

## **A. DRAFT CONTRACT**

**CONTRACT :**

**PRICE : #.....# EUROS**

SUBJECT: « Supply and installation of equipment ICW for the water reservoir located at the Ministry for Gozo, Malta *within the framework of the Non Conventional Water Resources Programme in Malta*»

In ....., this Contract is entered into force, on..... by and between the following parties:

- MIO ECSDE, acting, for the signing of the present Contract, as a lawful representative of the GWP-Med, as legally represented by the Chairman of its Management Board **Prof. Michael Scullios** and
- the company / firm named «.....» seated at: ..... – Tax Registration Number:..... – as legally presented by Mr. .... hereinafter referred to as «**the CONTRACTOR**»

Having regard to the following premises:

1. According to the Memorandum of Understanding dated 23.10.2014, signed between GWP-Med, the Sustainable Energy and Water Conservation Unit within the Ministry for Energy and Health, the EcoGozo Regional Development Directorate within the Ministry for Gozo the Ministry for Gozo and the Coca Cola System in Malta, GWP-Med will apply 2-3 non conventional water resources systems in schools and public areas in the Maltese Islands;
2. The Call for Quotations, dated 11/11/2014;
3. That the **CONTRACTOR** who submitted his bid to the said call declared that he holds the necessary infrastructure, know-how, personnel and experience and therefore he submitted his Financial Offer, in compliance with the specifications set forth in the Call;
4. That the Contracting Authority has accepted such offer under the following terms and conditions;
5. MIO-ECSDE's Assignment Decision No. ....; and
6. MIO-ECSDE's Awarding Letter No. .... to the **CONTRACTOR**.

Have agreed, contemplated and mutually accepted the following:

## **A.1. DEFINITIONS**

The following terms shall have the respective meanings, unless otherwise required by the text:

### **Project**

The implementation by the **CONTRACTOR** of the Contract scope, as detailed under article C.4, in accordance with the terms and conditions of this Contract.

### **Administrative Order**

Any instruction or order given in writing by GWP-MED as represented by MIO ECSDE / the Supervisor to the **CONTRACTOR** in relation to Project implementation.

### **Document**

Any handwritten, typed or printed notice, order or instruction or certificate issued under this Contract, including telexes, telegraphs and facsimiles.

### **Day**

Calendar day.

### **Offers**

The Financial Offers of the **CONTRACTOR** accompanying this Contract, being an integral part hereof.

### **Contract**

This Contract entered into force by and between MIO-ECSDE, acting for the signing of the present Contract as a lawful representative of GWP-Med and the **CONTRACTOR** for the « Supply and installation of equipment ICW for the water reservoir located at the Ministry for Gozo, Malta» as the same may be amended or complemented.

### **Acceptance Committee**

The Committee designated by the Contracting Authority in order to issue the final acceptance certificate, after prior acceptance by the Supervisor.

### **Deliverables**

The entire Project to be delivered by the **CONTRACTOR** to GWP-Med as represented by MIO-ECSDE in application hereof, as detailed in the **CONTRACTOR'S** Technical Bid.

### **Documentation**

Any material, in printed or electronic form, related to Project elaboration, and any other handwritten material accompanying the Deliverables.

### **Annexes**

- **Annex 1** «Instructions to Bidders»,
- **Annex 2** «Special and general Conditions»
- **Annex 3** «Forms» and

- **Annex 4 «Drawings»**

The headings and titles in the Contract shall not be taken as part thereof or be taken into consideration in its interpretation.

Where the context so permits, words in the singular shall be deemed to include the plural and vice versa and words in the masculine shall be deemed to include the feminine and vice versa.

Words designating persons or parties shall include firms and companies and any organisation having legal capacity.

### **Terms**

**Engineer's representative:** Any natural or legal person, designated by the Engineer as such under the contract, and empowered to represent the Engineer in the performance of his functions, and in exercising such rights and/or powers as have been delegated to him. In this case, references to the Engineer will include his representative.

**Evaluation committee:** a committee made up of an odd number of voting members (at least three) appointed by the Contracting Authority and possessing the technical, linguistic and administrative capacities necessary to give an informed opinion on tenders.

**Final acceptance certificate:** Certificate(s) issued by the Engineer to the Contractor at the end of the defects notification period stating that the Contractor has completed his obligations to construct, complete, and maintain the works concerned.

**General damages:** The sum not stated beforehand in the contract, which is awarded by a court or an arbitration tribunal, or agreed between the parties, as compensation payable to an injured party for a breach of the contract by the other party.

**In writing:** This includes any hand-written, typed or printed communication, including fax transmissions and electronic mail (e-mail).

**Liquidated damages:** The sum stated in the contract as compensation payable by the Contractor to the Contracting Authority for failure to complete the contract or part thereof within the periods under the contract, or as payable by either party to the other for any specific breach identified in the contract.

**Site:** The places provided by the Contracting Authority where the works are to be carried out and other places stated in the contract as forming part of the site.

**Supervisor/Engineer:** The legal or natural person responsible for administering the contract on behalf of the Contracting Authority.

**Tender document/s:** The dossier compiled by the Contracting Authority and containing all the documents needed to prepare and submit a tender.

**Tender price:** The sum stated by the tenderer in his tender for carrying out the contract.

**Works:** Works of a permanent or temporary nature executed under the contract.

## A.2. WRITTEN COMMUNICATION

The written communication between MIO-ECSDE and the **CONTRACTOR** (documents, Administrative orders) shall be delivered by post, telegraph, telex or email, or in person, as follows:

To **MIO-ECSDE**:

MIO-ECSDE

12 Kyrristou str.

10556 Athens, Greece

Tel: +30-2103247267, -2103247490

Fax: +30-210331712

Email: secretariat@gwpmmed.org

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To the **CONTRACTOR**:

« \_\_\_\_\_ »

Mail Address: \_\_\_\_\_

PC.: \_\_ \_\_, City: \_\_\_\_\_

E – mail: \_\_\_\_\_

Tel.: \_\_\_\_\_ - Fax \_\_\_\_\_

At all times, the sender shall take any necessary measure to ensure delivery and receipt of documents.

## A.3. CONTRACT CONTENTS

This Contract includes by order of precedence:

- a) The Attached Draft Contract (to be completed), including the Annexes;
- b) The Call for Quotations
- c) **CONTRACTOR**'s clarifications (if requested by and provided to MIO-ECSDE);
- e) The **CONTRACTOR**'s Financial Offer;
- f) Contract Annexes comprising the documentation submitted with the **CONTRACTOR**'s, being an integral part of this Contract.
- g) any other document forming part of the contract.

The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they should be read in the order in which they appear above.

## A.4. CONTRACT SCOPE

The Scope of this Contract is the « Supply and installation of equipment ICW for the water reservoir located at the Ministry for Gozo, Malta» according to the details included in the offers accompanying this Contract, as submitted by the **CONTRACTOR** during the procedure carried out following the Call for Quotations, being an integral part of this Contract.

The said bid include Special Terms which govern any issue not addressed in the main Contract.

#### **A.5. LAW AND LANGUAGE OF THE CONTRACT**

This Contract is being drawn up in English.

The Special Conditions shall specify the law governing all matters not covered by the contract.

Greek Law applies to the Contract, with the exception of the laws and rules related to the technical execution of the Project, where applicable are the Laws and regulations of Malta.

#### **A.6. CONTRACTUAL PRICE & METHOD OF PAYMENT**

The **CONTRACTOR**'s fees, pursuant to his financial bid dated \_\_\_\_\_, amounting to **Euros** \_\_\_\_\_ ( \_\_\_\_\_ €), shall be subject to the legal deductions and shall be paid as described below.

The **total cost** shall not exceed the amount of **Euros** \_\_\_\_\_ (€ \_\_\_\_\_) and shall be borne by MIO ECSDE's Special Account.

All payments shall be effected upon production of the legal documents required, at a time to be dependent upon the necessary administrative procedures for the issuance of the related money orders.

Payment is subject to the following documentation:

1. The Acceptance Protocol executed by the competent Acceptance Committee wherein acceptance of the source shall be certified along with the successful and faithful compliance with all the contractual obligations of the **CONTRACTOR**.
2. The **CONTRACTOR**'s invoices, indicating the total or the contractual price, in numbers and in words
3. Clearance Certificate for Social Security Contributions.
4. Tax Clearance Certificate.

After the final quantitative and qualitative Project acceptance. All legal deductions shall be calculated over the net price, exclusive of VAT, and shall be borne by the **CONTRACTOR**.

Payments shall be made in Euro. Payments due by the Contracting Authority shall be made to the bank account mentioned on the **financial identification form** completed by the Contractor. The Contractor must report in writing any changes of bank account.

Sums due shall be paid within no more than 30 calendar days from the date on which an admissible payment request is registered by the Contracting Authority. The date of payment shall be the date on which the institution's account is debited. The payment request shall not be admissible if one or more essential requirements are not met.

The 30-day period may be suspended by notifying the Contractor that the payment request cannot be fulfilled because the sum is not due or because appropriate substantiating documents have not been provided. An inspection may be, at all times, carried out on the spot for the purpose of further checks. The Contractor shall provide clarifications, modifications or further information within 30 days of being asked to do so. The payment period shall continue to run from the date on which a properly drawn-up payment request is registered.

The Contractor undertakes to repay any amounts paid in excess of the final amount due to the Contracting Authority within 30 days of receiving a request to do so. Should the Contractor fail to make repayment within the deadline set by the Contracting Authority, the Contracting Authority may increase the amounts due by adding interest at the rate applied by the European Central Bank to its main refinancing transactions in euro where payments are in euro, on the first day of the month in which the time-limit expired, plus three and a half percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline set by the Contracting Authority (exclusive), and the date on which payment is actually made (inclusive). Any partial payments shall first cover the interest thus established.

Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Contractor. This shall not affect the Parties' right to agree on payment in instalments. Bank charges incurred by the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor.

### **Advance Payment**

An advance of twenty per cent (**20%**) of the contract price (exclusive of V.A.T.) shall be paid, after the deposit by the **CONTRACTOR** of an Advance Payment Guarantee equaling 20% of the value of the contract price, according to the **Standard Letter F.3** hereof, provided by a credit institution or any other legal person lawfully operating in Malta or in the Contractor's country, which is entitled by law to issue such bonds. The Advance Payment Guarantee shall be returned upon the full completion and delivery of the works, due ..... (8 weeks from the contract date) and upon offsetting of any outstanding claims by the parties.

No pre-financing shall be granted until:

- a) the conclusion of the contract;
- b) provision to the Contracting Authority by the Contractor of the performance guarantee equaling 10% of the value of the contract price, provided by a credit institution or any other legal person lawfully operating in Malta or in the Contractor's country, which is entitled by law to issue such bonds. The Performance Guarantee shall be returned one (1) year after the delivery of the works due ..... (8 weeks from the contract date), i.e. on 30.11.2015 and upon offsetting of any outstanding claims by the parties.

The Contractor shall use pre-financing exclusively for operations connected with the execution of the works. Should the Contractor misuse any portion of the pre-financing, it

shall become due and repayable immediately and no further pre-financing will be paid to him.

Should the pre-financing guarantee cease to be valid and the Contractor fail to revalidate it, the Contracting Authority may either deduct the amount of the pre-financing from future payments due to the Contractor under the contract or apply the provisions of Article C.11.

If the contract is terminated for any reason whatsoever, the guarantees securing the pre-financing may be invoked immediately in order to repay the balance of the pre-financing still owed by the Contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.

#### **Payment of the balance of 80%**

An installment of forty per cent (**40%**) of the contract price (exclusive of V.A.T.) shall be paid to the Contractor with the completion and delivery of the works due on ..... (8 weeks from the contract date).

The balance of forty per cent (**40%**) of the contract price shall be paid after the final qualitative and quantitative acceptance of the project.

#### **A.7. CONTRACT TERM – DELIVERY – ACCEPTANCE**

The Project of this Contract is set to be implemented by ..... (8 weeks from the contract date).

The Supervisor and the Acceptance Committee shall inspect the works for any defects. Works which do not satisfy the terms and conditions of the contract or which, in the absence of such terms and conditions, are not carried out in accordance with trade practices in the state where the works are located shall, if necessary, be demolished and rebuilt by the Contractor or repaired to the satisfaction of the Supervisor. Otherwise, this shall be done as of right after due notice, at the expense of the Contractor, by order of the Supervisor. The Supervisor may also require the Contractor to demolish and reconstruct, or to repair to the Supervisor's satisfaction, works in which unacceptable materials have been used or works carried out.

The Contractor shall be responsible for making good any defect in, or damage to, any part of the works which may appear or occur for one (1) year after their delivery date on ..... (8 weeks from the contract date). If the Contractor fails to remedy a defect or damage within the time limit stipulated in the notification, the Contracting Authority, with the prior written approval of the Central Government Authority, may:

a) carry out the works itself or employ someone else to carry them out at the Contractor's risk and cost, in which case the costs incurred by the Contracting Authority will be deducted from monies due to, or from guarantees held against, the Contractor, or from both; or

b) terminate the contract.

In any of the above cases, the Contracting Authority may keep the Performance Guarantee.

Upon expiry of the one-year period and when all defects or damage have been rectified, the Acceptance Committee shall issue the Contractor a final acceptance certificate, stating the date on which the Contractor completed his obligations under the contract to the Supervisor's satisfaction.

Notwithstanding the issue of the final acceptance certificate, the Contractor and the Contracting Authority shall remain liable for the fulfilment of any obligation incurred under the contract prior to the issue of the final acceptance certificate which remains unperformed at the time that final acceptance certificate is issued. The nature and extent of any such obligation shall be determined by reference to the provisions of the contract

Notwithstanding the above, GWP-Med as represented by MIO-ECSDE may, on special grounds, make a decision to be timely communicated to the **CONTRACTOR**, to provisionally or definitively terminate Contract validity, during any contractual term.

In such a case, the **CONTRACTOR** shall be entitled to absolutely no claims for damages.

The Acceptance Committee may, if it ascertains substantial deviations from the contract terms or the specifications, refuse to officially accept the Project as above mentioned and may propose monetary penalties, as the same are detailed hereunder.

The Contracting Authority may unilaterally prolong Project time schedule or its separate prescribed phases or activities.

#### **A.8. CONTRACTOR'S TECHNICAL COMPETENCE & OPERATIONS**

The **CONTRACTOR** undertakes to ensure, in all technical aspects, the quality of his services provided to GWP-Med as represented by MIO-ECSDE and of the works produced. He shall ensure all necessary conditions for the suitability of the procedures followed, in particular those involving the understanding of needs and requirements, the Project concept and any specific problems, as well as the methodology, structure, control and programming.

#### **A.9. CONTRACTOR'S OBLIGATIONS**

##### **C.9.1 GENERAL OBLIGATIONS**

The **CONTRACTOR** shall:

a) be in compliance with the applicable laws, decrees, ministerial decisions, as stated in art.

C.18:

- governing the Project he has undertaken, and shall be personally liable for any infringement thereof;
- on health and safety of all his personnel to be employed in the assigned Project.
- while working, he shall also be in compliance with the prescribed Health & Safety, fire protection etc measures.

b) Undertake all responsibility and become solely and exclusively liable for any damages or wear caused by the Contractor or his personnel during Project execution. He shall be also exclusively responsible for any damage or injury that may be caused in a labor accident of his personnel employed with the Project.

c) with due care and diligence, and in accordance with the provisions of the contract, design the works to the extent stated in the contract, and execute, complete and remedy any defects in the works. The Contractor shall provide all superintendence, personnel, materials, plant, equipment and all other items, whether of a temporary or permanent nature, required for the design, execution and completion of works, and for remedying any defects, in so far as is specified in, or can be reasonably inferred from, the contract.

d) Inform his employed personnel that:

- He has absolutely no dependence upon or any labor or legal relation with GWP-Med and / or MIO-ECSDE
- He bears all legal and contractual penal liabilities and obligations.
- Furthermore, the **CONTRACTOR** shall replace forthwith, with no objections, any member of his personnel which may be considered by GWP-MED as represented by MIO-ECSDE as unsuitable (either for inappropriate behavior or otherwise), as soon as he receives written notice therefore.

e) The staff and workmen employed by the Contractor must be sufficient in number, and each must have the qualifications necessary to ensure due progress and satisfactory execution of the works. The Contractor shall immediately replace all persons indicated by the Supervisor, in a letter stating reasons, as hampering the proper execution of the works. The Contractor shall make his own arrangements for the engagement of all staff and labour. He shall comply with all the relevant labour laws applying to his employees, shall duly pay them and afford them all their legal rights.

f) The equipment, which the Contractor has at the site, shall be deemed to be for the purpose of carrying out the works. The Contractor shall not be entitled to remove it without the written consent of the Supervisor unless he shows that the said equipment is no longer required for the performance of the works.

g) The Contractor shall take full responsibility for the adequacy, stability and safety of all operations and methods of works under the contract.

h) The Contractor shall comply fully with any administrative orders given to him. Where the Contractor considers that the requirements of an administrative order exceed the authority of the Supervisor or the scope of the contract, he shall, on pain of being time-barred, notify the Supervisor of this fact within 5 days of receiving the administrative order and inform the Contracting Authority. Execution of the administrative order shall be suspended during this period.

i) The Contractor shall either give an address for service or give an address close to the works, or appoint an agent residing at that address. He shall notify the Contracting Authority of the address for service or other address. Should he fail to fulfil this obligation within one week of being notified of the approval of the contract, all notifications concerning the contract shall be valid when they are sent to the address given in the Special Conditions.

j) After final acceptance of the works, the Contractor shall be relieved of this obligation. Should he fail to inform the Contracting Authority of a change of address before final acceptance of the works, all notifications concerning the contract shall be valid when they are sent to the address given in the Special Conditions.

k) The Contractor shall indemnify the Central Government Authority (Ministry for Gozo – Republic of Malta) and the Contracting Authority against any claims and proceedings arising from any infringement by the Contractor, his employees and their dependants of such laws and regulations. Without prejudice to the above, the Contractor shall be bound to conform and comply with Chapter 452 of The Laws of Malta (Employment and Industrial Relations Act, 2002 – Act No. XXII of 2002) and to all regulations/legal notices that form part of this Act.

l) If the Contractor or any of his subcontractors, agents or servants offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the contract or any other contract with the Central Government Authority; or for showing favour or disfavour to any person in relation to the contract or any other contract with the Central Government Authority, then the Contracting Authority may, with the prior approval of the Central Government Authority, without prejudice to any accrued rights of the Contractor under the contract, terminate the contract in accordance with the relevant provisions of the present Contract.

m) If the Contractor is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound to fulfil the terms of the contract according to the law of the state of the Contracting Authority and shall, at the request of the Contracting Authority, designate one of such persons to act as leader with authority to bind the joint venture or consortium. The composition or constitution of the joint venture or consortium shall not be altered without the prior consent in writing of the Central Government Authority.

n) The Contractor shall take out **insurance** in both his own and the Contracting Authority's name against any loss or damage for which he is liable under the contract. Such insurance shall, unless the Special Conditions provide otherwise, cover:

a) the works, together with materials and plant for incorporation therein, to the full replacement cost against all loss or damage from whatever cause arising other than from force majeure or risks attributable under the contract to the Contracting Authority;

b) an additional sum of 15% of such replacement cost or any other amount specified in the Special Conditions, to cover all the additional direct or indirect costs of making good losses or damage, including professional fees and the cost of demolishing and removing any part of the works and of removing debris of whatever nature;

(c) the Contractor's equipment and other things brought onto the site by the Contractor, for a sum sufficient to provide their replacement at the site.

The Contractor may substitute the insurance by a comprehensive insurance policy that covers, inter alia, the above - mentioned elements (a), (b) and (c). In that case, the Contractor shall notify the insurer of the Contracting Authority's interest.

The Contractor shall take out insurance against industrial accidents and civil liabilities arising from the execution of the works to any person employed by the Contractor on the works or to the Contracting Authority and its employees. Such liability shall be unlimited in the case of personal injuries.

The Contractor shall take out insurance covering liability with regard to risks and civil liability resulting from an act or omission attributed to him, to his legal successors or agents. Such insurance shall be for at least the amount stated in the Special Conditions. The Contractor shall ensure that all his subcontractors have taken out similar insurance.

The insurance policy agreement shall be presented for the signing of the contract, and shall be subject to approval by the Contracting Authority. Such insurance shall take effect from the commencement of the works and remain in force until final acceptance of the works. On being asked to do so by the Contracting Authority or the Supervisor, the Contractor shall promptly present the Contracting Authority with the insurance policy and proof that premiums have been duly paid.

Notwithstanding the Contractor's insurance obligations under the present Article, the Contractor shall bear sole liability for, and indemnify the Central Government Authority, the Contracting Authority and the Supervisor against, any claims by third parties for damage to property or personal injuries arising from the execution of the works by the Contractor, his subcontractors and employees.

o) Regarding **safety on site**, the Contractor shall have the right to forbid access to the site to any person not involved in the performance of the contract, with the exception of persons authorised by the Supervisor or representatives of the Contracting Authority.

The Contractor shall ensure the safety of sites throughout the period of execution and shall be responsible for taking the necessary steps, in the interests of his employees, agents of the Contracting Authority and third parties, to prevent any loss or accident which may result from carrying out the works.

The Contractor shall, on his own responsibility and at his own expense, do his utmost to ensure that existing structures and installations are protected, preserved and maintained. He shall be responsible for providing and maintaining at his own expense all lighting, protection, fencing and security equipment that proves necessary for the proper performance of the works or that the Supervisor may reasonably require.

If, during the performance of the contract, urgent measures are necessary to obviate any risk of accident or damage or to ensure safety after an accident or damage, the Supervisor shall give formal notice to the Contractor to do what is necessary. If the Contractor is unwilling or unable to undertake the necessary measures, the Supervisor may, to the extent that the Contractor is liable, arrange for such measures to be implemented at the expense of the Contractor.

Without prejudice to the above, the Contractor shall be bound to conform and comply with Chapter 424 of The Laws of Malta (Occupational Health and Safety Authority Act 2000) and to all regulations/legal notices that form part of this Act, as well as any other national legislation, regulations, standards, and/or codes of practice, in effect during the execution of the contract, regarding health and safety issues as they apply for the Contractor's particular operating situation and nature of work activities.

p) On his own responsibility and at his expense, the Contractor shall take all the precautions required by good construction practice and by the prevailing circumstances to **safeguard all public properties and adjacent properties** and avoid causing any abnormal disturbance therein.

The Contractor shall indemnify the Central Government Authority and the Contracting

Authority against the financial consequences of all claims by neighbouring landowners or residents to the extent that the Contractor is liable and to the extent that the damage to adjacent properties is not the result of a hazard arising from the design or method of construction imposed on the Contractor by the Contracting Authority or the Supervisor.

#### **A.10. RIGHTS AND OBLIGATIONS OF THE CONTRACTING AUTHORITY**

##### **A.10.1. SUPERVISION - SUPERINTENDENCE OF THE WORKS**

The Supervisor shall be appointed by the Contracting Authority. The Supervisor shall have authority to issue to the Contractor, on behalf of the Contracting Authority, administrative orders incorporating such supplementary documents and instructions as are necessary for the proper execution of the works and the remedying of any defects therein.

The Contractor shall superintend the works himself or appoint a representative to do so. Such appointments shall be submitted to the Supervisor for approval. The approval may be withdrawn at any time. Should the Supervisor refuse to approve, or withdraw approval of the appointment, he shall set out the grounds on which his decision is based, and the Contractor shall submit an alternative appointment without delay. The address of the Contractor's representative shall be deemed to be the address for service given by the Contractor.

If the Supervisor withdraws his approval of the Contractor's representative, the Contractor shall, as soon as is practicable, after receiving notice of such withdrawal, remove the representative from the works and replace him with another representative approved by the Supervisor.

The Contractor's representative shall have full authority to make any decision necessary for the execution of the works, to receive and carry out administrative orders and to countersign the work register referred to in this Contract or the Annexes.

In any event, the Contractor shall be responsible for ensuring that the works are carried out satisfactorily, including ensuring that the specifications and administrative orders are adhered to by his own employees and by his subcontractors and their employees.

An officer appointed by the Ministry for Gozo shall have the right to supervise the works and their progress at his discretion, ensuring the compliance of the works with national legislation and the protection of public property.

##### **A.10.2. ACCESS TO THE SITE(S)**

The Contracting Authority shall, in due time and in conformity with the progress of the works, place the site and access thereto at the disposal of the Contractor in accordance with the programme of performance. The Contractor shall be in touch with the Ministry for Gozo and has to co-ordinate with the progress of the excavations executed by its Contractor(s). The Contractor shall afford other persons concerned every reasonable opportunity to carry out their work, as set out in the Special Conditions or as required by administrative orders.

Land procured for the Contractor by the Contracting Authority shall not be used by the Contractor for purposes other than the performance of the contract.

The Contractor shall keep any premises placed at his disposal in good condition while he is in occupation. He shall, if so required by the Contracting Authority or the Supervisor, restore them to their original state on completion of the contract, taking into account normal wear and tear.

The Contractor shall not be entitled to any payment for improvements resulting from work carried out on his own initiative.

### **A.10.3. ASSISTANCE WITH NATIONAL AND LOCAL REGULATIONS**

The Contractor may request the assistance of the Ministry for Gozo in obtaining copies of laws, regulations and information on local customs, orders or by-laws of the country where the works are located which may affect the Contractor in the performance of his obligations under the contract. The Ministry for Gozo and/or the Contracting Authority may provide the assistance requested to the Contractor at the Contractor's cost.

The Contractor shall duly submit all necessary documents in order to obtain the requisite permits and licences from the respective governmental authorities.

### **A.11. TIME SCHEDULE – PENAL CLAUSES**

Under a MIO ECSDE's decision, the Contractor may be imposed with penal clauses, in the following cases:

- If he does not duly perform his contractual obligations hereunder: **Euros Six thousand (6,000.00 €)**.
- If he is not in compliance with the instructions of the competent GWP-Med / MIO ECSDE officers as regards Project performance: **Euros Three thousand (3,000.00 €)**.
- If he does not see to the remedy of any failures or omissions: **Euros Four thousand (4,000.00 €)**.

Such clauses refer to case-by-case violations; in case of second recurrence, they shall be doubled; for a third recurrence they may be tripled or the **CONTRACTOR** may be forfeited, with all the legal consequences.

Such inappropriateness or inadequate performance of the **CONTRACTOR**'s contractual obligations shall be determined by the competent MIO-ECSDE's Committee, at its sole discretion, as per common sense and experience; the **CONTRACTOR** shall have no other right than to provide to the Committee his own opinion, information, explanation, either in writing or verbally.

Should the **CONTRACTOR** be imposed with a penal clause and the **CONTRACTOR** disagrees therewith, then he may lodge an objection within 5 days from the communication of the Contracting Authority's decision. The competent MIO-ECSDE's Committee shall resolve upon such objection, after a recommendation of the Tender Committee. Such a resolution may not be disputed by any other administrative appeal of any kind.

Should the said appeal be granted, in part or in total, the imposed penalty shall be obliterated or adjusted respectively and the withheld penal clause shall be refunded to the **CONTRACTOR**. Appeal rejection shall conclusively validate the penalty imposed.

If the **CONTRACTOR** resigns during the contract term, he shall be imposed with the following sanctions:

- a. Total forfeiture of his Good Performance Guarantee; and
- b. MIO-ECSDE shall be entitled to legally claim any and all direct and liquidated damages that may arise from such a behavior on the Contractor's part.

**A.12. C.12. CONTRACT AMENDMENT**

This Contract may be amended when both parties agree in writing, should the Contracting Authority, asks the CONTRACTOR to provide additional services to the ones provided hereunder. If this is necessary in order to meet the Contracting Authority's unforeseeable needs, then the **CONTRACTOR**, shall implement such a complementary Project, within a time schedule and in a manner to be mutually agreed, at a cost equal or analogous to the offered price.

**A.13. EXTENSION IN EXECUTION SCHEDULE**

The Contracting Authority shall unilaterally reserve its right to prolong Project time schedule or its separate prescribed phases or activities, if the Contracting Authority thinks it imperative.

No deferment is permitted for the CONTRACTOR, unless force majeure reasons concur or any other greatly serious reasons which render the timely delivery of the Project objectively impossible.

The **CONTRACTOR** may ask for a deferment of the Project time frame, in case Contract execution, or any part thereof, delays or is about to delay, on grounds beyond the Contractor's reasonable control because of force majeure events.

Within 15 days from having received knowledge of any event that might cause such a delay, the **CONTRACTOR**, shall submit to the Contracting Authority a request for the deferment of the execution deadline, which he considers he is entitled to, providing full and detailed information for his request, to enable its prompt consideration. The Contracting Authority shall consider the **CONTRACTOR's** request and shall decide whether any deferment is justifiable, either for the future or retroactively.

An execution deferment of individual Contract activities may be approved, under the same procedure as above, also if delays are due to other reasons, under the express condition that the **CONTRACTOR** shall represent, in his request, that such a deferment shall not have any effect on the overall Project time schedule.

The deferment of execution deadline shall entail no sanctions, shall require agreement of both parties and shall be conditional upon ensuring Project implementation, as the same has been detailed above.

**A.14. ASSIGNMENTS – TRANSFERS**

The **CONTRACTOR** may not transfer or assign the Contract or any part thereof, with no prior written consent by GWP-Med as represented by MIO-ECSDE. By way of exclusion, the **CONTRACTOR** may assign, with no consent, his claims GWP-Med as represented by MIO-ECSDE for the payment of the contractual price, according to the terms of this Contract, to a bank of his choice which is lawfully operating in Greece.

**A.15. FORCE MAJEURE - DEATH**

a. The parties shall not be liable for the fulfillment of their contractual obligations, to the extent that such failure to fulfill is due to force majeure events.

If he invokes force majeure, the **CONTRACTOR** shall promptly notify the Contracting Authority and the Supervisor in writing, giving details of the nature, the probable duration and the likely effect of the circumstances and producing any required evidence.

Unless otherwise directed by the Supervisor in writing, the Contractor shall continue to perform his obligations under the contract as far as is reasonably practicable, and shall employ every reasonable alternative means to perform any obligations that the event of force majeure does not prevent him from performing. The Contractor shall not employ such alternative means unless directed to do so by the Supervisor.

The Contracting Authority shall reply within fifteen (15) days from the receipt of the related request of the Contractor; otherwise, if such time frame elapses *dies non*, acceptance of such request shall be presumed.

For the purposes of this Article, the term "force majeure" means acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions and any other similar unforeseeable events which are beyond the Parties' control and cannot be overcome by due diligence.

The Contractor shall not be liable to forfeiture of his performance guarantee, liquidated damages or termination for default if, and to the extent that, his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure. Nor, notwithstanding the provisions of the Contract on delayed payments and termination by the Contractor, shall the Contracting Authority be liable for the payment of interest on delayed payments, for non-performance or for termination by the Contractor for default if, and to the extent that, the Contracting Authority's delay or other failure to perform its obligations is the result of force majeure.

**b.** Where the Contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the Contracting Authority shall examine any proposal made by the heirs or beneficiaries if they have notified their wish to continue the contract. The decision of the Contracting Authority shall be notified to those concerned within 30 days of receipt of such proposal.

Where the Contractor consists of a number of natural persons and one or more of them die, a report shall be agreed between the Parties on the progress of the works, and the Contracting Authority shall decide whether to terminate or continue the contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be.

#### **A.16. REPRESENTATIONS & WARRANTIES**

The **CONTRACTOR** represents to **MIO-ECSDE** that the Project shall be executed in compliance with the Contract terms and conditions and that all materials – products, services and equipment shall be in conformity with all the properties and characteristics specified in the Contract and shall meet the specifications, functions, results and properties

as the same are specified in the Annexes hereof or as they may be specified by **MIO-ECSDE** during Project execution. The undertaking of the said representation shall constitute a substantial term of this Contract to be signed between the Contractor and **MIO-ECSDE**, the infringement of which shall be considered (settled) by Athens Courts.

#### **A.17. BREACH OF CONTRACT**

A Party shall be in a breach of contract if it fails to discharge any of its obligations under the contract. Where a breach of contract occurs, the injured Party shall be entitled to damages and/or termination of the contract.

Where a breach of contract is attributable to the Contractor, the Contracting Authority shall also be entitled to the following remedies as of right:

- a) performance of all or part of the works using directly-employed labour;
- b) termination of all or part of the contract with or without compensation payable by the Contractor;
- c) conclusion of a contract with a third party replacing the Contractor, after prior termination of the original contract;
- d) notification of the Ministry for Gozo

In applying any of these measures, the Supervisor shall take all appropriate steps to protect or ensure proper performance of the works.

In the event of the works being executed by directly employed labour or by a contract with a third party replacing the Contractor, the Supervisor shall inspect the works, draw up an inventory of plant and materials and make out a statement of emoluments due to, and amounts owed by, the Contractor under the contract, after summoning the Contractor by registered letter with acknowledgement of delivery.

In the event of the works being executed by directly employed labour, the Supervisor shall be entitled to use the Contractor's equipment to complete the performance of the contract. Where the works are undertaken using directly employed labour, the Contractor shall be authorised to observe the operations, without, however, being able to interfere in the execution of instructions given by the Supervisor. The use of directly employed labour may be discontinued if the Contractor furnishes proof of the necessary means to resume the works and bring them to a satisfactory conclusion.

Additional expenditure resulting from the use of directly employed labour or of a contract with a third party replacing the Contractor shall be borne by the latter.

If the use of directly employed labour or a contract with a third party replacing the Contractor results in a reduction in expenditure, the Contractor may not claim any part of the profit thus derived; it shall be the property of the Contracting Authority.

In addition to the above-mentioned measures, damages may be awarded. They may be either:

- a) general damages; or
- b) liquidated damages.

Recovery of damages, disbursements or expenses resulting from the application of measures provided for in this Article shall be effected by deduction from the sums due to the Contractor and from the Letters of Guarantee presented by him.

#### **A.18. CONTRACT TERMINATION**

The Contracting Authority may, after giving the Contractor seven days' notice, terminate this Contract in any one of the following cases:

- a) Where the **CONTRACTOR** does not implement the Project in the manner specified in the Contract, despite the repeated notices given by the Contracting Authority to this end or refuses or neglects to carry out administrative orders given by the Supervisor;
- b) Where the **CONTRACTOR** assigns this Contract with no prior permission by the Contracting Authority;
- c) Where the **CONTRACTOR** is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations
- d) Where the **CONTRACTOR** has been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata
- e) Where the Contractor has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
- f) Where the Contractor has been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- g) Where the Contractor, following another procurement procedure or grant award procedure financed by the Community budget, has been declared to be in serious breach of contract for failure to perform its contractual obligations.
- h) Where any organisational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an addendum to the contract
- i) Where any other legal disability hindering performance of the contract occurs
- j) Where a final judgment is rendered against the **CONTRACTOR** for a crime related to his professional conduct

Termination results shall enter into effect upon the **CONTRACTOR** having received the termination notice from the Contracting Authority. In exceptional cases, the Contracting Authority may, at its discretion, for those termination causes this is possible, to set a reasonable (at its discretion) time frame for the remedy of the infringement that has given rise to termination; in this case, termination results shall enter into effect automatically

upon the elapse of the time frame set, unless the Contracting Authority notifies in writing the **CONTRACTOR** that the Contracting Authority considers the said infringement as remedied.

Upon Contract termination by the Contracting Authority, the **CONTRACTOR** shall, upon request by the Contracting Authority:

- a) refrain from the performance of any work, project, service rendering or fulfillment of his obligations under this Contract,
- b) hand over, at a time to be determined by the Contracting Authority any material - product, Project work (either completed or not) he may have elaborated or he may possess, along with all supporting documents and means (magnetic or not).
- c) hand over to the Contracting Authority any equipment, materials or other goods that he possesses and that are directly or indirectly related to the Project.

As soon as possible after Contract termination, the Contracting Authority shall certify the value of the Project part that has been already provided, along with any debt to the **CONTRACTOR** on the termination date.

The Contracting Authority shall suspend payment of any amount due to the **CONTRACTOR** under this Contract, until full settlement of their mutual obligations. The Letters of Guarantee shall forfeit.

The Contracting Authority may additionally claim indemnification from the **CONTRACTOR** for any damage it may have suffered, up to a maximum amount of the Contractual Price which corresponds to the Project part that may not, due to insufficient Contract execution, be used for its intended purpose.

The Contracting Authority shall also be entitled to the remedies stated in A.17 and in the present article.

In case the **CONTRACTOR** resigns during the Contract term, he shall be imposed with the following sanctions:

- Total forfeiture of his Good Performance Guarantee; and
- the Contracting Authority shall be entitled to legally claim any and all direct and liquidated damages that may arise from such a behavior on the Contractor's part.

The **CONTRACTOR** may be considered as forfeited under this Contract, at the discretion of the Contracting Authority's Management.

The Contractor may, after giving 14 days notice to the Contracting Authority terminate the contract if the Contracting Authority consistently fails to meet its obligations after repeated reminders

Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor. Upon such termination, the Contractor shall, subject to the law of the state of the Contracting Authority, be entitled to immediately remove his equipment from the site.

In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or damage the Contractor may have suffered.

#### **A.19. APPLICABLE LAW – SETTLEMENT OF DISPUTES**

**19.1** This Contract shall be governed by the Greek Law, with the exception of the laws and rules related to the technical execution of the Project, where applicable is the Law of Malta.

**19.2** In case any disputes arise in relation to the interpretation, execution or application of this Contract or in connection hereto, the Contracting Authority and the **CONTRACTOR** shall endeavor to settle the same amicably, in good faith and according to the rules of good business practice. The Parties shall make every effort to settle amicably any dispute, which may arise between them. Once a dispute has arisen, the Parties shall notify each other in writing of their positions on the dispute and any solution, which they consider possible. If either Party deems it useful, the Parties shall meet and try and settle the dispute. A Party shall respond to a request for amicable settlement within 30 days of such a request. The maximum period laid down for reaching such a settlement shall be 90 days from the commencement of the procedure. Should the attempt to reach an amicable settlement fail or a Party fail to respond in time to requests for a settlement, either Party shall be free to proceed to the next stage of the dispute-settlement procedure by notifying the other.

**19.3** If no settlement is reached within 90 days of the start of the amicable dispute-settlement procedure, each Party may seek a ruling from a national court. For any dispute that may not be settled according to the above provisions, Athens (Greece) courts shall have jurisdiction.

#### **A.20. CONFIDENTIALITY**

The Contractor shall treat all documents and information received in connection with the contract as private and confidential. He shall not, save in so far as may be necessary for the purposes of the contract's execution, publish or disclose any particulars of the contract without the prior consent in writing of the Contracting Authority or the Supervisor.

With no prior consent of the Contracting Authority, the **CONTRACTOR** shall not disclose any confidential information he was given or he discovered himself during Contract performance; he shall neither disclose any data, documents or information that come into his knowledge in relation to this Contract. The **CONTRACTOR** is obliged to take all steps required so that his employees and associates comply with the said obligation. In case the **CONTRACTOR** is in breach of his such obligation, the Contracting Authority shall be entitled to claim remedy of any damage it may have suffered and discontinuance of / refraining from the disclosure of confidential information in the future.

The **CONTRACTOR** may not make any public statements in relation to this Contract with no prior consent of the Contracting Authority; he may neither participate in activities that are incompatible with his obligations against the Contracting Authority; He may not bind the Contracting Authority in any way whatsoever, with no prior written consent of the latter.

When performing its duties, the Acceptance Committee and all of the Contracting Authority's authorized persons shall not disclose to anyone who is not qualified, any information they obtained during / on the occasion of Contract execution, involving technical or commercial aspects or construction or operation methods of this Contract or the **CONTRACTOR** himself.

**A.21. MISCELLANEOUS**

- This Contract has been prepared in English.
- Any delay or failure by any party to exercise any of its rights arising hereunder, shall not be considered as its waiver thereof.
- Any invalidity of a part hereof shall not entail invalidity of the entire Contract.
- The signing of this Contract entails full acceptance of its terms and conditions.
- The undersigning parties expressly represent and warrant that they are fully authorized to undertake their respective commitments.
- This Contract has been drawn up in three (3) counterparts. Each original has been signed by the representatives of both parties. The CONTRACTOR one (1) original, MIO ECSDE received one (1) original and one (1) original will be handed to the Ministry for Gozo.

**A.22. PROJECT DESCRIPTION AND TECHNICAL SPECIFICATIONS**

Listed in detail in **Annexes 4 and 5**.

**A.23. DURATION OF THE PROJECT**

The project must be completed as by ..... (6 weeks from the contract date).

**Contracting Authority:**

**Contractor:**

Signed by:

Signed by:

In the capacity of:

In the capacity of:

Being fully authorized by and acting on  
behalf of

Being fully authorized by and acting on  
behalf of

.....

.....

Date: .....

Date: .....

**B.1. GOOD PERFORMANCE GUARANTEE**

ISSUED BY.....

Date of issue.....

To: MIO-ECSDE

Our Letter of Guarantee no..... for ..... euros

We hereby guarantee, waiving irrevocably and unconditionally any right of division and distraint, in favor of

*{In case of an individual company : the Company ..... No ..... Street ..... P.C. ....}*

*{or in case of an Association or Consortium : the Companies*

a) ..... no ..... street ..... P.C. ....

b) ..... no ..... street ..... P.C. ....

members of the Association or Consortium, individually for each one of them and as jointly and severally liable by their membership in the Association or Consortium,}

up to the amount of .....euros, for the good performance of Contract no..... concerning the Call for Quotations held by MIO-ECSDE with the subject and with a total value of ....., according Call for Quotations dated .....

The afore mentioned amount of the guarantee stands at your disposal, and we are obliged to disburse it totally or partially with no objection or plea on our part and without investigating the tenability or not of your request, within three (3) days of your written notice.

The present is valid until it is rebated or until we receive a written declaration on your part that we can consider our Bank released from any relevant obligation.

In case the guarantee is forfeited, the amount of the forfeiture is subject to the fixed stamp duty applicable from time to time.

(Authorized signature)

**B.2. ADVANCE PAYMENT GUARANTEE**

ISSUED BY.....

Date of issue.....

To: MIO-ECSDE

Our Letter of Guarantee no..... for ..... euros

We hereby guarantee, waiving irrevocably and unconditionally any right of division and distraint, in favor of

*{In case of an individual company* : the Company ..... No ..... Street ..... P.C. ....}

*{or in case of an Association or Consortium* : the Companies

a) ..... no ..... street ..... P.C. ....

b) ..... no ..... street ..... P.C. ....

members of the Association or Consortium, individually for each one of them and as jointly and severally liable by their membership in the Association or Consortium.}

the reception of an advance payment for the disbursement of ...% of the contractual value, euros ..... according to Contract no ..... and your Call for Quotations dated....., in the context of the Call for Quotations held by MIO-ECSDE for the execution of project “Supply and installation of equipment ICW the water reservoir located at the Ministry for Gozo, Malta” with a total value of....., up to the amount of ..... euros plus interest over this advance payment which shall weigh on the Company ..... or, in case of an Association or Consortium, in favor of the Companies of the Association ..... or the Consortium ....., in favor of which we guarantee in application of the relevant articles of the Procurement Regulation, to which our guarantee is limited.

The afore mentioned guarantee amount stands at your disposal, and we are obliged to disburse it totally or partially with no objection or plea on our part and without investigating the tenability or not of your request, within three (3) days of your written notice.

This letter is valid until it is rebated or until we receive a written declaration on your part that we can consider our Bank released from any relevant obligation.

In case the guarantee is forfeited, the amount of the forfeit shall be subject to the fixed stamp duty applicable from time to time.

(Authorized signature)