6. PARTICULAR CONDITIONS OF CONTRACT

These “Particular Conditions” are amendments and additions to the “General Conditions” that form part of the “Conditions of Contract for EPC/Turnkey Projects” First Edition 1999 published by the Federation Internationale des Ingénieurs-Conseils (FIDIC)

GENERAL PROVISIONS

1.1

Definitions

1.1.1

The Contract

1.1.1.1 Amend by deleting the sub-clause and inserting as follows;

“Contract” means the Contract Agreement, the Letter of Acceptance, these Conditions, the Employer’s Requirements, the Tender, and the further documents (if any) which are listed in the Contract.

1.1.1.4 Amend by inserting the following words at the end of the sub-clause;

The word “Tender” is synonymous with “Contractor’s Proposal”.

1.1.1.6 After Sub-Clause 1.1.1.5, add the following Sub-Clause:

“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) as included in the Contract.

1.1.1.7 After Sub-Clause 1.1.1.5, add the following Sub-Clause:

"Letter of Acceptance" means the letter of formal acceptance, signed by the Employer, of the Contractor’s Proposal, including any annexed memorandums comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression "Letter of Acceptance" means the Contract and the date of issuing or receiving the Letter of Acceptance means the date of signing of the Contract.
1.1.3

Dates, Tests, Periods and Completion

1.1.3.3 Time for completing the whole Works shall be ... calendar days, starting from the commencement date.

1.1.4

Money and Payments

1.1.4.1 Delete the entire content of the Sub-Clause and substitute with the following words:

“Contract Price” means the agreed amount stated in the Contract for the execution and completion of the Works and the remedying of any defects, and includes adjustments (if any) in accordance with the Contract. The words “Contract Price” and “Contract value” and “Value of contract” are synonymous.

1.1.5

Works and Goods

1.1.5.8 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.

1.1.6

Other Definitions

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

“Country” means the Republic of Maldives in which the Sites are located, where the Permanent Works are to be executed.

1.1.6.12 Amend by inserting the following new sub clause at the end of sub clause 1.1.6.8:
Temporary Site means the places or temporary land which the Employer hands over under the title “Temporary Land”. This site is for the purpose of Temporary Works that are to be executed and to which Plant and Materials are to be temporarily stored. This Temporary Site will be a place considered to be forming a part of the Site under the sub clause 1.1.6.7 (Site).

1.2 Amend by inserting the following words at the end of the Sub-Clause (d):

Interpretation “In these Conditions, provisions including the expression “Cost plus reasonable profit” require this profit to be one tenth (10%) of this cost”

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

Communications “The only accepted electronic transmission system will be Fax and e-mail.”

The Employer address is;
Housing Development Corporation Ltd,
3rd floor, HDC Building, Hulhumalé,
Republic of Maldives
Phone: (+960) 3353535
Fax: (960) 3358892
Email: tenders@hdc.com.mv

The Contractor address is;

.................................................................
.................................................................
.................................................................

1.4 Delete the first and second Sub-paragraph of Sub-Clause 1.4 and substitute:

Law and Language

The Contract shall be governed by and construed in accordance with laws of the Republic of Maldives.

The language for communication shall be English Language.
1.5 **Priority of Documents**

Delete Sub-Clause 1.5 and substitute:

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

(a) The Contract Agreement,
(b) The Letter of Acceptance,
(c) The Schedule of Payments,
(d) The Addenda nos. .............,
(e) The Particular Conditions,
(f) These General Conditions,
(g) The Employer’s Requirements,
(h) The Contractor’s Tender/Proposal, and any other documents forming part of the Contract.

1.10 **Employer’s Use of Contractor’s Documents.**

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.

1.12 **Confidential Details**

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

“The Contractor shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable Laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous written agreement of the Employer.

The Contractor further acknowledges that, in performing the Contract, he may have access to confidential information of a non-public or proprietary nature relating to the Employer, its associated entities, their business affairs, clients, customers and employees, governmental and trade secrets and other confidential information data as well as information relating to the Works (together “Confidential Information”). The Contractor undertakes without limit of time:
(a) to use the Confidential Information only for the purposes of performing the Contract and not use the Confidential Information for his own personal gain or benefit or for the benefit of any person other than the Employer or any associated entity; and

(b) to keep the Confidential Information strictly secret and confidential and in particular not to divulge, publish or disclose the Confidential Information whether in whole or in part and whether directly or indirectly to any third party without the prior written consent of the Employer.

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

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

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

(a) is in or enters the public domain otherwise than as a consequence of any unauthorized disclosure, act or omission by the Contractor;

(b) is lawfully and properly in the possession of the Contractor at the time it is disclosed to or obtained by the Contractor (as evidenced by the Contractor’s written records) and which was not obtained directly or indirectly from the Employer;

(c) is disclosed pursuant to requirements of law.”

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

Compliance with Laws “For the avoidance of doubt, the Contractor agrees that he shall comply with all applicable Laws, ordinances, codes and regulations in the performance of his obligations under the Contract, including the procurement of permits and certificates where required. If at any time during the term of the Contract, the Contractor is informed or information comes to his attention that he is or may be in violation of any Laws,
ordinance or code (or if it is so determined by any court, tribunal or other authority), the Contractor shall immediately take all appropriate steps to remedy such violation and comply with such Laws, regulation, ordinance or code in all respects. Further, the Contractor shall establish and maintain all proper records (particularly, but without limitation, accounting records) required by any Laws, code of practice or corporate policy applicable to him from time to time.”

**THE EMPLOYER**

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<tr>
<th>Section</th>
<th>Description</th>
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<tr>
<td><strong>2.1</strong></td>
<td>Right of Access to the Site</td>
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<td>The time for giving the Contractor right of access to, and possession of, all the Site parts of the Site, shall be within 7 (Seven) days from the date of signing of this Contract.</td>
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</table>

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

**Permits, Licenses or Approvals**

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

**THE CONTRACTOR**

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<tr>
<th>Section</th>
<th>Description</th>
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<td><strong>4.2</strong></td>
<td>Performance Security</td>
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<td></td>
<td>Delete the First paragraph of Sub-Clause 4.2 and substitute:</td>
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<td></td>
<td>The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount of 5% (five percent) of the total Contract Price.</td>
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<tr>
<td><strong>4.2</strong></td>
<td>Performance Security</td>
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<td>Delete the second paragraph of Sub-Clause 4.2 and substitute:</td>
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<td>The Contractor shall deliver the Performance Security to the Employer within 28 days after both Parties have signed the Contract. The Performance Security shall be issued by an entity and from within a</td>
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country (or other jurisdiction) approved by the Employer, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

4.3 Amend by inserting the following words at the end of the of Sub-Clause Contractor’s Representative “If the Contractor’s Representative, or these persons, is not fluent in English Language, the Contractor shall make a competent interpreter available during all working hours.”

4.19 Delete the second and third paragraphs and amend by inserting the following words at the end of the first paragraph of Sub-Clause: Electricity, Water and Gas “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.”

4.21 Delete the First Sentence in first paragraph and amend inserting the following words at the beginning of the first paragraph of Sub-Clause: Progress Reports “Monthly progress reports shall be prepared by the Contractor and submitted to the Employer in one copy.”

DESIGN

5.1 Amend by deleting entire Sub-Clause 5.1 and substitute with: General Design Obligations 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.

<table>
<thead>
<tr>
<th>5.2</th>
<th>Amend by deleting 3rd, 4th, 5th and 6th sub-paragraph of Sub-Clause.</th>
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<tbody>
<tr>
<td><strong>Contractor’s Documents</strong></td>
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<td>5.5</td>
<td>Amend by deleting entire Sub-Clause 5.5.</td>
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<td><strong>Training</strong></td>
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<td>5.6</td>
<td>Amend by deleting last sub-paragraph of Sub-Clause 5.6 and insert the following new paragraph:</td>
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<tr>
<td><strong>As-Built Documents</strong></td>
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</table>

Prior to the issue of any Taking-Over Certificate, the Contractor shall supply to the Employer;
(a) 1 set original hard-copy and soft-copy for Architectural/Civil Works (with complete product specifications, origin, supplier name and details), and
(b) 1 set original hard-copy and soft-copy for services,

in accordance with the Employer’s Requirements. The Works shall not be considered to be completed for the purposes of taking-over under Sub Clause 10.1 [Taking Over of the Works and Sections] until the Employer has received these documents.

**STAFF AND LABOUR**

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<tr>
<th>6.1</th>
<th>Amend by inserting the following new paragraphs at the end of the Sub-Clause:</th>
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<tr>
<td><strong>Engagement of Staff and Labour</strong></td>
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</table>

“The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within the Country.

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.

6.5 Working Hours

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.”

6.6 Facilities for Staffs and Labour

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 Engineer.

6.7 Health and Safety

Amend by inserting the following new paragraphs between the first and second paragraphs of the Sub-Clause:

“The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the Site from nuisance by insects, rats, and other pests and reduce their danger to health. The Contractor shall provide suitable prophylactics for the Contractor’s Personnel for the prevention of malaria, and shall take steps to prevent the formation of stagnant pools of water. The Contractor shall comply with all the regulations of the local health authorities in these respects and shall in particular arrange to spray thoroughly with approved insecticide all buildings erected on the Site. Such treatment shall be carried periodically as instructed by the Engineer.

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

| 6.12 | Amend by inserting the following new Sub-Clause:

**Alcoholic Liquor or Drugs**
“The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal by Contractor’s Personnel.”

| 6.13 | Amend by inserting the following new Sub-Clause:

**Arms and Ammunition**
“The Contractor shall not give, barter, or otherwise dispose of to any person, any arms or ammunition of any kind or allow Contractor’s Personnel to do so.”

| 6.14 | Amend by inserting the following new Sub-Clause:

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

**COMMENCEMENT, DELAY AND SUSPENSION**

| 8.1 | Amend by deleting first paragraph (including (a) and (b)) of the Sub-Clause and replacing with the following words:

**Commencement of Works**
The Commencement Date shall be the date at which:
(a) the Employer hands over the Site to the Contractor.
8.7 **Delay Damage**

Amend by deleting (b) of the Sub-Clause and replacing with the following words:

The sum referred to in the second sentence in Sub Clause 8.7 shall be 0.25% (naught point two five percent) of the Contract Price as delay damages in respect of the Works, payable (per day) in the proportions of currencies in which the Contract Price is payable. The maximum amount of delay damages shall be 10% (ten percent) of the Contract Price stated in the Contract.

**DEFECTS LIABILITY**

11.2 **Cost of Remedying Defects**

Amend by deleting part (a) of the first paragraph of the Sub-Clause.

**VARIATIONS AND ADJUSTMENTS**

13.8 **Adjustments for Changes in Costs**

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.”

**CONTRACT PRICE AND PAYMENT**

14.2 **Advance payment**

Delete the last sentence of the first paragraph, (a), (b) and (c) add the following at end of the first paragraph.

(a) Advance payment shall be 15% (Fifteen percent) from the Contract price,
(b) Advance payment will be paid in currencies applicable to Contract,
(c) Advance payment will be recovered from each interim claims of the Contractor at the rate of 15%.”

14.3 Delete the (b), (c) of second paragraph and add the following wording

Application for Interim Payments

(b) any amounts to be added and deducted for changes in legislation, in accordance with Sub-Clause 13.7 [Adjustments for Changes in Legislation];
(c) any amount to be deducted for retention, calculated by applying 10% (Ten percent) of the summation of “(a)” and “(b)”, until the amount so retained by the Employer reaches the limit of 5% (Five percent) of Contract;

14.4 Delete all content of Sub Clause 14.4 and insert the following.

Schedule of Payments

Payment for the project will be based on the actual progress percentage (minimum 5%) for completed works. Contractor may submit invoice twice a month and shall be paid as per Sub-Clause 14.7 [Timing of Payments].

Completion of works will be determined by the Employer’s representative and Contractor’s representative jointly.

The actual work progress will be determined by the Employer in reference to the submitted Work Program.

14.5 Delete the sub clause 14.5.

Plant and Materials intended for the Works

14.9 The percentage of retention shall be 10% (Ten percent) of each Interim Payment, subject furthermore to a maximum aggregate ceiling of 5% (Five percent) of the Contract Price, half of which will be released after the issuance of Taking-Over Certificate, the balance will be released one week after the Defects Notification Period.
14.15 Currencies of Payment

Amend by deleting the entire contents of the Sub-Clause and replacing with the following:

The Contract Price shall be paid in Maldivian Rufiyaa (MVR). Thus, the applicable currency and proportion for this Contract is in Maldivian Rufiyaa (MVR) and in 100% respectively.

All payments made in accordance with the Contract shall be in Maldivian Rufiyaa (MVR).

CLAIMS, DISPUTES AND ARBITRATION

20.3 Failure to Agree Dispute Adjudication Board

The appointing entity or official (if not agreed) to be made by the Court of the Country.

20.6 Arbitration

Amend by deleting (a) of first paragraph of this sub clause and replacing with the following:

(a) The dispute shall be finally settled under the relevant court of Maldives in accordance with the Law of Maldives.