

## SECTION 6: CONDITIONS OF CONTRACT: PARTICULAR CONDITIONS OF CONTRACT

### CONSTRUCTION OF PRE-SCHOOL IN HULHUMALÉ PHASE II

Hulhumalé, Republic of Maldives

~~1<sup>st</sup> June 2021~~ 11<sup>th</sup> January 2022

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## PARTICULAR CONDITIONS – PART A

### CONTRACT DATA

The Conditions of Contract comprise the “General Conditions”, which form part of the “Conditions of Contract for Construction” Second Edition 2017 published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC), the following Contract Data (Particular Conditions – Part A) and the “Special Provisions” (Particular Conditions – Part B), which include amendments and additions to such General Conditions.

The provisions to be found in the Special Provisions (Particular Conditions – Part B) take precedence over the equivalent provisions found under the same Sub-Clause number(s) in the General Conditions, and the provisions of the Contract Data (Particular Conditions – Part A) take precedence over the Special Provisions (Particular Conditions – Part B).

Sub-Clause	Data to be given	Data
1.1.19	where the Contract allows for Cost Plus Profit, percentage profit to be added to the Cost	10%
1.1.27	Defects Notification Period (DNP)	365 days
1.1.31	The Employer’s name and address	Housing Development Corporation Ltd, 3rd floor, HDC Building, Hulhumalé, Republic of Maldives
1.1.35	The Engineer’s name and address:	Project Management & Development, Housing Development Corporation Ltd., 3rd floor, HDC Building, Hulhumalé, Republic of Maldives.
1.1.85	Time for Completion	<i>To be proposed by the Contractor</i> (Maximum 180 days)
1.3 (a)(ii)	agreed methods of electronic transmission	Email and Fax
1.3 (d)	address of Employer for communications	Housing Development Corporation Ltd, 3rd floor, HDC Building, Hulhumalé, Republic of Maldives Phone: (+960) 3353535 Fax: (960) 3358892 Email: mail@hdc.com.mv
1.3 (d)	address of Engineer for communications	Project Management & Development,

		Housing Development Corporation Ltd, 3rd floor, HDC Building, Hulhumalé, Republic of Maldives Phone: (+960) 3353535 Fax: (960) 3358892 Email: mail@hdc.com.mv
1.3 (d)	address of Contractor for communications	<i>To be filled by the Contractor</i>
1.4	Contract shall be governed by the law of	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	3 Copies
1.15	total liability of the Contractor to the Employer under or in connection with the Contract	Total Contract Price
2.1	after the Contract comes into effect, the Contractor shall be given right of access to all or part of the Site within	7 days
2.4	Employer's financial arrangements	Employer shall finance 100% of the Contract Price
4.2	Performance Security (as percentages of the Contract Price in Currencies)	
	Percent	5%
	Currency	Maldivian Rufiyaa (MVR)
4.7.2	Period for notification of errors in the items of reference	28 days
4.19	period of payment for temporary utilities	Not Applicable
4.20	number of additional paper copies of progress reports	1 copy
6.5	normal working hours on the Site	From 7:30 am to 5:30 pm & Friday is day of rest
8.3	number of additional paper copies of programmes	1 copy
8.8	Delay Damages payable for each day of delay	0.1% of the Contract Price
8.8	maximum amount of Delay Damages	5% of the Contract Price
12.3	Percentage profit	as stated under 1.1.19
13.4 (b)(ii)	percentage rate to be applied to Provisional Sums for overhead charges and profit	Not applicable
14.2	total amount of Advance Payment (as a percentage of the Accepted Contract Amount)	15%
14.2	currency or currencies of Advance Payment	Maldivian Rufiyaa (MVR)
14.2.3	percentage deductions for the repayment of the Advance Payment	15%

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14.3 (b)	number of additional paper copies of Statements	1 copy
14.3 (iii)	percentage of retention	10%
14.3 (iii)	limit of Retention Money (as a percentage of Contract Price)	5%
14.5 (b)(i)	Plant and Materials for payment when shipped	Not applicable
14.5 (c)(i)	Plant and Materials for payment when delivered to the Site	Not applicable
14.6.2	minimum amount of Interim Payment Certificate (IPC)	Amount corresponding to each 10% of the Contract Price
14.7 (b)(i)	period for the Employer to make interim payments to the Contractor under Sub-Clause 14.6 [Interim Payment]	56 days
14.7 (b)(ii)	period for the Employer to make interim payments to the Contractor under Sub-Clause 14.13 [Final Payment]	42 days
14.7 (c)	period for the Employer to make final payment to the Contractor	56 days
14.11.1 (b)	number of additional paper copies of draft Final Statement	2 copies
14.15	currencies for payment of Contract Price	Maldivian Rufiyaa (MVR)
14.15(a)(i)	proportions or amounts of Local and Foreign Currencies are:	
	Local	100% of Contract Price in MVR
	Foreign	-
14.15 (c)	Currencies and proportions for payment of Delay Damages	Maldivian Rufiyaa (MVR)
14.15(f)	rates of exchange	The rate of Maldives Monetary Authority (Central Bank of Maldives) which was 7 days prior to the Contract signing date
17.2(d)	Forces of nature, the risks of which are allocated to the Contractor	Covid-19 Pandemic
21.1	time for appointment of DAAB	28 days after a Party gives notice to the other Party of its intention to refer a dispute to a DAAB in accordance with Sub-Clause 21.4
21.1	the DAAB shall comprise	3 members
21.2	Appointing entity (official) for DAAB members	The appointing entity or official (if not agreed between both Parties) to be made by the Court of the Country or Maldives International Arbitration Centre (MIAC).

## PARTICULAR CONDITIONS – PART B

## SPECIAL PROVISIONS

The Conditions of Contract comprise the “General Conditions”, which form part of “Conditions of Contract for Construction” Second Edition 2017 published by the International Federation of Consulting Engineers (FIDIC), the Contract Data (Particular Conditions – Part A) and the following “Special Provisions” (Particular Conditions – Part B), which include amendments and additions to such General Conditions.

These “Particular Conditions - Part B: Special Provisions” are amendments and additions to the “General Conditions” that form part of “Conditions of Contract for Construction” Second Edition 2017 published by the Fédération Internationale Des Ingénieurs-Conseils (FIDIC).

<u>Clause No.</u>	<u>Amendments and Additions</u>
<b>GENERAL PROVISIONS</b>	
<b>1.1</b>	
<b>Definitions</b>	
<b>1.1.13</b>	Amend by inserting the following words at the end of the Sub-Clause:
<b>Contract Price</b>	The words “Contract Price” and “Contract Value” and “Value of Contract” and “Contract sum” are synonymous
<b>1.1.49</b>	Amend by deleting this Sub-Clause and substituting the following words:
<b>Laws</b>	“ <b>Laws</b> ” means all national (or state or provincial) legislation, statutes, acts, decrees, rules, ordinances, orders, and regulations and by-laws of any legally constituted public authority
<b>1.1.81</b>	Amend by inserting the following words at the end of the Sub-Clause;
<b>Tender</b>	The word “Tender” is synonymous with “Contractor’s Proposal” and “Bid”, and the words “Tender documents” is synonymous with “Bidding Documents”.
<b>1.1.87</b>	Amend by inserting the following words at the end of the Sub-Clause:
<b>Works</b>	“Works” is synonymous with “Project”. “Works” shall also mean to include any Project component stated or implied in the Contract or any component required to deliver the Project in complete as stated in Contract. It shall also mean submission of shop-drawings associated with Permanent Works or the Temporary Works.

1.1.89 Temporary Site	<p>Amend by inserting the following new Sub-Clause at the end of Sub-Clause 1.1.88</p> <p><b>“Temporary Site”</b> means the places or temporary land which the employer hands over under the title “Temporary Land”. This site is for the purpose of Temporary Works that are to be executed and at which Plant and Materials are to be temporarily stored and all permanent related logistics works are to be performed.</p>
1.5 Priority of Documents	<p>Delete Sub-Clause 1.5 and substitute:</p> <p>“The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation in the event of a conflict, ambiguity or discrepancy, the priority of the documents shall be in accordance with the following sequence:</p> <ul style="list-style-type: none"> <li>(a) The Contract Agreement</li> <li>(b) The Letter of Acceptance</li> <li>(c) The Letter of Tender</li> <li>(d) The Addenda nos.....</li> <li>(e) The Particular Conditions of Contract Part A</li> <li>(f) The Particular Conditions of Contract Part B</li> <li>(g) The General Conditions of Contract</li> <li>(h) The Specification</li> <li>(i) the Drawings</li> <li>(j) the Schedules/BOQ, and</li> <li>(k) any other documents forming part of the Contract.</li> </ul> <p>If a Party finds an ambiguity or discrepancy in the documents, that Party shall promptly give a Notice to the other Party, describing the ambiguity or discrepancy. After giving or receiving such Notice, the Employer shall issue the necessary clarification or instruction.”</p>
1.10 Employer’s Use of Contractor’s Documents	<p>Delete the entire content of the Sub-Clause and substitute with the following words:</p> <p>“When the Contractor submits Contractor’s Document(s) for approval or review such document shall become the property of the Employer.”</p>
1.12 Confidentiality	<p>Amend by inserting the following words at the end of the Sub-Clause:</p> <p>“The Contractor further acknowledges that, in performing the Contract, he may have access to confidential information of a non-public or proprietary nature relating to the Employer, its associated entities, their business affairs, clients, customers and employees, governmental and trade secrets and other confidential information data as well as information relating to the Works <b>(together “Confidential Information”)</b>. The Contractor undertakes without limit of time: -</p>

- (1) to use the Confidential Information only for the purposes of performing the Contract and not use the Confidential Information for his own personal gain or benefit or for the benefit of any person other than the Employer or any associated entity; and
- (2) to keep the Confidential Information strictly secret and confidential and in particular not to divulge, publish or disclose the Confidential Information whether in whole or in part and whether directly or indirectly to any third party without the prior written consent of the Employer.

For the avoidance of doubt, these undertakings as to confidentiality shall survive the expiry or termination of the Contract howsoever arising.

In the event of termination of the Contract or at any time upon request of the Employer, all Confidential Information shall be returned to the Employer forthwith, including any paper and electronic copies of the same. In the event that any Confidential Information is held on any electronic device in a third party's possession, custody or control, then the Contractor shall confirm in writing that such Confidential Information has been expunged and destroyed. The Contractor further agrees that damages will not be an adequate remedy in the event of any actual or potential breach of their undertakings hereof.

The above undertakings as to confidentiality shall not apply to information which the Contractor can establish to the Employer's satisfaction: -

- (1) is in or enters the public domain otherwise than as a consequence of any unauthorised disclosure, act or omission by the Contractor;
- (2) is lawfully and properly in the possession of the Contractor at the time it is disclosed to or obtained by the Contractor (as evidenced by the Contractor's written records) and which was not obtained directly or indirectly from the Employer;
- (3) is disclosed pursuant to requirements of law."

#### 1.13

Amend by inserting the following words at the end of the Sub-Clause:

#### Compliance with Laws

"The Contractor shall give all Notices, pay all taxes (such as but not limited to; Goods and Services Tax (GST), Business Profit Tax (BPT)), any duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution and completion of the Works and remedying of any defects: and the Contractor shall indemnify and hold the Employer harmless against and the consequences of any failure to do so.

For the avoidance of doubt, the Contractor agrees that he shall comply with all applicable Laws, ordinances, codes and regulations in the performance of his obligations under the Contract, including the procurement of permits and certificates where required. If at any time during the term of the Contract, the Contractor is informed or information comes to his attention that he is or may be in violation of any Laws, ordinance or code (or if it is so determined by any court, tribunal or other authority), the Contractor shall immediately take all appropriate steps to remedy such violation and comply

with such Laws, regulation, ordinance or code in all respects. Further, the Contractor shall establish and maintain all proper records (particularly, but without limitation, accounting records) required by any Laws, code of practice or corporate policy applicable to him from time to time."

**1.14** Amend by inserting the following words at the end of the Sub-Clause:

**Joint and Several Liability** "Where the Contractor is a group comprising of two or more persons, these persons shall mutually agree on their leader and inform Employer, within 14 days after signing of the Contract, of such agreement in the form of a document signed/executed by all these persons and approved by the Employer.

The Employer shall communicate and deal with the leader, appointed as stated above and representing the Contractor, in all aspects in respect to the Contract/Project. In no event will the Employer be involved in any dispute that may arise between the persons that the Contractor is comprised of."

#### THE EMPLOYER

**2.1** Amend by deleting the first paragraph of the Sub-Clause and replace with the following words:

**Right of Access to the Site**

"The Employer shall give the Contractor right of access to, and possession of, all parts of the Site (excluding the Temporary Site) within the time (or times) stated in the Contract Data. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Specification. However, the Employer may withhold any such right or possession until the Performance Security has been received."

**2.2** Amend by inserting the following words at the end of the Sub-Clause:

**Assistance**

"This Sub-Clause is subject to the provision that under no circumstances whatsoever shall the Employer be under any duty or obligation to carry out any of the matters stated in paragraphs (a) or (b) of this Sub-Clause, and any failure by the Employer to provide assistance in respect of such matters shall not relieve the Contractor from his duties, obligations or responsibilities under the Contract."



<b>2.4</b>	Delete the Sub-Clause (a) and substitute with the following Sub-Clause:
<b>Employer's Financial Arrangements</b>	(a) "receives an instruction to execute a Variation with a price greater than ten percent (10%) of the Accepted Contract Amount stated in the Contract Agreement, or the accumulated total of Variations exceeds twenty percent (20%) of the Accepted Contract Amount stated in the Contract Agreement;"
<b>THE CONTRACTOR</b>	
<b>4.3</b>	Amend by inserting the following words at the end of the of Sub-Clause
<b>Contractor's Representative</b>	"If the Contractor's Representative, or these persons, is not fluent in English Language, the Contractor shall make a competent interpreter available during all working hours."
<b>4.20</b>	Amend by inserting the following words at the end of the of Sub-Clause;
<b>Progress Reports</b>	"The Contractor shall prepare and submit daily and weekly progress reports to the Employer in the format in the Employer's Requirement or any other format given by the Employer. Daily progress report shall be submitted daily and weekly progress reports shall be submitted weekly."
<b>4.24</b>	Amend by inserting the following new Sub-clause after Sub-Clause 4.23:
<b>Duties and Taxes</b>	<p>"The Contractor shall bear all the cost related to duties and taxes.</p> <p>The Contractor shall include in Contract Price and pay all taxes, duties, and other charges imposed outside the Employer's country on the production, manufacture, sale, and transport of the Contractor's Equipment, Plant, Materials, and supplies to be used on or furnished under the Contract, and on the services performed under the Contract.</p> <p>Any element of tax (such as but not limited to; Goods and Services Tax (GST), Withholding Tax (WHT), Business Profit Tax (BPT)) or duties and other charges inherent in the price of goods or services or which is required to be paid for the execution and completion of the Works and remedying of any defects therein, imposed in the Employer's Country, shall be deemed to be included in the Contract Price."</p>
<b>4.25</b>	Amend by inserting the following new Sub-clause after Sub-Clause 4.24:
<b>Coordination with the local service providers</b>	"The Contractor shall cooperate and co-ordinate with Maldives State Electric Company (STELCO), Malé Water and Sewerage Company (MWSC), and Maldives National Defence Force (MNDF), Fire and Rescue Service and other relevant local authorities for related works, during execution of Works which includes laying service pipes/cables, and follow their guideline and instruction. The Employer shall give reasonable assistance in this regard and the Contractor shall indemnify and hold the Employer harmless against and the consequences of any failure to do so."

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**STAFF AND LABOUR**

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<b>6.1</b>  <b>Engagement of Staff and Labour</b>	<p>Amend by inserting the following new paragraphs at the end of the Sub-Clause:</p> <p>“The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within the Country.</p> <p>The Contractor may import any personnel who are necessary for the execution of the Works. The Contractor must ensure that these personnel are provided with the required residence visas and work permits, and shall be solely responsible for complying with procedures and processing of such visas and work permits in the Country. The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of imported Contractor’s Personnel.”</p>
<b>6.5</b>  <b>Working Hours</b>	<p>Amend by inserting the following new paragraph at the end of the Sub-Clause:</p> <p>“The Contractor shall respect the Country’s recognised festivals, days of rest, and religious or other customs.”</p>
<b>6.6</b>  <b>Facilities for Staffs and Labour</b>	<p>Amend by inserting the following new paragraphs between the first and second paragraphs of the Sub-Clause:</p> <p>“Without prejudice to the foregoing, the Contractor shall provide and maintain such accommodation and amenities as he may consider necessary for all the Contractor’s Personnel, including (without limitation) all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cookhouses, fire prevention and firefighting equipment, air conditioning, cookers, refrigerators, furniture, and other requirements in connection with such accommodation or amenities. Upon completion of the Contract, unless otherwise agreed with the Employer, the temporary camps or housing provided by the Contractor shall be removed and the Site reinstated to its original condition, subject to the approval of the Engineer.”</p>
<b>6.7</b>  <b>Health and Safety of Personnel</b>	<p>Amend by inserting the following new paragraphs at the end of the Sub-Clause:</p> <p>“The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the Site from nuisance by insects, rats, and other pests and reduce their danger to health. The Contractor shall provide suitable prophylactics for the Contractor’s Personnel for the prevention of malaria, and shall take steps to prevent the formation of stagnant pools of water. The Contractor shall comply with all the regulations of the local health authorities in these respects and shall in particular arrange to spray thoroughly with approved insecticide all buildings erected on the Site. Such treatment shall be carried periodically as instructed by the Engineer.</p>

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders, and requirements as may be made by the Employer's Government or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same."

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**6.15** Amend by inserting the following new Sub-Clause after Sub-Clause 6.12:

**Burial of the Dead**

"In the event of the death of any of the imported Contractor's Personnel or members of their families, the Contractor shall be responsible for making the appropriate arrangements for their repatriation to the place where they were originally recruited from or to their domicile or to any other place as required for burial. The Contractor shall also be responsible, to the extent required by any Laws, for making arrangements for burial of any of his local Personnel who may die whilst engaged upon the Works."

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**6.16** Amend by inserting the following new Sub-Clause after Sub-Clause 6.15:

**Temporary Site**

"If the Contractor requires additional land for Temporary Works, Contractor may request, within 7 (Seven) calendar days from the date of signing of this Contract, for a Temporary Site of reasonable size clearly detailing the purpose and requirement for Materials and equipment storage and the need of the Contractor's staff and employees for the Project.

If the Contractor fails to request for Temporary Site within this period, it shall be deemed that the Contractor is satisfied with the space within the Site.

Upon receipt of request for Temporary Site, the Employer may lease to the Contractor, subject to assessment of the requirement and availability, and payment of a security deposit, a Temporary Site of reasonable size at his sole discretion. The lease amount is MVR 5.00 per sqft per month and the amount of security deposit taken for the Temporary Site will be at MVR 15.00 per sqft.

Notwithstanding the foregoing, the Contractor shall not be entitled for any extension of time or additional cost in delay in handover of the Temporary Site or right of access to, and possession of, the Temporary Site by the Employer.

The Employer shall be entitled to reduce the size of the Temporary Site based on the requirement as Project progresses. Furthermore, the Employer shall be entitled to void the allocation of the Temporary Site if the Contractor uses the Temporary Site other than for the purpose of the Project authorized by the Employer."

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**COMMENCEMENT,  
DELAY AND SUSPENSION**

<b>8.1</b>	Amend by deleting the entire contents of the Sub-Clause and replacing with the following: -
<b>Commencement of Works</b>	"The Commencement Date shall be the date on which the Employer hands over the Site (excluding Temporary Site) to the Contractor."

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**VARIATIONS AND  
ADJUSTMENTS**

<b>13.6</b>	Amend by deleting the (c) and (d) of the Sub-Clause.
<b>Adjustments for Changes in Laws</b>	
<b>13.7</b>	Amend by deleting the entire contents of the Sub-Clause and replacing with the following: -
<b>Adjustments for Changes in Costs</b>	"Subject to Sub-Clause 13.6, the Contract Price shall not be subject to any adjustment in respect of rise or fall in the cost of labour, Materials, or any other matters affecting the cost of execution of the Contract."

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**CONTRACT PRICE AND  
PAYMENT**

<b>14.1</b>	Amend by deleting (a) and (b) of this Sub-Clause and replacing with the following words:
<b>The Contract Price</b>	(a) "the Contract Price shall be the lump sum Accepted Contract Amount and be subject to adjustments in accordance with the Contract;"

<b>21.6</b>	Amend by deleting the contents of the Sub-Clause entirely and replacing with the following:
<b>Arbitration</b>	"Unless settled amicably, and subject to Sub-Clause 3.7.5 <i>[Dissatisfaction with Engineer's determination]</i> , Sub-Clause 21.4.4 <i>[Dissatisfaction with DAAB's decision]</i> , Sub-Clause 21.7 <i>[Failure to Comply with DAAB's Decision]</i> , any Dispute or controversy arising out of or in relation to the Contract, including any question regarding its existence, validity or termination, in respect of which the DAAB's decision (if any) has not become final and binding shall be referred to and finally resolved by arbitration administered by the Maldives International Arbitration Centre

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("MIAC") in accordance with MIAC's Rules of Arbitration in force at the time.

The seat shall be the Republic of Maldives.

The language shall be English."

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**21.8**

Amend by deleting the entire contents of the Sub-Clause.

**No DAAB in Place**