



CONDITIONS OF CONTRACT

**DEFECTS RECTIFICATION & ADDITIONAL WORKS FOR INTERACTIVE
WATER FOUNTAIN IN HULHUMALÉ PHASE I**

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 9.1 [**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 *“Defects Rectification & Additional Works for Interactive Water Fountain in Hulhumalé Phase I”* in accordance to the requirement, defined in Annex 3 [*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 8 [*Programme*].
- 1.1.11. **“Bill of Quantities”** or “BOQ” means the bill of quantities (if any) included in Annex 4 [**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 3 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, Employer's Requirement as included in the Contract.
- 1.1.15. **“Site”** means the area shown in the Site Map included in Annex 3 **[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 16 **[Taking-Over Certificate]**.
- 1.1.19. **“Performance Certificate”** means the certificate issued by the Employer under Clause 17 **[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. **“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.
- 1.1.26. **“Schedule of Payments”** means the document entitled Schedule of Payments (if any) included in the Contract showing amount and manner of the payments to be made to the Contractor.
- 1.1.27. **“Defects Liability Period”** means the period after the completion of the Works during which the Contractor is responsible for rectifying defects or faults that appear in the Works.
- 1.1.28. **“Date of Completion”** means the date stated in the Taking-Over Certificate issued by the Employer.

- 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 Schedule of Payment (Annex 2)
 - c) The Employer's Requirement (Annex 3),
 - d) The Contractor's Proposal (Annex 4), and
 - e) The Example Forms of Guarantees (Annex 5).

- 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 addressee.
- 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 and 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@hdc.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 part of Site within 7 (Seven) days of signing of the Contract. The Employer may withhold such right if the performance security is not received in accordance to Clause 7 [Performance Security]. The right of access to the Site is deemed to be provided on the date the Employer issues Notice of commencement to the Contractor.
- 4.2 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.
- 4.3 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.
- 4.4 The Employer shall check if the Contractor is following approved methodology and shop drawings for each work and shall instruct to rectify if the Contractor deviates from the approved methodology.
- 4.5 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 18 [Variations] shall apply.

5.**Contractor's Obligations**

- 5.1 The Contractor shall execute and complete the Works properly as specified in the Annex 3 [*Employer's Requirements*] 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 3 [*Employer's Requirements*] and the Contract.
- 5.2 The Contractor shall be responsible for procuring, supplying, transporting, and providing all supervision, labor, Materials, tools, transportation, Contractor's Equipment, etc. necessary for completion of the Works in all respects and as per the Annex 3 [*Employer's Requirements*].
- 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 exercise reasonable skill, care and diligence in the performance of the Contractor's obligations under this Contract.
- 5.5 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.
- 5.6 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.
- 5.7 The Contractor is required to submit methodologies and shop drawings for each work, seeking the Employer's approval before commencing the respective work. Additionally, at the Employer's request, the Contractor must provide details of the arrangements and methods proposed for the execution of the Works, with no significant alterations allowed without prior notification to and approval by the Employer.
- 5.8 The Contractor shall prepare and submit daily, weekly, and monthly progress reports to the Employer in the format given by the Employer. Daily progress reports shall be submitted daily, weekly progress reports shall be submitted weekly, and monthly progress reports shall be submitted monthly.
- 5.9 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.
- 5.10 The Contractor shall obtain approval from the Employer for all Materials to be used for the Works. Any changes/substitutes on Materials shall only be utilized after getting the approval from the Employer.
- 5.11 The Contractor shall manage storage of Materials, equipment, tools etc. within the Site, and shall also be responsible for the safekeeping of their tools and Material on Site. Contractor may store the Materials off-Site, at his cost and risk, and relocate the Materials to the Site as required for the works as per the Programme. All Materials shall be stored in a proper manner protected from natural elements so as to avoid contamination and deterioration.
- 5.12 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.

- 5.13 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.
- 5.14 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.
- 5.15 The Contractor shall;
 - i) protect the environment (both on and off the Site);
 - ii) comply with the environmental impact statement for the Works (if any); and
 - iii) limit damage and nuisance to people and property resulting from pollution, noise and other results of the Contractor's operations and/activities.
- 5.16 The Contractor shall take and maintain necessary insurance related to the Works including (but not limited to) the Works and Goods, builder's risk, equipment and liability insurance and shall submit the same a copy of the same to the Employer.
- 5.17 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 all necessary shop drawings for the completion of Works.
 - iii) provide technical specifications including operation and maintenance manuals where required.

6. Design

- 6.1 The Contractor shall carry out, and be responsible for, the design of the Works (Where applicable) and shall be deemed to have scrutinized, prior to signing of the Contract, the Employer's Requirements (including design criteria and calculations, if any).
- 6.2 Design shall be prepared by designers who:
 - a) are architects, engineers or other professionals, qualified, experienced and competent in the discipline of the design for which they are responsible;
 - b) comply with the criteria (if any) stated in the Employer's Requirements; and

- c) are qualified and entitled under the applicable laws to design the Works.
- 6.3 The Contractor shall prepare all Contractor's Documents, and any other documents necessary to complete and implement the design during the execution of the Works. The Contractor's Documents shall comprise the documents:
 - a) specified in the Employer's Requirements (if any); and
 - b) required to satisfy all permits, permissions, licenses and other regulatory approvals.
- 6.4 In this Clause 6:
 - "Review Period" means the period not exceeding 14 (fourteen) days, or as otherwise stated in the Employer's Requirement, calculated from the date on which the Employer receives the finalized full set of a Contractor's Document with a Contractor's Notice.
 - "Contractor's Notice" means the Notice which shall state that the relevant Contractor's Document is considered by the Contractor to be ready for Review under this Clause 6 and for use, and that it complies with the Employer's Requirements and the terms of the Contract, or the extent to which it does not do so.
- 6.5 If the Employer's Requirements or the terms of the Contract specify that a Contractor's Document is to be submitted to the Employer for review, it shall be submitted accordingly, together with a Contractor's Notice.
- 6.6 The Employer shall, within the Review Period, give a Notice to the Contractor:
 - a) of No-objection (which may include comments concerning minor matters which will not substantially affect the Works); or
 - b) that the Contractor's Document fails (to the extent stated) to comply with the Employer's Requirements and/or the Contract, with reasons.
- 6.7 If the Employer instructs that further Contractor's Documents are reasonably required to demonstrate that the Contractor's design complies with the Contract, the Contractor shall prepare and submit them promptly to the Employer at the Contractor's cost.
- 6.8 If the Employer gives a Notice under Sub-Clause 6.6 (b) above, the Contractor shall:
 - a) revise the Contractor's Document;
 - b) resubmit it to the Employer for review in accordance with this Clause 6, and the Review Period shall be calculated from the date that the Employer receives it; and
 - c) not be entitled to EOT for any delay caused by any such revision and resubmission and/or by subsequent review by the Employer.

- 6.9 Except for Contractor's Documents under As-Built stated in Annex 3 [*Employer's Requirements*], for each part of the Works requiring Contractor's Documents to be submitted for review:
- a) construction of such part shall not commence until a Notice of No-objection is given by the Employer for all the Contractor's Documents which are relevant to its design and execution; and
 - b) construction of such part shall be in accordance with these Contractor's Documents.
- 6.10 The Contractor undertakes that the detailed design, the Contractor's Documents, the execution of the Works and the completed Works will be in accordance with:
- a) the Laws of the Country; and
 - b) the documents forming the Contract, as altered or modified by approved Variations.
- 6.11 If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's design and/or the Contractor's Documents, they and the Works shall be corrected in accordance with Sub-Clause 14.4. If such Contractor's Documents were previously the subject of a Notice of No-objection given by the Employer under Sub-Clause 6.6, the provisions of Sub-Clause 6 shall apply as if the Employer had given a Notice in respect of the Contractor's Documents under subparagraph (b) of Sub-Clause 6.6. All corrections and resubmissions under this Sub-Clause shall be at the Contractor's risk and cost.

7. Performance Security

- 7.1 The Contractor shall furnish to the Employer a performance security for proper performance within 07 days of signing the Contract, which shall be;
- a) in the form of a bank guarantee (refer Annex 5 for format of guarantee), 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.
- 7.2 Under any circumstance, if the Contractor is unable to complete the Works in accordance to the time or duration mentioned in Sub-clause 9.2 the performance security shall be extended until end of Defects Liability Period and an additional 70 days.

- 7.3 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.

**8.
Programme**

- 8.1 The Contractor shall submit a detailed time Programme for the execution of the Works within 7 (seven) days after signing the Contract.
- 8.2 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.
- 8.3 The Contractor shall revise the Programme accordingly upon completion of existing Site condition and obstruction survey as per the Employer's Requirements.
- 8.4 The Contractor shall also submit a revised Programme within 3 (three) 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.
- 8.5 Each Programme shall include:
- a) the Commencement Date and the Time for Completion of the Works;
 - b) the date right of access to and possession of (each part of) the Site is to be given to the Contractor
 - c) 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/installation and testing;
 - d) all activities (to the level of detail specified in the Employer's Requirements), logically linked and showing the earliest and latest start and finish dates for each activity, the float (if any), and the critical path(s); 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, if a revised programme, identification of any significant change(s) to the previous programme submitted by the Contractor; and the category 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);

- g) Manpower schedule and equipment schedule to be submitted with programme as per Employer's Requirements;

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 3 (three) days submit a revised Programme to the Employer in accordance with this Sub-Clause.

9. Commencement and Completion of the Works	9.1 The Commencement Date shall be the date on which the Contractor obtains the right of access to part of Site as per Sub-Clause 4.1. 9.2 The Time for Completion of the Works shall be maximum 90 calendar days from the Commencement Date. 9.3 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.
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10. Contract Price and Payment	10.1 The Contract Price shall be [Contract Price] (in Words) inclusive of any taxes, duties, fees or charges, payable for the Works. 10.2 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. 10.3 Payment for the Works shall be made on the basis of the lump sum Contract Price subject to adjustments in accordance with the Contract. Payment shall be made as per agreed Schedule of Payments against actual work progress, subject to completion of agreed milestones. 10.4 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. 10.5 The Contract Price shall not be adjusted for rises or falls in inflations, currency fluctuations or any other such inputs to the Works. 10.6 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. 10.7 No amount will be certified or paid until the Employer has received and approved the performance security in accordance to Clause 7 [Performance Security], and advance payment guarantee in accordance to Sub-Clause 10.8. Thereafter, the Employer shall make the payment to the Contractor within duration as specified in Annex
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2 [*Schedule of Payments*] upon receipt of invoice from the Contractor for Works completed, if the Works are according to the Contract and acceptable to the Employer.

- 10.8 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 5 for formats of guarantees) and issued by an entity approved by the Employer. Advance guarantee shall remain valid and enforceable until the cumulative value of works completed equals the amount of advance payment.
- 10.9 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.

11.
Measurement and Valuation

- 11.1 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 for profit of ten percent (10%), taking account of any other relevant matters.

12.
Extension of Time

- 12.1 Subject to Clause 19 [*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 including days for which “yellow or higher alert” is in effect for Male’ Region as issued by the standard station of the meteorological services.
 - 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.
- 12.2 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 19 [*Claims*].

13. Delay Damages	13.1 If the Contractor fails to comply with Sub-Clause 9.2, the Employer shall be entitled to payment of delay damages by the Contractor for this default. 13.2 Delay damages shall be 0.3% (naught point three percent) 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. 13.3 Delay damages shall be deducted from the payments to be made to the Contractor. 13.4 These delay damages shall be the only damages due from the Contractor for the Contractor's failure to comply with Sub-Clause 9.2, other than in the event of termination under Clause 21 [<i>Termination</i>] 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. 13.5 The Employer shall be entitled to terminate the Contract if the total delay damages exceed 10% of the Contract Price. 13.6 The Employer shall be entitled to payment of these delay damages by the Contractor, without: 13.6.1 the need for the Employer to submit a statement or any formal Notice (including any requirement to comply with Clause 19 [<i>Claims</i>]; and 13.6.2 prejudice to any other right or remedy. 13.7 If the amount for delay damages is less than the amount payable to the Contractor, delay damages shall be deducted from the payments made to the Contractor. If the amount for delay damages exceeds the amount payable to the Contractor, it shall be set off from the payments to be made to the Contractor, and the Contractor shall pay any remaining balance to the Employer within the duration notified by the Employer in such event.
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14. Quality Assurance, Testing and Inspection of the Works	14.1 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. 14.2 The 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. 14.3 The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables,
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instruments, labour, Materials, and suitably qualified and experienced staff, as are necessary to carry out the inspection and tests.

- 14.4 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
- 14.5 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,
 - b) remove and re-execute any other work which is not in accordance with the Contract, and
 - c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.
- 14.6 Each item of Materials shall become the property of the Employer, free from liens and other encumbrances when it is delivered to the Site.

15.

Defects Liability Period

- 15.1 The Employer may at any time prior to the expiry of the period stated in Sub-clause 15.3, 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. 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.
- 15.2 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 18 [Variations].
- 15.3 Defects Liability Period shall be **365 calendar days** after practical completion and take-over of the Works.

16.

Taking-Over Certificate

- 16.1 The Contractor shall notify to the Employer when the Contractor considers that the Works are completed.

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

17.

Performance Certificate

- 17.1 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.
- 17.2 The Performance Certificate shall be issued within 28 days after the expiry date of the Defects Liability Period once the Contractor rectifies all the defects notified by the Employer.

18.

Variations

- 18.1 Variation may be initiated by the Employer at any time before the issue of the Taking-Over Certificate for the Works.
- 18.2 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.
- 18.3 Prior to instructing a variation, the Employer shall request for proposal, to which the Contractor shall respond in writing 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.
- 18.4 The Contractor shall be bound by each variation instructed under Sub-Clause 18.1, 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 Clause 5 [Contractor’s Obligations].

- 18.5 Promptly after receiving the Notice under Sub-clauses 18.3 or 18.4, the Employer shall respond by giving Notice to the Contractor cancelling, confirming or varying the instruction.

19.

Claims

- 19.1 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;
- 19.2 If either Party considers that they are entitled to a claim, under any Clause of this Contract or otherwise in connection with the Contract, the following claim procedure shall apply.
- 19.3 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) days after the claiming Party became aware, or should have become aware, of the event or circumstance.
- 19.4 If the claiming Party fails to give a Notice of claim within this period of 14 (fourteen) 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.
- 19.5 The claiming Party shall keep all supporting and Contemporary Records as may be necessary to substantiate any claim.
- 19.6 Within 21 (Twenty-one) 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.
- 19.7 If the claiming Party fails to give a fully detailed claim within this period of 21 (Twenty-one) 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.
- 19.8 If the event or circumstance giving rise to the claim has a continuing effect the fully detailed claim as per Sub-clause 19.6 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) days after the end of the effects resulting from the event or circumstance, or within such other period as agreed by both Parties.
- 19.9 Within 21 (Twenty-one) 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.

- 19.10 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.

20.
Retention Money

- 20.1 Retention money shall be deducted at 10% (Ten percent) of each interim payment, up to a maximum of 2.5% (Two-point five percent) of the final Contract Price.
- 20.2 Retention Money will be released upon completion of Defects Liability Period, subject to making good all defects.

21.
Termination

- 21.1 If the Contractor fails to carry out any obligation under the Contract the Employer may, by giving a Notice to the Contractor, require the Contractor to make good the failure and to remedy it within a specified time. 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.
- 21.2 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 exceed 10% of the final Contract Price;
 - c) fails to comply with Sub-Clause 7 [*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.

- 21.3 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.

22.

Force Majeure

- 22.1 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.
- 22.2 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.
- 22.3 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.

23.

Indemnification

- 23.1 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.

- 23.2 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.

24.
Contractor's Care of the Works

- 24.1 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.
- 24.2 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 3 [Employer's Requirement].
- 24.3 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.

25.
Compliance with Laws

- 25.1 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 Maldivian Courts in connection with any action or proceeding that may arise out of or in connection with the Contract.
- 25.2 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.
- 25.3 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.

26.
Dispute Resolution

- 26.1 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.

26.2 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 Maldivian Courts.

27.
Corporate Authority

27.1 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.

28.
Waiver

28.1 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.

29.
Inurement

29.1 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.

30.
Confidentiality

30.1 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.

31. Amendments	31.1	Any amendments to the Contract shall be made in writing and duly executed by both Parties to the Contract.
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32. Entire Contract and Copies	32.1 32.2	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. 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.
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33. Contract Effectiveness	33.1	The Contract shall come into full force and effect on the date of signing this Contract by both Parties.
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ANNEX - 5

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 Liability 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 relevant sub-clause 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)