**Section 8 – Contract documents**

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# Agreement

**This Agreement** made the \_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_ 20\_\_\_\_\_\_\_, between Government of Maldives *represented by the* Ministry of Environment and Energy, Male’, Republic of Maldives (hereinafter called “the Employer”) of the one part and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_hereinafter called “the Contractor”) of the other part.

**Whereas** the Employer is desirous that certain Works known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of such Works and the remedying of any defects therein,

**The Employer and the Contractor agree** as follows:

**1.** In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.

**2.** The following documents shall be deemed to form and be read and construed as part of this Agreement,

1. The Letter of Acceptance dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. The Letter of Tender dated\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. The Addenda nos. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. The Conditions of Contract
5. The Employer’s Requirements
6. The Completed Schedules, and ;
7. The Contractor’s Technical Proposal.

**3.** In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.

**4.** The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the works and the remedying of defects therein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

For and Signed on behalf of:

|  |  |
| --- | --- |
| Employer:  …………………………………………………… | Contractor:  ……………………………………………………. |
| Name: | Name: |
| Designation: | Designation: |
| Address: | Address: |

In the presence of:

|  |  |
| --- | --- |
| Employer:  …………………………………………………… | Contractor:  ……………………………………………………. |
| Name: | Name: |
| Designation: | Designation: |
| Address: | Address: |

# Letter of Tender

NAME OF CONTRACT:

Design and Build Basis for Water Supply Network, Water Storage Tanks and Reverse Osmosis Plant and Allied Works based on Integrated Water Resources Management approach in Ha. Dhihdhoo, Maldives.

TO:

*Tender Evaluation Section, Ministry of Finance and Treasury, AmeeneeMagu, Male’, Republic of Maldives*

We have examined the Conditions of Contract, Employer’s Requirements, Schedules, the attached Appendix and Addenda Nos\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_or the above-named Works.We have examined, understood, and checked the documents and have ascertained that they contain no errors or other defects. We accordingly offer to design execute and complete the Works and remedy any defects therein, in conformity with this Tender which includes all these documents and the enclosed Proposal, for the lump sum of

(*in currencies of payment*) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[*in numbers*]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[*in words*]

We accept your suggestions for the appointment of the DAB, as set out in Schedule \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[*We have completed the Schedule by adding our suggestions for the other Member of the DAB, but these suggestions are not conditions of this offer*]\*

We agree to abide by this Tender until \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and shall remain binding upon us and may be acted at any time before that date. We acknowledge that the Appendix forms part of this Letter of Tender.

If this offer is accepted, we will provide the specified Performance Security, commence the Works as soon as is reasonably practicable after the Commencement Date, and complete the Works in accordance with the above-named documents within the Time for Completion. We guarantee that the Works will then conform with the Schedule of Guarantees.

Unless and until a formal Agreement is prepared and executed this Letter of Tender, together with your written acceptance thereof, shall constitute a binding contract between us.

We understand that you are not bound to accept the lowest or any tender you may receive.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the capacity of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

dulyauthorised to sign tenders for and on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\*If the Tenderer does not accept, this paragraph may be deleted and replaced by:

We do not accept you suggestions for the appointment of the DAB. We have included our suggestions in the Schedule, but these suggestion are not conditions if this offer. If these suggestions are not acceptable to you, we propose that the DAB be jointly appointed in accordance with Sub-Clause 20.2 of the Conditions of Contract.

# Appendix to Tender

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | | **Sub - Clause** |  | |
| Employer’s name and address | |  | Ministry of Environment and Energy,  AmeeneeMagu, Male’  Republic of Maldives | |
| Contractor’s name and address | | * + - 1. . |  | |
| Engineer’s name and address | |  | Ministry of Environment and Energy,  AmeeneeMagu, Maafannu,  Male’ 20392,  Republic of Maldives | |
| Time for Completion of the Works | | 1.1.3.3 | 09 Months | |
| Defects Notification Period | | 1.1.3.7 | 365 days | |
| Electronic transmission systems | | 1.3 | Electronic Mail and Facsimile | |
| Governing Law | | 1.4 | Law of the Republic of Maldives | |
| Ruling language | | 1.4 | English | |
| Language for communications | | 1.4 | English | |
| Time for access to the Site | | 2.1 | 14 days before Commencement Date | |
| Amount of Performance Security | | 4.2 | 10% of Agreed Contract price | |
| Period for notifying unforeseeable errors, faults and defects in the Employer’s Requirements | | 5.1 | 14 days | |
| Normal working hours | | 6.5 | 8 hours per day or as suited at site of work | |
| Delay damages for the Works | | 8.7 & 14.15(b) | 0.05% of the Contract Price per day , in the currencies and proportions in which the Contract Price is payable. | |
| Maximum amount of Delay damages | | 8.7 | 10% of the final Contract Price | |
| Percentage for adjustment of Provisional Sums | | 13.5(b) | Not Applicable | |
| Total advance payment | | 14.2 | 15% of the Accepted Contract Amount | |
| Percentage of Retention | | 14.3 | 10% | |
| Limit of Retention Money | | 14.3 | 10% of the Accepted Contract Amount | |
| Plant and Materials intended for the Works | | 14.5 | Not Applicable | |
| Currency of Payment | | 14.15 | Maldivian Rufiyaa or United States Dollars as named in the Letter of Tender | |
| Periods for submission of insurance:   1. Evidence of insurance 2. Relevant policies | | 18.1  18.1 | 14 days  28 days | |
| Maximum amount of deductibles for insurance of the Employer’s risks | | 18.2(d) | Nil | |
| Maximum amount of third party insurance | | 18.3 | MVR 1 Million | |
| The Dispute Adjudication Board shall be | | 20.2 | National Tender Board of Maldives | |
| Appointment (if not agreed) to be made by | | 20.3 | Ministry of Finance and Treasury | |
| Definitions of Sections: | | | | |
| Description  (Sub-Clause 1.1.5.6) | Value: percentage\* of  Accepted Contract Amount | | Time for Completion  (Sub-Clause 1.1.3.3) | Delay Damages  (Sub-Clause 8.7) |
| * These percentages shall also be applied to each half of the Retention Money under Sub-Clause 14.9 | | | | |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Special conditions of Contract

This Appendix forms part of the Agreement.

| **Item** | **Sub-Clause** | **Data** |
| --- | --- | --- |
| ***Clause 1*** |  |  |
| ***Country of Origin*** | 1.1.7 | *Insert this new Sub-Clause after sub-clause 1.1.6*  The use of Goods and Services from a country under embargo from United Nations is NOT permitted. |
| ***Clause 2*** |  |  |
| ***Employer’s Financial Arrangements*** | 2.4 | *This Sub-Clause is not applicable* |
| ***Clause 3*** |  |  |
| ***Engineer’s Duties and Authority*** | 3.1 | *Insert this at the end of Sub- Clause 3.1 as (d):*  “The Engineer shall obtain the specific approval of the Employer before ordering any works involving delay or any extra payment by the Employer or to make variation of or in the Works or Contract.” |
| ***Management Meetings*** | 3.6 | *Insert this new Sub-Clause 3.6 at the end of Clause 3:*  The Engineer shall invite the Contractor and other relevant parties to the first Management Meeting where he shall decide upon intervals between future Management Meetings.  The purpose of these Management Meetings is to coordinate the Works with the Contractor, (and other parties if deemed necessary) to record progress in relation to agreed program, and to reach and verify agreements.  Minutes of each Management Meeting will be prepared by the Engineer and circulated to all parties attending the Management Meeting, prior to the next meeting. Agreements reached at a particular Management Meeting if duly recorded and confirmed at the next meeting will be considered accepted by all parties. Where such agreements require to be confirmed by Instructions from the Engineer in compliance with the Contract, the Engineer shall forthwith issue such Instructions.  Agreement reached at meetings shall not be means to override the requirements to follow stipulated procedure and to submit the required quality assurance documents, method statements, shop drawings etc. |
| ***Clause 4*** |  |  |
| ***Contractor’s Representative*** | 4.3 | *At the end of the second paragraph of Sub-Clause 4.3:*  The Contractor’s Representative and all these persons shall also be fluent in English Language. |
| ***Subcontractors*** | 4.4 | Prior consent shall not be required if the value of the subcontract is less than one percent (1%) of the Accepted Contract Amount. |
| ***Safety Procedures*** | 4.8(f) | *Add the following to Sub-Clause 4.8*  The Engineer may call a halt to all works if the contractor fails to meet any of the requirements outlined in this clause. Works shall not recommence until such time as the Contractor has remedied their failure to comply with this conditions of this clause. Any costs incurred as a result of the contractor being ordered to halt work under this clause shall be borne by the contractor. |
| ***Site Data*** | 4.10 | The Contractor shall be responsible for verifying and interpreting the technical data transmitted by the Employer. |
| ***Unforeseeable Physical Conditions*** | 4.12 | *Substitute the first paragraph of the Sub-Clause and replace with the following:*  “In this Sub-Clause, “physical conditions” means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including hydrographic and sub-seabed conditions but excluding climatic conditions. Hard rock (Beach rock) areas or areas where excavation works cannot be carried out using normal methodology of works shall not be considered as unforeseeable under this Clause.”  *Delete sub-paragraph (b) of Sub-Clause 4.12 and substitute with the following:*   1. Payment for any such Cost, fifty per cent (50%) of which shall be included in the Contract Price (the balance fifty percent of the Cost shall be borne by the Contractor). |
| ***Protection of the Environment*** | 4.18 | *add sub paragraph as follows;*  Contractor must comply with Environment Protection and Preservation Act 1993, and prepare any documents deemed necessary by the Environment Impact Assessment Regulations 2007, and receive consent to the document from the Environment Protection Agency before executing contractual Works and temporary works under this Contract. The cost of any EIA if required shall be borne by the Contractor.   1. Comply and ensure that its subcontractors, if any, comply with international environmental and labor standards consistent with applicable law and regulations in the country of implementation of the project, including the fundamental conventions of the International labor organization (ILO) and International Environmental treaties. 2. Adopt any environmental and social risk mitigations measures as defined in the environmental and social management plan or the notice of environmental and social impact issued by the employer |
| ***Clause 5*** |  |  |
| ***General Design Obligation*** | 5.1 | *Add the following at the end of the first paragraph of Sub-Clause 5.1*  The Contractor shall be responsible for verifying and interpreting the technical data transmitted by the Employer. |
| ***Clause 6*** |  |  |
| ***Engagement of Staff and Labour*** | 6.1 | *Add to this Sub-Clause*  The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labor with appropriate qualification and experience from sources within the Country of Works. |
| ***Clause 8*** |  |  |
| ***Commencement of Work*** | 8.1 | The contractor shall be mobilized onsite within 21 days of Commencement Date. |
| ***Clause 14*** |  |  |
| ***The Contract Price*** | 14.1/14.2 | Add the following sub-paragraph   1. if any part of the Works is to be paid according to works completed, Engineer shall use the rate specified in the Contractor’s priced Schedule. |
| ***Plant and Materials intended for the Works*** | 14.5 | This Sub-Clause is not applicable. |
| ***Clause 17*** |  |  |
| ***Indemnities*** | 17.1 | Delete Sub-Clause 17.1 in its entirety and insert the following.  To the fullest extent permitted by law,  Contractor shall defend, indemnify and hold harmless the  Employer, the Engineer, and the Owner, and their officers, directors,  subsidiaries, affiliates, agents, employees and other subcontractors,  from and against all claims, damages, loss and expenses, including but not limited to attorneys’ fees, costs and expenses arising out of or resulting from the performance of  Contractor's Work, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including resulting loss of use), caused in whole or in part by any act or omission of  Contractor or anyone directly or indirectly employed by  Contractor or for anyone for whose acts  Contractor may be liable, regardless of whether it is caused in part by an indemnified party.  Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Contract. |
| ***Clause 18*** |  |  |
| ***General Requirements for Insurances*** | 18.1 | Add the following at the end of Sub-Clause 18.1:  Acceptable to the Employer. |
| ***Insurance against Injury to Persons and Damage to Property*** | 18.3 | Add the following sentence at the end of the Sub-Clause 18.3  Prior to commencing any excavation or using any heavy equipment in close proximity to third party properties, the Contractor shall at his own expense arrange his insurers to inspect such properties. He shall also prepare pre-operation condition reports of such properties including any photographs, as deemed appropriate, for future reference. |
| ***Clause 20*** |  |  |
| ***Contractor’s Claims*** | 20.1 | The number days referred to in the Clause is amended as follows:  1st Paragraph: 28 days amended to 14 days  2nd Paragraph: 28 days amended to 14 days  5th Paragraph: 42 days amended to 21 days  6th Paragraph: 42 days amended to 21 days |
| ***Obtaining Dispute Adjudication Board’s Decision*** | 20.4 | The last sentence of the 1st Paragraph is amended as follows:  Such reference shall be made within 14 days on the establishment of a dispute by either Party and shall state that it is given under this Sub-Clause.  The number days referred to in the Clause is amended as follows:  4th Paragraph: 84 days amended to 28 days  5th Paragraph: 84 days amended to 28 days. 28 days amended to 14 days  7th Paragraph: 28 days amended to 14 days |
| ***Clause 21*** |  |  |
| ***Corrupt Practices*** | 21.0 | Add the following after Clause 20 of GCC.  AFD’s Anticorruption Policy requires that borrowers (including beneficiaries of AFD-financed activity), as well as bidders, suppliers, and contractors under AFD financed contracts; observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the AFD:  a. defines, for the purposes of this provision, the terms set forth below as follows:  (i) “Corrupt practice” means the offering, giving receiving, or soliciting, directly or indirectly, an thing of value to influence improperly the actions of another party;  (ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;  (iii) “Coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;  (iv) “Collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;  (v) “obstructive practice” is  (aa) deliberately destroying falsifying altering or concealing of evidence material to the investigation or making false statement investigators in order top materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice: and/ or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigations or from pursuing the investigation, or  (bb) acts intended to materially impede the exercise of the Agency’s inspections and audit rights provided for under the Contract.  If the Employer determines that the Contractor and/or its subcontractors has engaged in corrupt, fraudulent, collusive coercive, or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contractor’s employment under the Contract and expel him from the Site, and the provisions of Clause 42 shall apply as if such expulsion had been made under Sub-Clause 15.2 GCC. |