Section 8 – PARTICULAR CONDITIONS OF CONTRACT

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## **8.1 Contract Data**

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|  | **Sub - Clause** |  |
| Employer’s name and address | 1.1.27 | Ministry of Education,  Ameenee Magu, Maafannu  Male’,  Republic of Maldives |
| Contractor’s name and address | 1.1.11. |  |
| Employer’s Representative name and address | 3.1 | [Name]  [Address]  Male’, Republic of Maldives |
| Time for Completion of the Works | 1.1.76 | **18 Months** |
| Defects Notification Period | 1.1.24 | 365 days |
| Notices and other Communications | 1.3 | Electronic Mail and Facsimile |
| Governing Law | 1.4 | The law is that in force in the Repbulic of Maldives |
| Ruling language | 1.4 | English |
| Time for access to the Site | 2.1 | 14 days before Commencement Date |
| Amount of Performance Security | 4.2 | 5% of Agreed Contract price |
| Normal working hours | 6.5 | 8 hours per day or as suited at site of work |
| Delay damages for the Works | 8.8 & 14.15(b) | 0.25 % of Contract Price per day, in the currencies and proportions in which the Contract Price is payable. |
| Maximum amount of Delay damages | 8.8 | 15% of the final Contract Price |
| Percentage for adjustment of Provisional Sums | 13.4(b) | Not Applicable |
| Total advance payment | 14.2 | Not Applicable |
| Amortization Rate | 14.2.3 | Not Applicable |
| Percentage of Retention | 14.3 | 5% |
| Limit of Retention Money | 14.3 | 5% of the Contract Price |
| Plant and Materials intended for the Works | 14.5 | Not Applicable |
| Minimum amount of Interim Payment Certificate | 14.6 | 2% of the Contract Price. |
| Currency of Payment | 14.15 | Maldivian Rufiyaa as named in the Letter of Tender |
| Periods for submission of insurance:   1. Evidence of insurance 2. Relevant policies | 19.1  19.1 | 14 days  28 days |
| Maximum amount of deductibles for insurance of the Employer’s risks | 19.2 | Nil |
| Maximum amount of third party insurance | 19.2.4 & 19.2.5 | MVR 1 Million |
| The Dispute Avoidance/ Adjudication Board shall be | 21.1 | DAB shall comprise 03 members |
| Appointment (if not agreed) to be made by | 21.2 | Ministry of Finance |

## **8.2 Particular conditions of Contract**

This Appendix forms part of the Agreement.

| **Item** | **Sub-Clause** | **Data** |
| --- | --- | --- |
| ***Clause 1*** |  |  |
| ***Country of Origin*** | 1.1.81 | *Insert this new Sub-Clause after sub-clause 1.1.80*  The use of Goods and Services from a country under embargo from United Nations is NOT permitted. |
| ***Works and Goods*** | 1.1.79 | *Amend by inserting the following words at the end of the Sub‐Clause:*  “Works” shall also mean to include any project component stated or implied in the Contract. It shall also mean submission of shop‐drawings associated with Permanent Works or the Temporary Works. |
| ***Law and Language*** | 1.4 | *Amend by inserting the following words at the end of the Sub‐Clause:*  *The Contract shall be governed by and construed in accordance with laws of the Republic of Maldives.*  *The language for communication shall be the English Language.* |
| ***Priority of Documents*** | 1.5 | *Delete Sub-Clause 1.5 and substitute:*  The documents forming the Contract are to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found, the priority shall be such as may be accorded by the governing law. The Employer’s Representative has authority to issue any instruction which he considers necessary to resolve an ambiguity or discrepancy. |
| ***Other Definitions*** | 1.1.30 | *Amend by inserting the following words at the end of the Sub‐Clause:*  “Employer’s Representative” means an entity or a person assigned by the entity for the monitoring of Works under the under Contract. |
| ***Employer’s Use of Contractor’s Documents*** | 1.9 | Delete the entire content of the Sub‐Clause and substitute with the following words:  When the Contractor submits Contractor’s Document for approval or review to the Employer and once the Employer makes payment for such document, it shall become the property of the Employer. |
| ***Clause 2*** |  |  |
| ***Employer’s Financial Arrangements*** | 2.4 | *This Sub-Clause is not applicable* |
| ***Clause 3*** |  |  |
| ***The Employer’s Representative*** | 3.1 | *Insert this at the end of Sub- Clause 3.1 as (d):*   1. Monitor the works on site daily and prepare daily sheets for the work progress. 2. hold monthly site meetings with the project team 3. Inform the employer of any issue to be rectified or requiring immediate attention. 4. any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Employer’s Representative (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances. |
| ***Management Meetings*** | 3.6 | *Delete the entire content of the Sub‐Clause and substitute with the following words:*  The Employer’s Representative 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 Employer’s Representative 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 Employer’s Representative in compliance with the Contract, the Employer’s Representative 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*** |  |  |
| ***Performance Security*** | 4.2 | *At the end of second paragraph, insert the following:*  If the Performance Security is in the form of a bank guarantee, it shall be issued either (a) by a local bank, or (b) by a foreign bank located in the country, acceptable to the Employer. |
| ***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 Contract Price. |
| ***Safety Procedures*** | 4.8(h) | *Add the following to Sub-Clause 4.8*  The Employer 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. |
| ***Site Data*** | 4.10 | The Contractor shall be responsible for verifying and interpreting the technical data transmitted by the Employer. |
| ***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 |
| ***Temporary Utilities*** | 4.19 | *At the end of the second paragraph of Sub-Clause 4.19:*  “The Contractor shall obtain temporary electricity and water from the local authorities for Contractor’s own use. All the cost should be borne by the Contractor including initial cost and monthly bills. If such services are not available in the site area Contractor shall provide on Contractor’s own cost alternative methods to obtain electricity, water and any other utility service which require to complete the work.” |
| ***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 the preparation and provision of all shop drawings and documents described in Sub‐Clause 5.2 [Contractor’s Documents].  The Employer shall not be responsible for any error, inaccuracy or omission of any kind in the Employer’s Requirements as originally included in the Contract and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated below. Any data or information received by the Contractor, from the Employer or otherwise, shall not relieve the Contractor from his responsibility for the execution of the Works. The Contractor shall be responsible for verifying and interpreting the technical data transmitted by the Employer.” |
| ***Contractor’s Documents*** | 5.2 | *Amend by deleting (a) (iii) of 6th sub‐paragraph of Sub‐Clause.* |
| ***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.  The Contractor may import any personnel who are necessary for the execution of the Works.  The Contractor must ensure that these personnel are provided with the required residence visas and work permits and shall be solely responsible for complying with procedures and processing of such visas and work permits in the Country.    The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of imported Contractor’s Personnel. |
| ***Working Hours*** | 6.5 | *Amend by inserting the following new paragraph at the end of the Sub‐ Clause:*  “The Contractor shall respect the Country’s recognized festivals, days of rest, and religious or other customs.” |
| ***Facilities for Staffs and Labour*** | 6.6 | *Amend by inserting the following new paragraphs between the first and second paragraphs of the Sub‐Clause:*  “Without prejudice to the foregoing, the Contractor shall provide and maintain such accommodation and amenities as he may consider necessary for all the Contractor’s Personnel, including (without limitation) all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cookhouses, fire prevention and firefighting equipment, air conditioning, cookers, refrigerators, furniture, and other requirements in connection with such accommodation or amenities.   Upon completion of the Contract, unless otherwise agreed with the Employer, the temporary camps or housing provided by the Contractor shall be removed and the site reinstated to its original condition, subject to the approval of the Employer’s Representative. |
| ***Clause 8*** |  |  |
| ***Commencement of Work*** | 8.1 | The contractor shall commence the works within 21 days of signing of the contract agreement. |
| ***Clause 12*** |  |  |
| ***Procedures for Tests after Completion*** | 12.1 | Add the following to the end of sub-clause:  All costs associated with conducting Tests after Completion shall be borne by the Contractor. |
| ***Clause 13*** |  |  |
| ***Adjustments for Changes in Costs*** | 13.7 | Amend by deleting the entire contents of the Sub‐Clause and replacing with the following: ‐  “Subject to Sub‐Clause 13.7, the Contract Price shall not be subject to any adjustment in respect of rise or fall in the cost of labour, Materials, or any other matters affecting the cost of execution of the Contract.” |
| ***Clause 14*** |  |  |
| ***Advance Payment*** | ***14.2*** | This Sub-Clause is not applicable. |
| ***Plant and Materials intended for the Works*** | ***14.5*** | This Sub-Clause is not applicable. |
| ***Clause 15*** | 15.6 | Sub Clause 15.6 is amended to read as under:  If the Employer determines that the Contractor and Financier has engaged in corrupt, fraudulent, collusive or coercive 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 15 shall apply as if such expulsion had been made under Sub- Clause 15.2 [Termination by Employer].  Should any employee of the Contractor or Financier be determined to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [Contractor’s Personnel].  The Employer requires that all Contractors adhere to the Employer’s Policies for the Procurement of Works and Goods. In particular, the Employer requires that the executing agencies and contracting agencies, as well as all firms, entities and individuals bidding for or participating in this project, including, inter alia, applicants, bidders, contractors, consulting firms and individual consultants (including their respective officers, employees and agents) adhere to the highest ethical standards, and report to the Employer all suspected acts of fraud or corruption of which it has knowledge or becomes aware, during the Bidding Process and throughout the negotiation or execution of a Contract. Fraud and corruption are prohibited. Fraud and corruption include acts of: (a) bribery, (b) extortion or coercion, (c) fraud and (d) collusion.  The definitions of actions set forth below cover the most common types of corrupt practices, but are not exhaustive. For this reason, the Employer shall also take action in the event of any similar deed or complaint involving alleged acts of corruption, even when these are not specified in the following list. The Employer shall in all cases proceed in accordance with Sub-Clause 15.6.  In pursuance of this policy:   1. The Employer defines the terms set forth below as follows: 2. "Bribery" meaning the offering or giving of anything of value to influence the actions or decisions of third parties or the receiving or soliciting of any benefit in exchange for actions or omissions related to the performance of duties; 3. "Extortion" or "Coercion" meaning the act of obtaining something, compelling an action or influencing a decision through intimidation, threat or the use of force, where potential or actual injury may befall upon a person, his/her reputation or property; 4. "Fraud" meaning any action or omission intended to misrepresent the truth so as to induce others to act in reliance thereof, with the purpose of obtaining some unjust advantage or causing damage to others; and 5. "Collusion" meaning a secret agreement between two or more parties to defraud or cause damage to a person or entity or to obtain an unlawful purpose; 6. If the Employer, in accordance with its administrative procedures, demonstrates that any firm, entity or individual bidding for or participating in this project including, inter alia, applicants, bidders, contractors, consulting firms, individual consultants, purchasers, executing agencies and contracting agency (including their respective officers, employees and agents) engaged in an act of fraud or corruption in connection with this project, the Employer may: 7. decide not to accept any proposal to award a contract or a contract awarded;   suspend the operation if it is determined at any stage that evidence is sufficient to support a finding that an employee, agent or representative of the Employer, Executing Agency or Contracting Agency has engaged in an act of fraud or corruption. |
| ***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 Employer’s Representative, 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 19*** |  |  |
| ***General Requirements for Insurances*** | 19.1 | Add the following at the end of Sub-Clause 18.1:  Acceptable to the Employer. |
| ***Insurance against Injury to Persons and Damage to Property*** | 19.2 | The minimum insurance amount and deductibles for injury to persons and damage to property shall be as below;   1. For loss or damage to property (except the works, plant, material and equipment in connection with contract): 10% of contract amount. 2. For personal injury or death: MVR 1,000,000 |
| ***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 |
| ***Arbitration*** | 20.6 | At the end of sub-paragraph (a), insert the following:  “in Male’” |