Works.
 - 9.6 Each payment shall be payable upon submission of invoice by the Contractor following completion of a portion of Works. Contractor may submit invoice at the end of each month, in a form approved by the Employer, showing in detail the amounts to which the Contractor considers himself entitled, together with supporting documents. However, payment for such a request shall be subject to inspection, acceptance and certification by the Employer, of the Works for which payment is requested, and provided that the payment request is deemed by the Employer to be reasonable and proportionate for Works completed for which the request is made.
 - 9.7 No amount will be certified or paid until the Employer has received and approved the performance security in accordance to Clause 6 [*Performance Security*], and advance payment guarantee in accordance to Sub-Clause 9.8. Thereafter, the Employer shall make the payment to the Contractor within 30 (Thirty) calendar days upon receipt of invoice from the Contractor for Works completed, if the Works is according to the Contract and acceptable to the Employer.
 - 9.8 The Employer shall pay 15% of the unadjusted Contract Price as advance payment upon submission of a guarantee by the Contractor, in amounts and currencies equal to the advance payment, in a form approved by the Employer (refer Annex 4 for format of guarantees) and issued by an entity approved by the Employer. Advance guarantee shall remain valid and enforceable until the advance payment has been repaid. The

advance payment will be recovered through deduction of 15% of the amount of each payment certificate.

- 9.9 The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price. Unless otherwise stated in the Contract, the Contract Price covers all the Contractor's obligations under the Contract and all things necessary for the proper design, execution and completion of the Works and the remedying of any defects.

10.
Measurement and Valuation

- 10.1 If no specified rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable cost of executing the work, together with the applicable percentage of ten percent (10%) for profit, taking account of any other relevant matters.

11.
Extension of Time

- 11.1 Subject to Clause 18 [Claims], the Contractor shall be entitled to an extension of the Time for Completion ("EOT") if and to the extent that the completion of the Works is or will be delayed by any of the following causes;
- (a) a variation or other substantial change in the quantity of an item of Works included in the Contract,
 - (b) exceptionally adverse climatic conditions,
 - (c) unforeseeable delays or disruptions caused by authorities or public (provided that the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country),
 - (d) unforeseeable shortages in the availability of personnel or Goods caused by governmental actions, or
 - (e) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's personnel, or the Employer's other contractors on the Site.
- 11.2 If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall follow the claim procedure under Clause 18 [Claims].

12.
Delay Damages

- 12.1 If the Contractor fails to comply with Sub-Clause 8.2, the Employer shall be entitled to payment of delay damages by the Contractor for this default.
- 12.2 Delay damages shall be 0.5% (naught point five) per day of delay on the Contract Price, which shall be paid for every day which shall elapse between the relevant Time for Completion and the relevant date of completion of the Works. The total amount due under this Sub-Clause shall not exceed 10% of the Contract Price.
- 12.3 These delay damages shall be the only damages due from the Contractor for the Contractor's failure to comply with Sub-Clause 8.2, other than in the event of termination under Clause 20 [Termination] before completion of the Works. These delay damages shall not relieve

the Contractor from the obligation to complete the Works, or from any other duties, obligations or responsibilities which the Contractor may have under or in connection with the Contract.

- 12.4 Where the amount owed to the Contractor by the Employer exceeds the amount of accrued delay damages, the amount of delay damages shall be deducted from the amount owed to the Contractor. Where the amount of accrued delay damages exceeds the amount owed to the Contractor by the Employer, the Contractor shall pay such amount to the Employer within the duration notified by the Employer in such event.
- 12.5 The Employer shall be entitled to terminate the Contract if the total delay damages exceeds 10% of the Contract Price.
- 12.6 The Employer shall be entitled to payment of these delay damages by the Contractor, without:
- (i) the need for the Employer to submit a statement or any formal Notice (including any requirement to comply with Clause 18 [Claims]); and
 - (ii) prejudice to any other right or remedy.

13.
**Quality Assurance, Testing
and Inspection of the
Works**

- 13.1 The Employer shall be entitled to examine, inspect, measure and test the Materials and workmanship. The Contractor shall give the Employer's personnel full access to all parts of the Site, and provide full opportunity to carry out these activities, including providing facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.
- 13.2 Contractor shall give Notice to the Employer whenever any work is ready for inspection and testing. The Employer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give Notice to the Contractor that the Employer does not require to do so.
- 13.3 The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, Materials, and suitably qualified and experienced staff, as are necessary to carry out the inspection and tests.
- 13.4 If, as a result of an examination, inspection, measurement or testing, any Materials, design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Employer may reject the Materials, design or workmanship by giving Notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract. If the Employer requires this Material, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions, at the Contractor's cost.
- 13.5 Notwithstanding any previous test or certification, the Employer may instruct the Contractor to:

- a) remove from the Site and replace any Materials which is not in accordance with the Contract; and/or,
- b) remove and re-execute any other work which is not in accordance with the Contract; and/or,
- c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

13.6 Each item of Materials shall become the property of the Employer, free from liens and other encumbrances when it is delivered to the Site.

14.

Defects Liability Period

14.1 The Employer may at any time prior to the expiry of the period stated in Sub-clause 14.3, notify the Contractor of any defects or outstanding work. The Contractor shall remedy, at no cost to the Employer, any defects due to the Contractor's design, Materials, Plant or workmanship not being in accordance with the Contract, and within the timeframe instructed by the Employer. The cost of remedying defects attributable to any other cause shall be valued as a variation. Failure to remedy any defects or complete outstanding work within a reasonable time of the Employer's Notice shall entitle the Employer to carry out all necessary work at the Contractor's cost.

14.2 The Employer may give instruction as to the uncovering and/or testing of any work. Unless as a result of any uncovering and/or testing it is established that the Contractor's design, Materials, Plant or workmanship are not in accordance with the Contract, the Contractor shall be paid for such uncovering and/or testing as a variation in accordance with Clause 17 [*Variations*].

14.3 Defects Liability Period shall be 180 Calendar Days (6 months) after practical completion and take-over of the Works.

15.

Taking-Over Certificate

15.1 The Contractor shall notify to the Employer when the Contractor considers that the practical Works are completed.

15.2 The Employer, after inspection of the Works, shall instruct the Contractor if there are any outstanding practical Works or any Works to be remedied.

15.3 The practical Works shall only be deemed completed and handed over to the Employer when the Taking-Over Certificate is issued to the Contractor by the Employer.

16.

Performance Certificate

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

16.2 The Performance Certificate shall be issued within 28 calendar days after the expiry date of the Defects Liability Period once the Contractor rectifies all the defects notified by the Employer.

- 17.**
- Variations**
- 17.1 Variation may be initiated by the Employer at any time before the issue of the Taking-Over Certificate for the Works.
- 17.2 The Contractor shall execute and be bound by each variation to the Works proposed by the Employer; unless the Contractor promptly gives Notice to the Employer that the Contractor cannot undertake the same. Each variation may include; changes to quality, quantity, timing, or other characteristics of any component of the Works; or any additional work or services necessary for the completion of the Works.
- 17.3 Prior to instructing a variation, the Employer shall request for proposal, to which the Contractor shall respond by sending a Notice within 7 calendar days, either by giving reasons why the Contractor cannot comply or by submitting the following:
- a) A description of the proposed work or service to be performed and a schedule for its execution,
 - b) The Contractor's proposal for necessary modifications to the Works and to the Time for Completion, and
 - c) The Contractor's proposal for adjustments to the Contract Price due to the variations.
- 17.4 The Contractor shall be bound by each variation instructed under Sub-Clause 17.1, and shall execute the variation with due expedition and without delay, unless the Contractor promptly gives a Notice to the Employer stating (with detailed supporting particulars) that:
- a) the Contractor cannot readily obtain the Goods required for the variation; or
 - b) it may adversely affect the Contractor's obligation to complete the Works so that they shall be fit for the purpose(s) for which they are intended under Sub-Clause 5 [Contractor's Obligations].
- 17.5 Promptly after receiving the Notice under Sub-clauses 17.3 or 17.4, the Employer shall respond by giving Notice to the Contractor cancelling, confirming or varying the instruction.

- 18.**
- Claims**
- 18.1 A claim may arise:
- (a) if the Employer considers that the Employer is entitled to any additional payment from the Contractor (or reduction in the Contract Price) and/or to an extension of the Defects Liability Period;
 - (b) if the Contractor considers that the Contractor is entitled to any additional payment from the Employer and/or EOT;

- 18.2 If either Party considers that he/she is entitled to a claim, under any Clause of these Conditions or otherwise in connection with the Contract, the following claim procedure shall apply.
- 18.3 The claiming Party shall give a Notice to the other Party, describing the event or circumstance giving rise to the cost, loss, delay, EOT or extension of Defects Liability Period for which the claim is made as soon as practicable, and no later than 14 (fourteen) calendar days after the claiming Party became aware, or should have become aware, of the event or circumstance.
- 18.4 If the claiming Party fails to give a Notice of claim within this period of 14 (fourteen) calendar days, the claiming Party shall not be entitled to the claim and the other Party shall be discharged from any liability in connection with the event or circumstance giving rise to the claim.
- 18.5 The claiming Party shall keep all supporting and Contemporary Records as may be necessary to substantiate any claim.
- 18.6 Within 21 (Twenty-one) calendar days after the claiming Party became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as agreed by both Parties, the claiming Party shall send a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed.
- 18.7 If the claiming Party fails to give a fully detailed claim within this period of 21 (Twenty-one) calendar days, the claiming Party shall not be entitled to the claim and the other Party shall be discharged from any liability in connection with the event or circumstance giving rise to the claim.
- 18.8 If the event or circumstance giving rise to the claim has a continuing effect the fully detailed claim as per Sub-clause 18.6 shall be considered as interim, and the claiming party shall send further interim claims at monthly intervals. The claiming party shall send a final claim within 28 (Twenty-Eight) calendar days after the end of the effects resulting from the event or circumstance, or within such other period as agreed by both Parties.
- 18.9 Within 21 (Twenty-one) calendar days after receiving a fully detailed claim or any further particulars supporting a previous claim, or within such other period as agreed by both Parties, the Employer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.
- 18.10 Each interim payment shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

- 19. Retention Money**
- 19.1 Retention money shall be deducted at 10% (ten percent) of each interim payment, up to a maximum of 5% (five percent) of the final Contract Price.
- 19.2 Half of retention will be released upon practical completion and take-over of the Works and remaining will be released upon completion of Defects Liability Period, subject to making good all defects.

- 20. Termination**
- 20.1 The Employer shall be entitled to terminate the Contract if the Contractor fails to remedy a breach within the period notified in the Notice of breach.
- 20.2 Notwithstanding above, the Employer shall be entitled to terminate the Contract immediately if:
- a) the Contractor abandons the Works or otherwise demonstrates the intention not to continue performance of his obligations under the Contract, without just cause;
 - b) if the total delay damages exceeds 10% of the final Contract Price;
 - c) fails to comply with Sub-Clause 6 [*Performance Security*];
 - d) the Contractor, without reasonable excuse, fails to proceed with the Works in accordance with the terms and conditions of this Contract;
 - e) the Contractor becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events,
 - f) the Contractor gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward; for doing or forbearing to do any action in relation to the Contract; or for showing or forbearing to show favor or disfavor to any person in relation to the Contract.
- 20.3 Upon termination of the Contract, the Contractor shall remove its equipment, machinery and other movable assets from the Site and handover the Site together with the infrastructure and immovable assets therein. The Employer shall not be required to pay any compensation whatsoever under such circumstances.

- 21. Force Majeure**
- 21.1 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below;
- (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,

- (c) riot, commotion, disorder, strike or lockout by persons other than the Contractor's personnel and other employees of the Contractor and subcontractors,
 - (d) Natural catastrophes such as earthquake, hurricane, or typhoon.
- 21.2 The Party shall, having given written Notice to the other Party within 7 (Seven) calendar days of Force Majeure event, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them. Difficulty or slow rate of progress of Works shall not fall within the ambit of this Clause. If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure and suffers delay by reason of such Force Majeure, the Contractor shall be entitled to an extension of time for any such delay if completion is or will be delayed. For avoidance of doubt, the Employer shall not be liable to compensate for any cost or loss in profit incurred by the Contractor by a Force Majeure event.
- 21.3 Notwithstanding any other provision to the contrary in this Contract, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

22. Indemnification

- 22.1 The Contractor shall indemnify and hold harmless the Employer, the Employer's personnel, and the Employer's respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses);
- a) in respect of bodily injury, sickness, disease or death, of any person whatsoever; to the extent that it arises out of, in the course of, and by reason of, the Contractor's execution of the Contract; and provided it is not attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's personnel, and the Employer's respective agents; and
 - b) in respect of damage to or loss of any property; to the extent that such damage or loss arises out of, or in the course of, or by reason of, the Contractor's execution of the Works; and provided it is not attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's personnel, and the Employer's respective agents.
- 22.2 The Employer shall indemnify and hold harmless the Contractor, the Contractor's personnel, and Contractor's respective agents, against and from; all claims, damages, losses and expenses (including legal fees and expenses) which is attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's personnel, or any of the Employer's respective agents.

23. Contractor's Care of the Works

- 23.1 The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued.

- 23.2 The Contractor warrants and guarantees that all Works will be free from all defects in workmanship and Materials, and that all installations (if any) will provide the capacities and characteristics specified in the Annex 2 [*Employer's Requirement*].
- 23.3 The Contractor shall be liable to pay compensation and indemnify the Employer against all loss or damages to the Works and against all claims or expenses arising out of the Works caused by Contractor's breach of the Contract or by negligence of the Contractor.

24.
Compliance with Laws

- 24.1 The Contract shall be governed by, construed and enforced in accordance with the laws of the Republic of Maldives and both Parties hereby agree to submit to the exclusive jurisdictions of the Maldives International Arbitration Center (MIAC) and Maldivian Courts in connection with any action or proceeding that may arise out of or in connection with the Contract.
- 24.2 Each Party hereto agrees that it shall comply with all applicable laws, regulations, rules, directions and other requirements applicable from time to time, and shall not do, or omit, or permit to be done, or omit to be done any act or thing by which any of the terms of the Contract may be invalidated or become unenforceable partly or wholly.
- 24.3 If at any time any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the laws of Maldives, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the laws of Maldives shall in any way be affected or impaired thereby. Notwithstanding the above, the Parties are at liberty to alter the provision or provisions so severed, with a view to bring it/them in conformity with the laws of the Republic of Maldives.

25.
Dispute Resolution

- 25.1 Matters which are not set forth in this Contract shall be discussed between the Parties hereto in good faith and friendly spirit as necessity arises. If and when such agreement shall be reached, by reason of such discussion, details of such agreement shall be confirmed in writing by the Parties hereto.
- 25.2 In the event of any dispute that may arise between the Parties, both Parties hereby agree and accept that they shall explore all means to resolve such disputes in a way that will be mutually beneficial and acceptable to both Parties and that, to the extent reasonably possible, gives effect to the terms and conditions of the Contract. As such, both Parties expressly pledge that they shall resort to ways or methods that best assist in reaching a reasonable solution to any dispute, and to work on trying to come to solutions of mutual benefit to both Parties in the event of disputes. As such, any dispute arising out of or in connection with the Contract shall be dealt with as follows.
- a) In the first instance in good faith by mutual discussion and agreement.

- b) If the dispute cannot be resolved by mutual discussion, either Party may refer such dispute to the exclusive jurisdiction of the Maldives International Arbitration Center (MIAC) for final determination.

26.
Corporate Authority

26.1 Each Party represents and warrants that it has the legal power and authority to enter into this Contract. Both Parties to the Contract represent that each has taken all necessary corporate action to authorize the execution and consummation of the Contract and will furnish the other Party with satisfactory evidence of this upon request. Each Party agrees to negotiate in good faith the execution of such other documents or agreements as may be necessary or desirable for the implementation of the Contract and the effective execution of the transactions contemplated hereby.

27.
Waiver

27.1 The failure by any Party to exercise or enforce in any instance any of the terms or conditions of the Contract, or to insist upon strict performance by the other Party of any of the provisions of the Contract, shall not constitute or be deemed a waiver of that Party's rights thereafter to enforce each and every term and condition of the Contract.

28.
Inurement

28.1 Contract shall inure to the benefit of and be binding upon each of the Parties. Further, the Contract shall inure to the benefit of and be binding upon the respective successors-in-title and permitted assigns of the Parties.

29.
Confidentiality

29.1 The Parties shall at all times keep confidential information acquired in consequence of the Contract, except for information which the receiving Party already knows or receives from third parties or which the receiving Party may be entitled or bound to disclose under compulsion of law or where required by regulatory agencies or to their professional advisors, investors and other Parties where reasonably necessary for the performance of their obligations under the Contract. For the avoidance of doubt, the obligations in this Clause shall not apply to information in the public domain or information which the Parties own or acquired lawfully from other and which may be freely disclosed to other without breach of any obligation of confidence.

30.
Amendments

30.1 Any amendments to the Contract shall be made in writing and duly executed by both Parties to the Contract.

31.
Entire Contract and Copies

31.1 This Contract constitutes the entire agreement between the Parties with respect to the subject matter contemplated herein and supersedes all oral statements and prior writings with respect to the subject matter contemplated herein.

31.2 The Contract shall be executed simultaneously in two original copies, each of which when executed and delivered shall constitute an original, but all copies shall together constitute one and the same instrument.

32. Contract Effectiveness 32.1 The Contract shall come into full force and effect on the date of signing this Contract by both Parties.

ANNEX - 4

FORM A: EXAMPLE FORM OF PERFORMANCE SECURITY – DEMAND GUARANTEE

Brief description of Contract:
[PROJECT TITLE]

Name and address of Beneficiary;
Housing Development Corporation Ltd., 3rd Floor, HDC Building, Hulhumalé, Republic of Maldives,
(whom the tender documents define as the Employer).

We have been informed that _____ (hereinafter called the "Principal") is your Contractor under such Contract, which requires him to obtain a performance security.

At the request of the Principal, we (*name of bank*) _____ hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of _____ (the 'guaranteed amount', say: _____) upon receipt by us of your demand in writing and your written statement stating:

- (a) that the Principal is in breach of his obligation(s) under the Contract, and
- (b) the respect in which the Principal is in breach.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before (*the date 70 days after the expected expiry of the Defects Notification Period for the Works*) _____ (the "expiry date"), when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the performance certificate under the Contract has not been issued by the date 28 days prior to such expiry date. We undertake to pay you such guarantee amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the performance certificate has not been issued, for reasons attributable to the Principal, and that this guarantee has not been extended.

THIS GUARANTEE SHALL BE GOVERNED BY THE LAWS OF MALDIVES, AND SHALL BE SUBJECT TO THE UNIFORM RULES FOR DEMAND GUARANTEES (URDG) 2010 REVISION, ICC PUBLICATION NO. 758.

Date:

Signature(s)

FORM B: EXAMPLE FORM OF ADVANCE PAYMENT GUARANTEE

Brief description of Contract:

[PROJECT TITLE]

Name and address of Beneficiary;

Housing Development Corporation Ltd., 3rd Floor, HDC Building, Hulhumalé, Republic of Maldives,
(whom the tender documents define as the Employer).

We have been informed that _____ (hereinafter called the 'Principal') is-your contractor under such Contract and wishes to receive an advance payment, for which the Contract requires him to obtain a guarantee.

At the request of the Principal, we (*name of bank*) _____ hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of _____ (the 'guaranteed amount', say: _____) upon receipt by us of your demand in writing and your written statement stating:

- (a) That the Principal has failed to repay the advance payment in accordance with the conditions of the Contract, and
- (b) The amount which the Principal has failed to repay.

This guarantee shall become effective upon receipt [of the first installment] of the advance payment by the Principal. Such guaranteed amount shall be reduced by the amounts of the advance payment repaid to you, as evidenced by your notices issued under sub-clause 9.8 of the conditions of the Contract. Following receipt (from the Principal) of a copy of each purported notice, we shall promptly notify you of the revised guaranteed amount accordingly.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before (*the date 70 days after the expected expiry of the Time for Completion*) _____ (the 'expiry date'), when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the advance payment has not been repaid by the date 28 days prior to such expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the advance payment has not been repaid and that this guarantee has not been extended.

THIS GUARANTEE SHALL BE GOVERNED BY THE LAWS OF MALDIVES, AND SHALL BE SUBJECT TO THE UNIFORM RULES FOR DEMAND GUARANTEES (URDG) 2010 REVISION, ICC PUBLICATION NO. 758.

Date:

Signature(s)