Section XV - Contract Forms

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# LETTER OF ACCEPTANCE

…………………… *[Date]`*

To:

……………………………………………………………………………………………………………..

*[Name of the Contractor]*

………………………………………………………………………………………………………….….

*[Address of the Contractor]*

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

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

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

Authorized Signature:

Name and Title of Signatory:

Ministry of Planning and Infrastructure

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

# FORM OF PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)

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

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

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

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

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

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

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

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

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

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

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

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

Signed on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signed on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

in the presence of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the presence of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# FORM OF BANK GUARANTEE FOR ADVANCE PAYMENT

To:

……………………………………………………………………………… …………

*[name & address of Employer*]

*……………………………………………………………………………… …………*

*[name of Contract]*

Dear Sirs:

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

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

Yours truly,

SIGNATURE AND SEAL: …………………………………………………………………..

NAME & ADDRESS OF BANK/INSTITUTION ……………………………………………….

# CONTRACT AGREEMENT

This Agreement made the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, between Ministry of Planning, Housing and National Infrastructure, Male’, Republic of Maldives (hereinafter called “the Employer”) the one part and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. (Herein after called “the Contractor”) of the other part.

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

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement,
3. the Letter of Acceptance
4. the Letter of Proposal
5. the addenda Nos \_\_\_\_\_\_\_\_(if any)
6. the Particular Conditions
7. the General Conditions
8. the Employer’s Requirements
9. the completed Schedules
10. the Proposal of the Proposer, and
11. any other documents forming part of the Contract including, but not limited to:
    * 1. Code of Conduct for Contractor’s Personnel (ES)**.**
12. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned the Contractor hereby covenants with the Employer to design, execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
13. The Employer hereby covenants to pay the Contractor, in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price at the times and in the manner prescribed by the Contract.

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

For and Signed on behalf of:

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

In the presence of:

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

|  |
| --- |
|  |

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

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

The Employer and the Contractor agree as follows:

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

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

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

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

Signed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (for the Employer)

Signed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (for the Contractor)

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

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

# SCHEDULE OF COST INDEXATION

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

# CODE OF CONDUCT FOR CONTRACTOR’S PERSONNEL (ES) FORM

***Note to the Employer****:*

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

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

***Delete this Box prior to issuance of the RFP documents.***

**Note to the Proposer**:

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

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

**CODE OF CONDUCT FOR CONTRACTOR’S PERSONNEL**

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

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

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

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

**REQUIRED CONDUCT**

Contractor’s Personnel shall:

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

**RAISING CONCERNS**

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

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

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

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

**CONSEQUENCES OF VIOLATING THE CODE OF CONDUCT**

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

FOR CONTRACTOR’S PERSONNEL:

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

Name of Contractor’s Personnel: [insert name]

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: (day month year): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Countersignature of authorized representative of the Contractor:

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: (day month year): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_