



Black Rocks Harbor Saba

Tender Documents - Volume 1 Prime Documents

Public Entity of Saba

19 december 2023

Project Black Rocks Harbor Saba
Client Public Entity of Saba

Document Tender Documents - Volume 1 Prime Documents
Status Final version 02
Date 19 december 2023
Reference 118421/23-020.430

Project code 118421
Project Leader A. van den Berg MSc
Project Director R.W. Bos BSc

Author(s) A.F.M. de Heer MSc
Checked by A. van den Berg MSc, M.G.M. Huijsmans BSc
Approved by A. van den Berg MSc

Paraph

BB

Address Witteveen+Bos Raadgevende ingenieurs B.V. | Deventer
Blaak 16
P.O. Box 2397
3000 CJ Rotterdam
The Netherlands
+31 10 244 28 00
www.witteveenbos.com
CoC 38020751

The Quality management system of Witteveen+Bos has been approved based on ISO 9001.

© Witteveen+Bos

No part of this document may be reproduced and/or published in any form, without prior written permission of Witteveen+Bos, nor may it be used for any work other than that for which it was manufactured without such permission, unless otherwise agreed in writing. Witteveen+Bos does not accept liability for any damage arising out of or related to changing the content of the document provided by Witteveen+Bos.

TABLE OF CONTENTS

1	INVITATION TO TENDER	6
1.1	General	6
1.2	Tender planning	6
2	INSTRUCTIONS TO TENDERERS	7
2.1	General	7
2.2	Contents	8
2.3	General Information	8
2.4	Tender scheme	9
2.5	General Tender requirements	9
2.6	Eligibility of the Tenderer's	10
2.7	Tender clarifications	10
2.8	Conformance to the Laws of Saba and BES islands	11
2.9	Permits	12
2.10	Site visit	12
2.11	Contact with Employer	13
3	TENDER SUBMISSION CONTENTS	14
3.1	Prequalification	14
3.1.1	Item A - Power of attorney	15
3.1.2	Item B - Statement of acknowledgment, understanding and compliance with the tender requirements	15
3.1.3	Item C - Statement of compliance with Code of Conduct of Public Entity of Saba	15
3.1.4	Item D - List of reference customers	15
3.1.5	Item E - Health and safety records	16
3.1.6	Item F - List of disputes	16
3.1.7	Item G - Annual statements of past 5 years	16
3.1.8	Item H - Certification ISO 9001, or equivalent	16
3.1.9	Item I - Certification ISO 14001, or equivalent	16
3.1.10	Item J - Certification ISO 45001, or equivalent	16
3.1.11	Item K - Reference projects harbor construction	16
3.1.12	Item L - Reference projects backhoe dredging	17
3.1.13	Item M - Reference projects caisson construction	17
3.1.14	Item N - Reference projects Caribbean region	17

3.2	Technical submission	17
3.2.1	Item A - QA/QC and HSE plans	18
3.2.2	Item B - Methodology for construction for the Works and equipment selection, in particular dredging, backfilling and caisson construction, transport and placement	18
3.2.3	Item C - Methodology for design	19
3.2.4	Item D - List of equipment, working capacity on reference projects, availability of spare equipment and parts for contingencies and the sources and supply of materials	19
3.2.5	Item E - Project personnel and organisation chart	20
3.2.6	Item F - Project planning, including mitigation of hurricane season	20
3.2.7	Item G - Methodology for preparation and execution for coral relocation and environmental monitoring	20
3.2.8	Item H - Reference projects for working in environmentally sensitive areas	21
3.3	Commercial Submission	21
3.3.1	Item A – Letter of Tender	21
3.3.2	Item B - Impact of contractual and commercial qualifications	21
3.3.3	Item C - Impact of risks and opportunities	21
3.3.4	Item D - Schedules and payment schedule	22
3.3.5	Item E – Contract Data	22
3.3.6	Item F - Joint Venture details	22
3.3.7	Item G - Insurance details	22
3.3.8	Item H - Financial and bank details	22
3.3.9	Item I - Statement of non-reliance	22
3.3.10	Item J - Declaration of accuracy of information	23
3.4	Submission of the Tender	23
4	TENDER SCORING METHOD	24
4.1	Scoring for Prequalification Data	24
4.2	Technical scoring	25
4.3	Commercial scoring	26
4.4	Total scoring	26
5	TENDER OPENING AND EVALUATION	27
5.1	Tender evaluation and scoring	27
5.2	Substantially responsive Tender	27
5.3	Evaluated Tender amount	28
5.4	Request for additional information	28
5.5	Bill of Quantities	29
5.6	Award of the Contract	30
5.7	Litigation against the Tender evaluation and Award of Contract	30
6	INFORMATION TO TENDERERS	31

6.1	General	31
6.2	Information on Tender Design	31
6.3	Information on Detailed Engineering Design	32
6.4	Information on the works quantity in the tender	32

7	CONDITIONS OF CONTRACT	33
----------	-------------------------------	-----------

7.1	General Conditions of Contract	33
7.2	Particular Conditions of Contract, Part B - Special Provisions	33

Last page	67
---------------------------	-----------

APPENDICES

Number of pages

I	Contract Data	3
II	Annexures to Tender:	
II.A	Annex A - Letter of Tender	2
II.B	Annex B - Form of Agreement	4
II.C	Annex C - Power of Attorney	1
II.D	Annex D - Statement of Acknowledgement, Understanding and Compliance with the Tender Documents	1
II.E	Annex E - Statement of Compliance with Code of Conduct of Public Entity of Saba	1
II.F	Annex F - Statement of Non-Reliance	1
II.G	Annex F - Declaration of Accuracy of Information	1
II.H	Annex G - Form of Key Personnel	1

1

INVITATION TO TENDER

1.1 General

Tenderers are invited by Public Entity of Saba for:

DESIGN AND BUILD OF BLACK ROCKS NEW HARBOR AND FORT BAY HARBOR IMPROVEMENT WORKS

All as described herein, and in accordance with the terms of the Tender Documents.

The Tenders and all supporting documents should be submitted according to Section 2 Instructions to Tenderers, in three separate submissions marked 'Prequalification' (in TenderNed: 'eisen'), 'Technical' (in TenderNed: 'gunningscriteria: Technical') and 'Commercial' (in TenderNed: 'gunningscriteria: prijs').

The submissions shall be submitted digitally in the TenderNed environment.

The Tender Committee and the Employer are not bound to accept the lowest Tender and reserves the right to reject any or all Tenders without assigning any reason whatsoever.

1.2 Tender planning

The tender publication date is 21 December 2023 and tenders shall be submitted on Wednesday 1 May 2024 with the Commencement Date on 1 July 2024.

2

INSTRUCTIONS TO TENDERERS

Sections 2 till 5 form the Instructions to Tenderers.

2.1 General

The purpose of these Instructions to Tenderers is to establish the terms and conditions which apply to this stage of the tendering process and to set out the procedures for submission of Tenders in relation to the project.

By participating in the tendering process for the project, Tenderers are conclusively treated as accepting these Instructions to Tenderers and no purported rejection, variation, or addition to these Instructions to Tenderers made by Tenderers shall have any effect. In particular, but without limitation, each Tenderer acknowledges and agrees that the tendering process described in these Instructions to Tenderers is fair and reasonable.

Tender Options

There are two Tender Options:

- Option 1: Black Rocks Harbor New Build - Package A and Fort Bay Harbor Upgrade Works.
- Option 2: Black Rocks Harbor New Build - Package B and Fort Bay Harbor Upgrade Works.

The Tenderer shall submit bids for both options.

Optional works

The column Jib crane as part of Black Rocks New Harbor New Build Package B is optional.

Alternatives

The Employer has based the reference design on a caisson type structure, for technical and environmental reasons. (Technical: robust design in extreme hurricane wave climate, off-site construction possible avoiding use of scarce local resources, Environmental: small footprint, offsite construction). For above reasons it is expected that the Contractor will base his proposal on a caisson-type structure. However, alternative designs may be submitted **instead of the reference design**.

In all cases the Contractor shall ensure that:

- All Employer's requirements regarding the design, quality, environment, permits etcetera are fully met.
- The alternative should fit in the environmental impact assessment (EIA) and provided permits.

The Employer may decide to award only part of the Works to the successful bidder.

Time for Completion

The Time for Completion is 1 December 2026 for all Options and shall incorporate the following conditions:

- Fort Bay Harbor Upgrade Works shall start before 1 December 2025.
- Fort Bay Harbor Upgrade Works roll on-roll off ramp widening shall only start after completion of the Black Rocks New Harbor works.

Durations are calendar days measured from the Commencement Date. The Works are to be completed in accordance with the periods contained within the Contract Data.

Contractor can propose a later Time for Completion with clear explanation of obvious benefits for the Employer.

The above works must be completed such that they are safe and suitable to be occupied by the Public Entity of Saba and their harbor users and future tenants as well as be compliant with the Employer's Requirements and the Contract.

2.2 Contents

The Tender Documents for the Design and Build package, as issued to each Tenderer in accordance with the Letter of Invitation, comprise:

Table 2.1 Tender document contents

Volume	Title	Content
I	Prime Document	- Invitation to Tenderers - Instructions to Tenderers - Letter of Tender and Appendix - Form of Agreement and Appendices - Specimen Form of Performance Security - Conditions of Contract - Contract Data - Annexes to Tender
II	Employer's Requirements	- Part 1a: Scope of Works and General Requirements - Part 1b: Particular Requirements and Design Criteria - Part 2: General Technical Specification - Definition drawings
III	Schedule of Rates	- Preamble to Bill of Quantities - Bill of Quantities
IV	Reference design	- Reference design report - Reference design drawings - Design support studies
V	Site Data and support documents	- Surveys and site data - Permits - Other support documents

This volume describes Volume 1, the Prime Document for the Contract, and shall be read in conjunction with all the other volumes listed above.

2.3 General Information

The Tenderer is expected to examine the Tender Documents, including all instructions, forms, contract terms, requirements, and specifications. Failure to furnish all information required by the Tender Documents, or submission of a Tender not substantially conforming to the documents in every respect, will be at the Tenderer's risk and may result in the rejection of the Tender.

These Instructions to Tenderers shall not form part of the Tenderer's offer, nor part of the defined words 'Tender' or 'Contract'. These Instructions prescribe the procedures to be followed until the Employer either enters into a Contract with the Tenderer or advises him that the Employer does not intend to do so.

Words and expressions defined in Clause 1.1 of the Conditions of Contract shall have the same meanings where used in these Instructions unless otherwise defined herein.

The Tender and all communications between the Tenderer and the Employer shall be in English. This includes all documents in relation to the Tender submission. The Tenderer shall bear all costs incurred in the preparation and submission of the Tender, including all logistic costs for site visits and other actions mentioned or implied in these documents.

All documents issued, and information given to the Tenderer shall be treated as confidential.

2.4 Tender scheme

This Contract comprises of a lump sum type for the Design and Build of the works associated with Black Rocks New Harbor and the upgrade of Fort Bay Harbor included in this Instructions to Tenderers.

The conditions of contract shall be the FIDIC Conditions of Contract for Plant and Design-Build – Second Edition, 2017 (Yellow Book).

The Tenderer is deemed to be aware of the Law of Saba and BES Islands (Bonaire, Saint Eustatius and Saba) and to have made allowance for any legal requirements which may affect the tendered design contract sum and/or programme.

The tendered contract sum shall be inclusive of all taxes, royalties, duties and levies, fees, cost, and charges payable by the Contractor, either on Saba or anywhere else, as a consequence of undertaking the Works. The sources of all taxes shall be specified in the commercial tender.

Irrespective of the contents of this document, the Employer reserves the right to accept or reject any Tender, or to annul the tendering procedure and reject all Tenders, without incurring liability to any Tenderer. The Employer shall inform Tenderers about the motivation of his decision.

2.5 General Tender requirements

The Tenderer shall complete all the requirements of this document and submit a Tender for the whole of the Works in accordance with the Tender Documents. A Tender which excludes part of the Works may be rejected as per the procedures described in this document.

The completed Tender shall not have any alterations or erasures, except any which may be specified in an addendum to Tender Documents issued under Section 2.7 of these Instructions. However, if any alterations are necessary to correct errors made by the Tenderer, these corrections shall be endorsed before submission with the signature of the person signing the Letter of Tender.

All Tenderers shall submit a substantially responsive Tender. A substantially responsive Tender is defined in Section 3 of this document.

As a minimum, Tenderers are required to submit a Tender that is compliant with the Employer's Requirements.

The Tenderer may also offer technical or other alternatives to the requirements of the Tender Documents, which may include reasonable deviations or other proposals, however, this will only be reviewed if provided in addition to a fully compliant Tender. If alternative designs or deviations are proposed, these shall be clearly identified as a separate schedule to the Tender. An alternative Tender shall include all information required in this document, and as necessary for its complete evaluation by the Employer, with the technical

and commercial advantages clearly highlighted. The Employer reserves the right to evaluate and accept and/or reject alternative offers.

2.6 Eligibility of the Tenderer's

Tenders have been invited under an open tender process for this tender.

In these Instructions to Tenderers the expression 'joint venture' means any groupings described in Clause 1.14 of the Conditions of Contract. In order that such a joint venture of two or more legal persons is to be acceptable as eligible:

- 1 Joint ventures of Tenderers shall be allowed.
- 2 These persons shall have nominated a leader with authority to bind the joint venture and each of these persons. And this leader shall be authorised to incur liabilities and receive instructions for and on behalf of any and all these persons.
- 3 Evidence of this authorisation shall be submitted with the Tender in the form of Power of Attorney signed by legally authorised signatories of all these persons.
- 4 The Letter of Tender, and (if it is accepted) the Agreement, shall be signed so as to be legally binding on each of these persons.
- 5 A copy of the Joint Venture Agreement entered into by these persons shall be submitted with the Tender. The Contract shall state:
 - (i) each such person's percentage participation in the joint venture, and
 - (ii) that these persons shall be jointly and severally liable to the Employer for the performance of the Contract.

No such person or sole Tenderer shall participate in a joint venture in the preparation of another Tender or in more than one joint venture in the preparation of the subsequent Tenders for the same Contract. If any entity is found to have participated in two or more Tenders, other than alternative Tenders for the same Tenderer, all such Tenders will be rejected.

However, any entity may be proposed as a prospective subcontractor by more than one Tenderer in addition to being either a sole Tenderer or a participant in one joint venture Tenderer.

2.7 Tender clarifications

The Tender shall be responsive to the complete set of Tender Documents which comprise the documents listed in Section 2.2 above and any addenda to Tender Documents which may be issued as described in this Section 2.7 as Notices to Tenderers. The Tenderer must carefully examine all Tender Documents. The Tenderer shall scrutinise each document immediately upon receiving it and shall promptly give notice to the party who issued the document of any pages which appear to be missing and/or any other inconsistencies and/or mistakes. Failure to comply with these Instructions or with any other tendering requirements will be at the Tenderer's risk.

Any site/marine surveys, as-built drawings, investigations and studies included with the Tender Documents are provided only as a guide to the existing Site conditions. Neither the Employer nor the Consultant guarantees the accuracy of this information. The Tenderer shall be solely responsible for the interpretation and verification of the data provided and shall be deemed to have satisfied himself as to the conditions expected to be encountered in constructing the Works, whether from the information provided or by his own further surveys, investigations and studies.

Soil investigations conducted by the Employer and made available as part of Volume V Site Data are however already considered comprehensive and representative. It is expected that Contractor shall use these soil investigations data or, in case he proposes to use other data, provides explanation why these provided data are insufficiently representative.

If the Tenderer requires clarification of the Tender Documents, he may give notice to the Employer using the Tendered form for request for tender clarifications. The Employer shall publish tender clarifications at two moments during the Tender procedure. i.e. two weeks after the site visit and 10 days prior to the Tender submission date.

The Employer shall respond to the notice by issuing tender clarification responses. The tender clarifications shall state:

- The text of the question or request for clarification and the Employer's clarification.
- The response shall be in writing and shall give no indication of the identity of the Tenderer who requested the clarification.

These requests for clarification and responses shall be published on Tendered and made available to all prospective Tenderers.

However, if a notice is received less than 15 days before the Tender submission date, there will be no response.

A tender clarification meeting shall be organised during the site visit as per Section 2.10.

If amendments are made to the Tender Documents, arising from a notice or otherwise, the Employer shall issue an addendum to the Tender Documents under a Notice to Tenderers.

Each addendum to the Tender Documents shall be published on Tendered and made available to all prospective Tenderers who have registered and shall be binding upon them. The Tenderer shall promptly acknowledge receipt of each Notice to Tenderers by written notice to the Employer, through the Chairman of the Tender Committee of the Public Entity of Saba and shall enter the Notice to Tenderers reference number in the Letter of Tender.

At any time, the Employer may similarly issue extensions of the tendering period which amends the Tender submission date. In this event, all rights and obligations of the Employer and the Tenderers previously related to the original date shall thereafter be subject to the amended date.

2.8 Conformance to the Laws of Saba and BES islands

The Tenderer shall conform to the Saba and BES islands now in force or which may be made from time to time during the period of the Contract and subject to Sub-Clause 13.6 [*Adjustments for Changes in Laws*]. It is the responsibility of the Tenderer to familiarise itself with all relevant laws and ensure compliance.

The Tenderer's attention is particularly drawn to the following laws but not limited to, briefly summarised below, and the Tenderer is advised to examine these regulations in detail before submitting his Tender:

- 1 Law on maritime management BES (Wmb BES) - Building permit from the Minister of Infrastructure and Water Management for the construction of the breakwater, other harbor structures and land reclamation in/on the seabed (article 20).
- 2 43860 20231030 Black Rocks Harbor Saba (002), Vergunning op grond van de Wet maritiem beheer BES voor het hebben, aanleggen of doen aanleggen van een bouwwerk in of op de bodem van de territoriale zee van het openbaar lichaam Saba, d.d. 30/10/2023.
- 3 Exemption from the Minister of Infrastructure and Water Management for the discharge of dredge spoils to open sea (article 44 and 45).
- 4 Law on nature management BES (Wgn BES) - Ministerial decree for the relocation of approximately 250 colonies of protected coral species (article 8a and 8b) and reporting to the Scientific and Technical Advisory Committee (STAC) of the SPAW Protocol (article 11 par. 1 and 2 of SPAW Protocol).
- 5 Bouwbesluit BES - Building permit from the Executive Council Saba for the harbor structures on land (article 2.2).
- 6 Housing, Planning and Environment Act BES (Wet Volkshuisvesting, ruimtelijke ordening en milieu BES).

- 7 Marine Environment Ordinance of Saba - Exemption from the Executive Council Saba for the construction of a harbor and the relocation of approximately 250 colonies of protected coral species in the Saba Marine Park (article 8 and 14).
- 8 Nuisance Ordinance for the Windward Islands: Nuisance permit from the Executive Council Saba for a facility with electromotors with a rated power of 2 HP and more (article 1).
- 9 Legislation and ordinances for noise and light emissions.
- 10 Island Ordinance on regulations pertaining to building and housing - Building and Housing Ordinance 1999 - see also: <https://lokaleregelgeving.overheid.nl/CVDR30413/2>.
- 11 Labour Law 2000 BES, in particular in relation to permits for work, residency and settlement - see also: <https://wetten.overheid.nl/BWBR0028202/2022-01-01>.
- 12 Code of Conduct Public Entity of Saba and Inappropriate Behavior Policy.
- 13 Saba port regulations - www.sabaport.com.
- 14 Saba local legislation - <https://lokaleregelgeving.overheid.nl/ZoekResultaat?datumrange=op&caribisch=Saba>.

The Activities Decree BES (Activiteitenbesluit BES) is expected to enter into force before or during the execution of the works and that this will not be considered new legislation and should therefore be taken into account when submitting a tender.

2.9 Permits

The Employer has obtained a permit for the Works which is included in Volume 4. Further, Tenderers are provided with the Environmental Impact Assessment (EIA) in Volume 4.

The Tenderer shall be required to obtain all other necessary design, construction and occupational permits, and approvals, and pay all costs, charges and fees in connection thereto. The timeframes for processing and obtaining these permits should be allowed for in the Tenderer's schedule.

The Tenderer is referred to the website www.sabaport.com for the latest version of the port regulations to which it shall be bound under Contract. Notwithstanding, it is for the Tenderer to validate and take responsibility for such processes and timelines.

2.10 Site visit

Tenderers may visit the Site and its surroundings on 31 January 2024 during the Tender process (as part of a tour hosted by the Employer) and obtain on their own responsibility all information which may be necessary for the purpose of making a tender and entering into a Contract. They shall carefully examine the Site and the Tender Documents and satisfy themselves as to the risks, obligations, and responsibilities to be undertaken in the Contract. The Employer further facilitates individual meetings of 30 minutes with Tenderers on 1 February 2024 for which interested Tenderers shall indicate their interest on 25 January 2024 at the latest via the Tenders dashboard.

The Tenderer and any of his personnel or agents will be granted conditional permission to enter the Site. The permission shall be deemed to have been based on the Tenderer, his personnel and agents indemnifying in full the Employer and his personnel and agents from and against all liability and upon the Tenderer being responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses (however caused) which would not have arisen other than due to the exercise of such permission.

The Site visit is intended to supplement and not replace the individual inspections carried out by each Tenderer. The Employer accepts no responsibility for providing any indication of relevant aspects or access to appropriate areas, which a competent Tenderer may consider necessary for the preparation of a Tender.

A tender clarification meeting shall be organised as part of the site visit programme. The Employer shall not be bound by any oral representations which may be made during the Site visit, whether by the Employer's personnel or by others, and whether during a formal meeting or otherwise. In order to minimise the possibility of misunderstanding, Tenderers should present any Requests for Clarifications in writing as per Section 2.7.

2.11 Contact with Employer

All contact with the Employer during the Tender phase shall be via the Tendered dashboard.

3

TENDER SUBMISSION CONTENTS

The Tender shall be submitted in three individual submissions containing:

- 1 Prequalification details entitled **Prequalification Data** (in TenderNed: 'eisen').
The Prequalification Data shall contain all documents for the identification and evaluation of the Tenderer for their qualification for evaluation of their technical and commercial bids.
- 2 Technical details entitled **Technical Proposal** (in TenderNed: 'gunningscriteria: Technical').
The Technical Proposal shall contain all the required documents of technical nature to be evaluated in the submission.
- 3 Commercial details entitled **Commercial Proposal** (in TenderNed: gunningscriteria: prijs').
All information of financial and commercial nature shall be contained within the Tenderer's Commercial Proposal.

The submissions shall be submitted digitally in the TenderNed environment.

The Tender proposals shall include the items as listed in Sections 3.1 till 3.3. The Tenderer is required to follow the same order of submission documents below in its Tender submission.

The Tender Documents to be submitted by each Tenderer shall comprise the documents as described in Section 2.2 of these Instructions and a Proposal prepared in accordance with this Section. The scoring of the above submission is presented in Section 4 of this document.

The Tender Documents issued to the Tenderer, including any amendments instructed in any Addenda to the Tender Documents, shall be used without further amendments.

3.1 Prequalification

The Prequalification items listed in Table 3.1 shall be expanded by the Tenderer submission with the minimum information detailed in the following section. In case of submission as a joint venture, Tenderer shall provide the information for each joint venture partner.

Table 3.1 Tender submission - Prequalification

Item	Title	Reference
A	Power of attorney	Annex II.C
B	Statement of acknowledgement, understanding and compliance with the tender requirements	Annex II.D
C	Statement of compliance with Code of Conduct of Public Entity of Saba	Annex II.E
D	List of reference customers	
E	Health and safety records	
F	List of disputes	
G	Annual statements of past 5 years	
H	Certification ISO 9001, or equivalent	
I	Certification ISO 14001, or equivalent	
J	Certification ISO 45001, or equivalent	
K	Reference projects harbor construction	
L	Reference projects backhoe dredging	
M	Reference projects caisson construction	
N	Reference projects Caribbean region	

3.1.1 Item A - Power of attorney

The Tenderer shall provide a Power of Attorney or appropriate registered corporate evidence, proving that the person who signs on behalf of the company/joint venture/consortium is duly authorised to do so.

3.1.2 Item B - Statement of acknowledgment, understanding and compliance with the tender requirements

The Tenderer shall provide a written statement listing all Tender Documents and any Tender addendum, clarifications and circulars as may have been issued by the Employer, which shall be signed confirming its acknowledgement of receipt.

The Tenderer must provide a signed statement confirming that he understands the Tender requirements, that the Tender submitted is fully compliant with the requirements of the Tender Documents and he accepts all conditions of the tender procedure and the draft contract agreement.

3.1.3 Item C - Statement of compliance with Code of Conduct of Public Entity of Saba

The Tenderer must provide a signed statement confirming that the Tenderer shall be fully compliant with the Code of Conduct of the Public Entity of Saba.

3.1.4 Item D - List of reference customers

The Tenderer shall provide a list of customers with their corresponding contact information for the reference projects included in Items K, L and M.

3.1.5 Item E - Health and safety records

The Tenderer shall provide an overview of his health and safety performance over the past 5 year, including:

- Casualties rate, per year.
- Lost Time Injuries (LTIs), per year.
- Reported near misses, per year

3.1.6 Item F - List of disputes

The Tenderer shall provide a list of all disputes he was involved in over the period of the last five years and shall detail the type of project, type of contract, topic of dispute, the amount claimed and the claiming party and the status of the dispute or how the dispute has been solved.

3.1.7 Item G - Annual statements of past 5 years

The tenderer shall provide annual statements over the past five years addressing the following elements:

- Consolidated Balance Sheets, Profit & Loss and Auditor Statements (signed) for the entity proposed to hold the contract have to be received from the bidders with regard to the last five years.
- Consolidated Balance Sheets, Profit & Loss Statements, Profit & Loss Transfer Agreements and Auditor Statements for the parent company of the entity proposed to hold the contract have to be received with regard to the last five years.
- Consolidated Balance Sheets, Profit & Loss Statements and Auditor Statements for the relevant (main) subcontractors of the entity proposed to hold the contract have to be received with regard to the last five years.
- Name of the external auditors of all the Financial Statements provided with an explicative note in case the auditor changed from one year to another.

Tenderer will submit a complete package including corporate registration certificate, details of shareholders, tax registration certificates and operational licenses for tenderer and his significant vendors/subcontractors.

3.1.8 Item H - Certification ISO 9001, or equivalent

The Tenderer shall provide their ISO 9001 certification, or equivalent certification.

3.1.9 Item I - Certification ISO 14001, or equivalent

The Tenderer shall provide their ISO 14001 certification, or equivalent certification.

3.1.10 Item J - Certification ISO 45001, or equivalent

The Tenderer shall provide their ISO 45001 certification, or equivalent certification.

3.1.11 Item K - Reference projects harbor construction

The Tenderer shall provide an overview of his experience in harbor construction over a period of the past 10 years and relevant for the project scope of works. The project references should at least state the following:

- Client.
- Location.
- project's scope of work.
- type of contract.
- Tenderer's role in the Project.
- In case of design responsibility, which party was involved for the design works.
- Project turnover and Tenderer's percentage in the total turnover.
- Client's letter of satisfaction.

3.1.12 Item L - Reference projects backhoe dredging

The Tenderer shall provide an overview of his experience in backhoe dredging over a period of the past 10 years and relevant for the project scope of works. The project references shall state the same details as indicated under Item K.

3.1.13 Item M - Reference projects caisson construction

The Tenderer shall provide an overview of his experience in caisson construction over a period of the past 10 years and relevant for the project scope of works. The project references shall state the same details as indicated under Item K.

In case of an alternative Tender for the breakwater construction, 'caisson construction' shall be replaced with the alternative construction method for breakwater construction.

3.1.14 Item N - Reference projects Caribbean region

The Tenderer shall provide an overview of his experience in the Caribbean region over a period of the past 10 years and relevant for the project scope of works. The project references shall state the same details as indicated under Item K.

These project references shall not be evaluated for the purpose of prequalification but solely provide information to the Employer about Tenderer's experience of working in the specific circumstances in the Caribbean region.

3.2 Technical submission

The Technical Submission items listed in Table 3.2 shall be expanded by the Tenderer submission with the minimum information detailed in the following section. Unless otherwise stated, the document length of the items shall be appropriate for the purpose of Tender evaluation.

Table 3.2 Tender submission contents - Technical

Item	Title
A	QA/QC and HSE plans
B	Methodology for construction for the Works and equipment selection, in particular dredging, backfilling and caisson construction, transport and placement
C	Methodology for design
D	List of equipment, working capacity on reference projects, and availability of spare equipment and parts for contingencies and the sources and supply of materials
E	Project personnel and organisation chart
F	Project planning, including mitigation of hurricane season
G	Methodology for preparation and execution for coral relocation and environmental monitoring
H	Reference projects for working in environmentally sensitive areas

Drawings shall be in the metric system and shall comprise A3 sized sets, using an internationally recognised scale and created using AutoCAD or similar software (electronic files shall be provided in PDF and DWG files).

In case of an alternative Tender for the breakwater construction, 'caisson construction' shall be replaced with the alternative construction method for breakwater construction.

3.2.1 Item A - QA/QC and HSE plans

With regards to Quality Assurance and Quality Control (QA/QC), Health, Safety and environment (HSE) and sustainability, the Tenderer should state for the Works:

- The project specific QA/QC plan, specifying the QA/QC procedures in place for management of the Works, including a clear approach to simultaneous operations (SIMOPS) of the construction activities as part of this tender and the other ongoing operations and activities in the port.
- The project specific HSE plan, specifying the HSE procedures in place for management of the Works.
- The project specific sustainability policy and programme.
- For permits the Tenderer shall identify an anticipated list of permits, approvals and NOC's for the different stages of the Works, including the expected process to obtain such. Such permits and approvals shall be linked with the schedule provided in the proposal.

3.2.2 Item B - Methodology for construction for the Works and equipment selection, in particular dredging, backfilling and caisson construction, transport and placement

The Tenderer shall provide a clear methodology of construction and the selection of the associated equipment of maximum 30 pages excluding drawings. The methodology shall include particular attention for the main construction activities dredging, backfilling and breakwater construction. The methodology shall be created specifically for this project and include details of the arrangements, process control (including workability), construction/demolition methods and sequences which the Tenderer proposes to adopt for the execution of the Works. The methodology shall be in sufficient detail to demonstrate the Tenderer's adequacy to achieve the requirements of the Contract, including mobilisation, site establishment, procurement items and key interfaces.

A broad and detailed methodology shall be provided, but it is noted that particular key areas of interest to be detailed in the methodology include the following:

- All required Works for dredging and backfilling.
- All required Works for caisson construction, transport and placement.
- All required Temporary Works stating that they will not affect the design and delivered Works, including a clear risk assessment to state their need and timing during the Works to be used.
- Demolition Works, including their interfaces with other structures, Contractor's Works and other port operations.
- Incorporation of environmental requirements and their management plans in order to meet the permit requirements.

All calculations shall demonstrate that appropriate checking/quality assurance procedures have been carried out. The methodology of construction shall be aligned with the methods of risk, available plant, materials, schedule, specific environmental and operational restrictions and other items within the Tender.

3.2.3 Item C - Methodology for design

The Tenderer shall provide a clear methodology of design of maximum 30 pages excluding drawings. The methodology shall be created specifically for this project and include details of the arrangements, design methods and process control and sequences which the Tenderer proposes to adopt for the execution of the Works. The methodology shall be in sufficient detail to demonstrate the Tenderer's adequacy to achieve the requirements of the Contract.

A broad and detailed methodology shall be provided, but it is noted that particular key areas of interest to be detailed in the methodology include the following:

- Bid Design report, including design philosophy, Basis of Design and preliminary design calculations.
- Contractor designer profile and CVs.
- Design process control plan.
- Design interfaces.
- All required Temporary Works stating that they will not affect the design and delivered Works, including a clear risk assessment to state their need and timing during the Works to be used.

All calculations shall demonstrate that appropriate checking/quality assurance procedures have been carried out. The Tenderer shall prove that his design meets or exceeds the minimum specification. The methodology of design shall be aligned with the methods of risk, available plant, materials, schedule, specific environmental and operational restrictions and other items within the Tender.

3.2.4 Item D - List of equipment, working capacity on reference projects, availability of spare equipment and parts for contingencies and the sources and supply of materials

The Tenderer shall provide:

- **Plant** - an overview of required types, capacity and number of all equipment dedicated for this project and how this fits in the project planning and the required production. The plan shall further include a mobilisation plan and logistics plan for parts and contingencies and explain the delivery of the equipment, site establishment, permits, visas, etc.
- **Suppliers and materials** – A list of the sources from which it is proposed to obtain products and materials and details of each product and material.

Tenderers should note that post-contract approval of all Plant and Materials shall be required in accordance with the Contract.

3.2.5 Item E - Project personnel and organisation chart

The Tenderer shall provide:

- 1 An organisation chart showing the proposed site staff and management organisation for undertaking the works, detailing the appropriate lines of communication and role descriptions of the individual responsibilities. Key personnel should be as a minimum:
 - 1 Project Manager (at least 15 years of experience with similar projects).
 - 2 Engineering Manager, responsible for managing inputs from all design specialists (at least 10 years of experience with similar projects).
 - 3 Works Manager: Marine Construction (at least 10 years of experience with similar projects).
 - 4 Environmental Officer (at least 10 years of relevant experience).
 - 5 Quality Officer (at least 10 years of relevant experience).
 - 6 Health & Safety Officer (at least 10 years of relevant experience).
- 2 A list with the expected numbers of superintendents and labour including those to be employed by sub-contractors.

The Tenderer shall provide the names, qualifications and experience of the key personnel proposed for the management of the contract and the execution of the Works, both on and off Site, including curriculum vitae, responsibilities and job title of the key personnel. Personnel shall be highly experienced in work of the type specified and shall be fluent in English, spoken and written. CVs shall be limited to a maximum of 3 sides of A4 using the provided format. CVs that do not clearly state the role of the individual per the list above will not be evaluated. Additional CVs can be provided but will not be evaluated. The positions of 4, 5 and 6 may be combined in 1 or 2 persons.

Any subsequent change in key personnel shall be of equivalent experience and subject to the written approval of the Employer. For all people proposed their CV shall be submitted for evaluation.

3.2.6 Item F - Project planning, including mitigation of hurricane season

The Tenderer shall provide a legible (when printed in A3) schedule, in bar chart or network form, showing the proposed sequence of all activities, supported by a narrative approach describing his approach to realise the Works.

The activities shall include design, mobilisation periods, construction and Engineer review periods within the Works, including those to be executed off-site (submissions, procurements, etc.) parts of the Works. The schedule shall include as a minimum critical path, activity interrelation, time-distance diagram and resource allocation.

All activities and especially all activities related to the risk mitigations plans (including workability) above must be included. Tenderers shall propose distinct completion dates for Contractor's documents as specified in Volume 2. Preparation time and review periods shall be identified separately.

Within the Project Schedule the Tenderer shall incorporate the design schedule prepared by the Tenderer's designer. This schedule shall have sufficient detail to identify the major elements and durations of the design works including studies, surveys, investigations, design periods, submissions and the like.

3.2.7 Item G - Methodology for preparation and execution for coral relocation and environmental monitoring

The Tenderer shall provide a clear methodology for preparation and execution of coral relocation and environmental monitoring, similar to the requirements for Item A.

3.2.8 Item H - Reference projects for working in environmentally sensitive areas

The Tenderer shall provide an overview of reference projects to demonstrate their capabilities and experience in working in environmentally sensitive areas. The overview shall, as a minimum, address the following subjects:

- Turbidity monitoring and management.
- Dredging spill management.
- Coral relocation and reinstatement.

3.3 Commercial Submission

The Commercial Submission items listed in Table 3.3 require that formats be completed by the Tenderer and submitted as per the Appendices. All documents in this section shall be presented in their original language and with it corresponding certified translation to English and the Contract currency is United States Dollar.

Table 3.3 Tender submission contents - Commercial

Item	Title	Reference
A	Letter of Tender	Annex II.A
B	Impact of contractual and commercial qualifications	
C	Impact of risks and opportunities	
D	Schedules and payment schedule	
E	Contract Data	Appendix I
F	Joint venture details	
G	Insurance details	
H	Financial and bank details	
I	Statement of non-reliance	Annex II.F
J	Declaration of accuracy of information	Annex II.G

3.3.1 Item A – Letter of Tender

The Tenderer shall complete and return a signed copy of the Letter of Tender available in Annex II.A for both Options.

3.3.2 Item B - Impact of contractual and commercial qualifications

The Tenderer shall compile his overview list of contractual and commercial qualifications in response to the Tender documents and applicable to his Bid.

3.3.3 Item C - Impact of risks and opportunities

The Tenderer shall provide his risk and opportunities register with their descriptions and price impact.

3.3.4 Item D - Schedules and payment schedule

The Tenderer is to complete the Bill of Quantities provided in Volume 3 in accordance with the preamble to the Bill of Quantities.

The Tenderer shall present a forecast of the anticipated interim monthly valuations related to the execution of the works, including the project cash flow forecast, cost vs time S-curve, amortization of advance payments, retentions, etc., all in accordance with the contract terms and conditions. Tender shall propose the amount of the advance payment(-s) and their moment of payment.

3.3.5 Item E – Contract Data

The Tenderer shall complete and return a signed and stamped copy of the Contract Data.

3.3.6 Item F - Joint Venture details

The Tenderer shall provide all details of the joint venture and its comprising companies and details of joint venture agreement, as applicable. The joint venture shall be deemed to follow the stipulated in Clause 1.14 of the Conditions of Contract – Joint and Several Liability and the requirements of this document.

3.3.7 Item G - Insurance details

The Tenderer must provide the name and address of the insurers and their principal terms for the insurances required by Clause 19 of the General Conditions of Contract, including proposed deductibles, exclusions, limits of liability, date of expiration of policy(ies) if they are existing.

Where the insurance terms submitted for approval provide for an excess sum, i.e., a provision under which the insurer is not liable for the first specified amount of a claim or for claims below that amount or if the insured amount is not compliant with Sub-Clause 1.15, Tenderers must include with their Tender a statement undertaking responsibility for dealing with third party claims, or parts of such claims within the excess amount.

The insurances must be provided in accordance with the laws of Saba and BES islands and the requirement as stated by the Lenders. The Employer reserves the right to change the insurance requirements for the project to Employer led insurance, hence the cost to the Contractor may be obviated.

3.3.8 Item H - Financial and bank details

The Tenderer must provide the name and address of the bank which will provide the Performance Security and the Advance Payment Guarantee; and a letter from such entity acknowledging having received the Annexes to the Particular Conditions of Contract and undertaking to provide these security documents in accordance with the exact wording of these Annexes (if the entity prefers to make minor changes, they must be specified exactly). The proposed bank shall be of a reputable reputation and based on the BES islands. The Employer reserves the right to decline the bank proposed by the Tenderer.

3.3.9 Item I - Statement of non-reliance

The Tenderer must provide a signed statement confirming that the Tenderer has visited the Site and familiarised himself with all conditions which may affect his Tender and that he has no queries on any matter concerning the Contract in compliance with Clause 4.10 of the General Conditions of Contract.

3.3.10 Item J - Declaration of accuracy of information

The Tenderer must provide a signed statement confirming that the Tenderer has provided accurate information as part of his Bid.

3.4 Submission of the Tender

All information and particulars to be filled in on the tender documents shall be typed. No additions or erasures shall be made except for the Tenderer to correct errors, in which case the changes shall be initialled by the person or persons signing the Tender.

Each Tender and copies shall be signed by a person or persons duly authorised to do so and the Tender Proof of authorisation in the form of a power of attorney shall be annexed to the Letter of Tender. All pages of the Contract Data and Schedules where entries or amendments have been made shall be initialled by the person(s) signing the Letter of Tender.

All blank spaces in the Letter of Tender are to be filled, except where specifically stated otherwise.

Tenders shall be received no later than the time, on the Tender submission date, stated in the invitation letter. Tenders received by the Employer thereafter will be returned unopened.

The Tenderer may modify or withdraw his Tender after submitting, if the modification or notice of withdrawal is received in writing before such prescribed time for submission of Tenders but not thereafter.

A Tender submitted other than as described in this section may be rejected by the Employer and returned to the Tenderer.

The Tender shall remain valid and open for acceptance for a period of 180 days from the Tender Submission Date. The Tenderer shall calculate the date on which validity expires and insert this expiry date in the Letter of Tender. Prior to this expiry date the Employer may by written notice request the Tenderer to extend the validity period. The Tenderer may refuse the request but shall not modify his Tender other than by extending its validity.

4

TENDER SCORING METHOD

For the purposes of evaluating the Tenders, the Employer shall evaluate the three individual submissions as follows:

- Prequalification Data on the basis of pass or fail, Only Tenderer's passing on all items will be considered for opening of their Technical Tender.
- the Technical Submission under a discrete scoring system based on the submission contents.
- the Commercial Submission on the basis of a combination of pass or fail and discrete scoring.

The details of the scoring system are presented in Sections 4.1, 4.2 and 4.3.

The total scoring of the assessed tenders is the sum of the technical scoring and the commercial scoring and the Tenders will be ranked in the order of highest total scoring.

4.1 Scoring for Prequalification Data

The prequalification scoring criteria is as defined in the following table.

Table 4.1 Prequalification scoring

Item	Title	Scoring methodology*
A	Power of attorney	pass/fail
B	Statement of acknowledgement, understanding and compliance with the tender requirements	pass/fail
C	Statement of compliance with Code of Conduct of Public Entity of Saba	pass/fail
D	List of reference customers	pass/fail
E	Health and safety records	pass/fail
F	List of disputes	pass/fail
G	Annual statements of past 5 years	pass/fail
H	Certification ISO 9001, or equivalent	pass/fail
I	Certification ISO 14001, or equivalent	pass/fail
J	Certification ISO 45001, or equivalent	pass/fail
K	Reference projects harbor construction	pass/fail
L	Reference projects backhoe dredging	pass/fail
M	Reference projects caisson construction	for information for the Employer
N	Reference projects Caribbean region	for information for the Employer

Note: * pass / fail is depending on the completion of the relevant form or provision of appropriate statement/ document. A fail may disqualify the Tender, subject to the discretion of the Employer.

In addition to the criteria listed above the Public Entity of Saba shall conduct a due diligence investigation to assess the Tenderer's creditability.

Only Tenderer's passing on all items will be considered for opening of their Technical Tender.

4.2 Technical scoring

The technical scoring criteria is as defined in the following table.

Table 4.2 Technical scoring

Item	Title	Mark available	Weighted scoring	Maximum score
A	QA/QC and HSE plans	0 - 10 points	5 %	50
B	Methodology for construction for the Works and equipment selection, in particular dredging, backfilling and breakwater construction with the proposed method, transport and placement	0 - 10 points	30 %	300
C	Methodology for design	0 - 10 points	15 %	150
D	List of equipment, working capacity on reference projects, availability of spare equipment and parts for contingencies and the sources and supply of materials	0 - 10 points	15 %	150
E	Project personnel and organisation chart	0 - 10 points	5 %	50
F	Project planning, including mitigation of hurricane season	0 - 10 points	10 %	100
G	Methodology for preparation and execution for coral relocation and environmental monitoring	0 - 10 points	10 %	100
H	Reference projects for working in environmentally sensitive areas	0 - 10 points	10 %	100
total			100 %	1,000 points

Full points will be awarded where the Tenderer has significantly exceeded the requirements for that particular item.

A minimum technical scoring of 600 points is required to advance to opening of the Commercial Tender.

The achieved marks shall be converted into weighted scoring with the following formula:

$$= \frac{Fn \times MS}{F1} = Sn$$

Where: MS = maximum scoring = 10
F1 = highest score Technical Proposals
Fn = total weighted scoring of Technical Proposal under evaluation
Sn = normalised score Technical Proposal under evaluation

4.3 Commercial scoring

The commercial scoring criteria is as defined in the following table.

Table 4.3 Commercial scoring

Item	Title	Scoring methodology*
A	Letter of Tender	weighted scoring of price for Package B according to formula below this Table 4.3
B	Impact of contractual and commercial qualifications	shall be considered for recognition of the packages to be priced
C	Impact of risks and opportunities	shall be considered for recognition of the packages to be priced
D	Schedules and payment schedule	pass/fail
E	Contract Data	pass/fail
F	Joint venture details	pass/fail
G	Insurance details	pass/fail
H	Financial and bank details	pass/fail
I	Statement of non-reliance	pass/fail
J	Declaration of accuracy of information	pass/fail

Note: * the impact on price and quality of Tenderer's contractual and commercial qualifications and his assessment of risks and opportunities subject to his proposed Tender shall be evaluated as part of the Tender evaluation.
pass / fail is depending on the completion of the relevant form or provision of appropriate statement/ document. A fail may disqualify the Tender, subject to the discretion of the Employer.

The price for Package B shall be converted into weighted scoring with the following formula:

$$= \frac{F1 \times MP}{Fn} = Sn$$

Where: MP = maximum scoring = 20 points
F1 = lowest price as tendered
Fn = Commercial Proposal under evaluation
Sn = normalised score Commercial Proposal under evaluation

The lowest price, after clarifications and corrections based on Items B to H, other corrections and considerations of tax implications and other relevant aspects, shall be awarded 20 points.

4.4 Total scoring

The technical and commercial scoring shall be summed without weighing, to calculate the total scoring of a Tender. The results of the Tenders shall then be ranked based on their highest scoring.

5

TENDER OPENING AND EVALUATION

Tenders and other submissions, which are in accordance with these Instructions, will be opened in three stages at the offices of the Employer. Prequalification first, Technical second and later Commercial. Tenderers are not invited to attend.

5.1 Tender evaluation and scoring

Evaluation of the three stages Prequalification, Technical Tender and Commercial Tender shall be based on Table 4.1, Table 4.2 and Table 4.3.

A scoring system has been developed by the Employer to enable an objective approach to the evaluations of submissions where possible. Evaluations will be undertaken independently by members of the Employer, before a committee held to discuss and collate findings. On completion of the evaluation of the complete Tender a shortlist of three (3) tenderers will have been selected for further participation in the process evaluation of the technical and commercial tenders. Clarification meetings will be organised after evaluation of the technical and commercial tenders after which these Tenderers shall receive the opportunity to alter and submit their revised technical and commercial tender to be considered as their best and final offer.

It is expected that the key members of the Tenderer's team will attend the interview, during which the Tenderer will present its preliminary design and construction methodology for undertaking the project. The interview represents an opportunity for the Tenderer to demonstrate its competency, communication skills and clarify any issues the Employer may have identified during its initial review.

5.2 Substantially responsive Tender

For the purpose of these processes, a substantially responsive Tender is one which conforms to all the terms, conditions and requirements of the Tender Documents without material deviation or reservation. Alternative technical and commercial proposals can be provided by Tenderers, but only in addition to a substantially responsive Tender.

A material deviation or reservation is one which affects in any substantial way the scope, quality, or performance of the Works, or which limits in any substantial way (inconsistent with the Tender Documents) the Employer's rights or the Contractor's obligations under the Contract, and the rectification of which deviation or reservation would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

If a Tender is not substantially responsive to the requirements of the Tender Documents, it will be rejected by the Employer. The Tender shall not be made responsive by the Tenderer correcting or withdrawing the non-conforming deviation or reservation. Incomplete or improperly filled-in tenders will not be considered.

5.3 Evaluated Tender amount

The Employer will only evaluate and compare the Tenders which have been determined to be substantially responsive to the requirements of the Tender Documents. Responsive Tenders will first be checked by the Employer for any arithmetic errors in computation and summation, and any errors will be corrected as follows:

- 1 The amount entered in the Letter of Tender including the impact of contractual and commercial qualifications and the priced risk and opportunities register may be considered acceptable as the Contract Amount without any of the corrections and adjustments described in these sub-paragraphs. If there is any discrepancy between amounts in figures and in words, the amount in words will take precedence.
- 2 If there is any discrepancy between this amount and the equivalent sum computed on the basis of the Bill of Quantities, the Employer may make corrections and/or adjustments (applying the principles described in these sub-paragraphs) and give notice to the Tenderer, specifying each error, correction and adjustment. If the Tenderer does not accept these notified corrections and adjustments, his Tender may be rejected.
- 3 If there is a substantial discrepancy between a stated amount and the correct amount calculated by multiplying the stated unit rate by the quantity, and the rate seems to have been stated in error (inconsistent with the Tenderer's likely intentions), the stated unit rate shall be amended and the stated amount will be binding.
- 4 If there is any discrepancy between a stated amount and the correct amount calculated by multiplying the stated unit rate by the quantity, and either the discrepancy is not substantial or it is reasonable to assume that the stated rate is consistent with the Tenderer's intentions, the stated unit rate will be binding and the stated amount shall be amended.

For the purpose of evaluating Tenders, the Employer will determine for each Tender the Evaluated Tender Amount as follows:

- 1 Making any correction for errors as described above.
- 2 Making an appropriate adjustment for any acceptable variations, deviations, discounts or other alternative offers not reflected in the submitted amount or these corrections.
- 3 Making an allowance for any acceptable varied times for completion offered in alternative Tenders, the allowance being calculated at the same rate as the rate for delay damages for the Works which is stated in the Contract Data.

Tenders for which the Employer has received a valid notice of withdrawal in accordance with these Instructions shall not be opened.

The Employer will examine the Tenders to determine whether they appear to be complete, properly signed, and substantially responsive.

After this Tender opening, information relating to the examination, clarification, evaluation and comparison of tenders, and recommendation for the award of a contract, shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced. Any effort by a Tenderer or his agents to influence the Employer's evaluation of tenders or award decision, including the offering or giving of bribes, gifts, or other inducement, will result in the invalidation of his tender and the forfeiture of his tender security.

5.4 Request for additional information

Tenderers must comply with the specified forms; however, the Employer reserves the right to request additional information from any single Tenderer, or from all Tenderers. In addition to written information, the Employer may request a personal interview with key individuals from the Tenderer's firm, and may also request that representatives of the Employer visit the offices of the Tenderer, and/or visit on-going

construction sites to ascertain the suitability and qualifications of the Tenderer. The costs associated with any site visits by the Employer's representatives shall be borne by the Employer.

5.5 Bill of Quantities

The Bill of Quantities will be examined prior to the Award of Contract in order to ascertain that there are sufficient rates and detail to enable an adequate tender assessment.

Generally, should any error be found, the rate will remain unaltered and the extended amount will be corrected, unless there is an obvious typographical error in such case the more realistic figure shall be inserted. The total amount of the Tender shall be amended accordingly. The Tenderer will be informed of any arithmetical adjustments made should the Tender Committee wish to further consider his Tender and he will be required to certify his acceptance.

Each item in the Bill of Quantities shall be completed. Any alteration must be initiated by the person signing the Tender Form. If any items are left unpriced it shall be deemed that the cost of the work described thereat is allowed for elsewhere.

The rates and prices set down by the Tenderer against the items in the Bill of Quantities are to be for the full inclusive value of the finished work described thereat and shall include for profit, attendance, and all liabilities and obligations of every kind described in the Tender Documents and arising under the Contract.

In cases the rates included in the Bill of Quantities are found to be unacceptable to the Engineer the Tenderer shall amend the rate by such amount as agreed with the Engineer. The price difference in the extended total for the item of work shall be carried through to the Main Summary page and clearly described and referenced, and added to or deducted from the Tender Price.

To assist the examination, evaluation and comparison of Tenders, the Employer may ask Tenderers individually for clarification of their Tenders, including detailed information and breakdowns of unit rates and lump sum prices, which shall be provided by the Tenderer within 48 hours of being so requested. The breakdown is to show the actual calculations of the Preliminaries, Labour, Plant and Materials costs for the Works, the build-up of measured rates with on-costs and overheads and any other allowances used to arrive at the Tender Price. No change in the price or substance of the Tender shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered during the evaluation of the Tenders. The request for clarification and the response shall be in writing.

Tenderers shall furnish with their Tender details of each of the insurance policies which they would provide in the event of being awarded the Contract. Such details would include but may not be limited to name and address of insurer, standard or special insurance policy coverage, exclusions, excesses and dispute resolution.

Copies of similar policies issued by the insurer may be requested.

Further information or clarification of the details submitted or amendments to the proposed policies may be required if necessary to comply with the relevant Conditions of Contract.

The Tenderer must satisfy himself as to the correctness of all items and/or quantities contained in the Bill of Quantities as they are for guidance purpose only and will not be adjusted if more or less work is actually required on Site.

Provision has been made at the end of each section of the Bill of Quantities to enter and price any work which is described in the Employer's requirements and/or shown in the drawings as provided with Volume 2 but not itemised in the Bill of Quantities. The Tender Sum is deemed to have included for all works described or shown in all parts of the Tender Documents. Any change to the Tender Sum shall not be permitted after the Tender opening.

The descriptions contained in the Bill of Quantities for each item are not necessarily complete. The Tenderer is referred to the Employer's Requirements, Conditions of Contract, drawings as included in Volume 2 and all other Tender Documents as well as relevant Standards and Codes of Practice for further information as no claim or variation will be considered on account of the Tenderer's failure to do so.

The rates and prices set down against the items in the Bill of Quantities shall be for the full inclusive value of the finished work described thereunder and shall include for profit and all obligations and liabilities of every kind arising under the Contract.

5.6 Award of the Contract

The Employer intends to award the Contract to the Tenderer who appears to have the capability and resources to carry out the Contract effectively, whose Tender has been determined to be responsive to the Tender Documents and who has offered (all taken into consideration) the most favourable Tender but reserves the right to accept an alternative Tender.

The preferred Tenderer(s) may be invited to participate in negotiation meeting(s) with the Employer, who may then issue a Letter of Intent recording the outcome of their joint discussions of the Tender.

This Letter of Intent will constitute the agreed basis upon which a contract could be concluded, and/or may include clarification of any alternative proposals which the Tenderer may have submitted. The Letter of Intent:

- Shall be binding on the Tenderer as an acceptable clarification or amendment of his Tender until its validity expires.
- Shall be wholly subject to a subsequent Contract Agreement.
- Shall not bind the Employer nor commit him to entering into any contract under any terms.

After receiving the Employer's Letter of Acceptance, the successful Tenderer shall submit a Performance Security in accordance with Clause 4.2, and an Advance Payment Guarantee in accordance with Clause 14.2, of the Conditions of Contract.

After receiving the Performance Security from the successful Tenderer, the Employer will notify the other Tenderers that their Tenders have been unsuccessful.

5.7 Litigation against the Tender evaluation and Award of Contract

Tenderers can submit their appeal in order to challenge the results of the Tender evaluation in case they do not agree with the results of the Tender evaluation and the Award of Contract. The appeal shall be submitted in writing and within 14 days from publication of the Tender evaluation results. In case litigation has not been started within this period, this results in a lapse of rights to challenge the results of the Tender procedure. The Employer shall respond within 14 days to the received appeals, if any.

Any dispute and/or difference of interpretation arising out of or in connection with this appeal shall, if no amicable settlement can be reached through negotiations, be settled by the competent court in Saba.

6

INFORMATION TO TENDERERS

6.1 General

All available data and information are presented in Volume 4 Site Data and are for information only unless otherwise expressed herein. The Tenderer shall verify this information.

Notwithstanding the above described information, it is stated that:

- The Tenderer is deemed to be familiar with the environmental and other conditions in the Project Area, which may influence his work and/or schedule. The Tenderer is required to acquaint himself with the daily, seasonal and annual characteristics of winds, waves, currents, tide, rainfall, humidity, temperature and sunshine.
- Similarly, the Tenderer is required to acquaint himself with the occurrence and duration of extreme meteorological events and manifestations of these in the Project Area.
- All equipment necessary for the Work shall be proportioned, arranged and rated to operate satisfactorily in the prevailing temperature and climatic conditions.
- Besides that, the Contractor shall be fully responsible to collect the necessary additional other data, for checking these and satisfying himself as to their validity, accuracy, scale and precision.
- Soil investigations conducted by the Employer and made available as part of Volume 4 Site Data are however already considered comprehensive and representative. It is expected that Contractor shall use these soil investigations data or, in case he proposes to use other data, provides explanation why these provided data are insufficiently representative.
- Tenderer shall inform itself on other matters which could affect the Works and which are related to, amongst others, transportation, accommodation, communications, security and access to fuel, water, power and other utilities at the Site.
- The Tenderer shall check the available Design Documents for the correctness and completeness of the information.

6.2 Information on Tender Design

In preparing the tender design Tenderers shall consider the following situation:

- Tenderers may visit the Site and shall obtain for themselves on their own responsibility, all information which may be necessary for the purpose of making a basic tender design and entering into a Contract.
- The Tenderer is deemed to be familiar with the climatic and other physical conditions at the site. The Tenderer is required to acquaint himself about the wind velocities, rainfall, wave conditions, tides and currents, topography, bathymetry and soils conditions prevailing at the Site, and the existence of any possible obstructions for his work performance as existing facilities, wires, cables, large stones, boulders, cobbles and gravel, etc.
- The Tenderer is deemed to be aware with the limitation of availability of construction material (quantity and quality).
- The work quantities and pricing based on the Tender Design shall be brought in to the Contract.
- During the tender phase, Tender Design is subject to verification, clarification, review, remarks and adjustment by the Employer.

6.3 Information on Detailed Engineering Design

After entering the contract, the tender design will further be developed in to detailed engineering design (DED) by the Contractor. The DED shall be prepared in a way that it will not significantly change or deviate from the Tender Design. The contractor may conduct re-survey, soil investigation or other field investigations which may deemed necessary for the DED as indicated in the Tender.

The procedure of DED preparation shall comply with Clause 5 of the Conditions of Contract.

6.4 Information on the works quantity in the tender

In preparing the Tender, Tenderers shall propose the work quantities by the following requirements:

- The proposed work quantities in the tender are based on the calculation on the available survey data and basic tender design.
- These defined quantities shall be provided with breakdown quantity calculation from his Tender Design.
- These quantities will be brought in the Contract on award of the Contract.
- The Tenderer is responsible for the calculation of the quantities. The quantities will not be relevant during the execution of the Work as this is a Lump sum contract.

7

CONDITIONS OF CONTRACT

7.1 General Conditions of Contract

The Conditions of Contract comprise the Conditions of Contract for Plant and Design-Build First Edition, for Building and Engineering Works designed by the Contractor, Second Edition, 2017 prepared by the Fédération Internationale des Ingénieurs Conseils (FIDIC).

Part I of the FIDIC Conditions of Contract must be purchased, and this standard document may be obtained from the following source:

Fédération Internationale des Ingénieurs Conseils (FIDIC)
World Trade Center II
PO Box 311
1215 GENEVA 15, Switzerland
Tel: +41 22 799 4900
Fax: +41 22 799 4901
Web: www.fidic.org

The General Conditions referred to as Part I are supplemented and augmented by Part II, the Particular Conditions.

Parts I and II together comprise the Conditions governing the rights and obligations of the parties.

7.2 Particular Conditions of Contract, Part B - Special Provisions

The following Sub Clauses shall be amended to read the following:

- 1.1.4 **'Base Date'** means the date on which the Contract Agreement has been signed by both Parties, or if the Parties, sign on different dates, the date on which the last Party signs the Contract Agreement.'

- 1.1.9 **'Contract'** means the Contract Agreement, Letter of Acceptance, the Letter of Tender, any addenda referred to in the Contract Agreement, the Particular Conditions of Contract, the General Conditions of Contract, the Employer's Requirements, Definition Drawings, the Schedules, the Contractor's proposal, the JV Undertaking (if applicable) and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.'

- 1.1.21 The Country is Saba.

- 1.1.49 At the end of Sub-Clause 1.1.49, remove '.' and insert:

‘and shall include environmental and maritime rules and laws and shall follow all sanctions adopted by the applicable law.’

1.1.69 At the end of Sub-Clause 1.1.49, remove ‘.’ and insert:

‘**Quality Assurance / Quality Control Management System**’ or ‘**QA/QC System**’ have the same meaning as QM System given in Sub-Clause 4.9.1 [*Quality Management System*].’

1.1.87 ‘**Unforeseeable**’ means not reasonably foreseeable by an experienced contractor acting in accordance with good industry practice by the Base Date.’

The following Sub-Clauses shall be added:

1.1.91 ‘**Approved**’ means approved in writing, including subsequent written confirmation of previous verbal approval and ‘**approval**’ means approval in writing, including as aforesaid. Approved/Approval in no way relieves the Contractor from any obligation or responsibility under the Contract.

1.1.92 ‘**Authority**’ or ‘**public authority**’ means any central, local or other government authority (including regulatory authorities and administrative bodies) having jurisdiction over the Works and any department, authority, ministry, commission, instrumentality or agency of the Public Entity of Saba or the Netherlands.’

1.1.93 ‘**Calamity**’ is a serious accident or event causing damage or suffering to structures, people or the environment.’

1.1.94 ‘**Design Life**’ is the duration that an element of the Works needs to be fully functional as specified in the Employer’s Requirements, with carrying out acceptable maintenance as per the Employer Requirement’s and Contractor’s operation and maintenance manuals. Design Life is measured from taking-over of the relevant Section.’

1.1.95 ‘**Lenders**’ means any bank or other person at any time providing finance (or re-financing) or credit support in connection with the Project, including lending banks, insurers, any export credit agency and other providers of finance, re-finance or credit support as well as any agent or trustee for other Lenders. Where the context so permits, Lenders shall include prospective Lenders.’

1.1.96 ‘**other contractor**’ means any contractor, vendor, consultant or service provider, engaged by or on behalf of the Employer from time to time, and includes suppliers and installers, crane supply/erection contractors, mechanical and electrical contractors, and other contractors erecting buildings and constructing infrastructure as well as any subcontractors and vendors (of any tier) of the same.’

1.1.97 ‘**Project**’ means the development, upgrade, expansion, financing, ownership, operation, repair and maintenance of Black Rock New Harbor and Fort Bay Upgrade Works, of which the Works form part.’

1.1.98 ‘**Vessel**’ means any dredger, vessel, craft or other floating equipment owned, chartered or hired by the Contractor or any Subcontractor and used in connection with the execution of the Works.’

1.2 Interpretation

At the end of Sub-Clause 1.2(i), delete:

'and'

and replace the '.' at the end of Sub-Clause 1.2(j) with:

''.

Then insert the following:

'(k) words such as 'for instance' and 'for example' means without limitation to the generality of the foregoing or without limitation,

(l) periods of time shall be construed by reference to the Gregorian calendar; and times of day shall be the time of day in Saba,

(m) unit weights and measures shall be in metric units (S.I.). Only practices approved by recognised professional bodies and EN or ASTM or equivalent specifications for materials shall be adopted, in the order of preferences as written, and

(n) the rights, powers and remedies provided by the Contract are cumulative and are not exclusive of any rights, powers and remedies provided by law. '

At the end of the Sub-Clause shall be added:

'In the Contract, the expression 'Cost plus reasonable profit' shall be interpreted the same as Sub-Clause 1.1.20.'

1.3 Notices and Other Communications

Amend Sub-Clause 1.3(c) to read as follows:

' and delivered by hand (against receipt by the addressee by dated signature), sent by registered post (with return receipt) or by special courier (with acknowledgement of receipt), or transmitted using any of the systems of electronic transmission under subparagraph (a)(ii) above (which shall be confirmed by dispatching the original copy by one of the aforementioned modes of delivery); and'

At the end of the fourth paragraph, after 'withheld or delayed' insert:

',' unless otherwise stated in the Contract.'

1.5 Priority of Contract Documents

In the final paragraph, after 'instruction' remove '.' and insert ':

'and the Contractor shall comply therewith, without, by reason of such instruction or compliance, being entitled to any extension of time, additional payment, adjustment to the Contract Price or other relief.'

1.6 Contract Agreement

In the first sentence, replace 'a' with 'the'.

After the first sentence, insert:

'The Contract documents shall be prepared by the Engineer.'

1.9 Errors in the Employer's Requirements

Delete Sub-Clause 1.9 and replace with the following:

'If the Contractor finds an error, fault or defect in the Employer's Requirements, the Contractor shall give a Notice to the Engineer describing the error, fault or defect taking into account the following conditions:

- (a) The Contractor acknowledges that it has, prior to the Base Date, fully checked and verified all aspects of the Employer's Requirements and hereby warrants that the contents of the Employer's Requirements are correct, complete and consistent with the obligations of the Contractor under the Contract. The Contractor accepts full responsibility for all aspects of the Employer's Requirements as though it had prepared it itself (whether or not this was the case). If the Employer's Requirements contains any error or omission:
 - I. the Contractor shall not thereby be relieved from any obligation or liability under the Contract; and
 - II. the Contractor shall not thereby become entitled to any Variation, adjustment to the Contract Price, additional payment, extension of time or other relief and any such entitlement is hereby excluded.
- (b) The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents prepared by or on behalf of the Contractor and the Contractor accepts full responsibility for the same, whether such specifications, drawings and other documents have been approved by the Employer or not.'

1.10 Employer's Use of Contractor's Documents

in the second paragraph after 'royalty-free licence' insert:

'(with the right to sub-license)'

Replace the 'full stop' at the end of this Sub-Clause with a 'comma' and insert the following text:-

'save that the Employer may communicate the Contractor's Documents and other design documents to the Public Entity of Saba or any other public authority or body as required under applicable Laws or under the Employer's contractual arrangements with the Public Entity of Saba, or with any other contractors. '

1.13 Compliance with Laws

In the first sentence, after 'Laws' insert:

'and licences, permits, no objection letters and approvals (regardless of whether they have been obtained by (or in the name of) Contractor or the Employer).'

In sub-paragraph (a), delete the words:

'The Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so, unless the failure is caused by the Contractor's failure to comply with sub-paragraph (c) below'.

Replace sub-paragraph (b) with:

(b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain, maintain and/or renew all further permits, licences, no objection letters and approvals, as required by the Laws, in relation to the design, execution and completion of the Works and the

remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so and/or of any failure to comply with applicable Laws and permits, licences, approvals and no objection letters. This obligation shall, without limitation, require the Contractor to contest at its own risk and expense, any appeal made or brought by any third party in relation to any permit, licence, no objection letter and/or approval granted and properly to take all appropriate legal measures available to the Contractor against any refusal to grant a permit, license, no objection letter and/or approval. The Employer may assist but bear no risks in obtaining these permits, licenses, no objection letters and/or approvals.'

Replace sub-paragraph (c) with:

'(c) the Contractor shall at all times and in all respects comply with, give all notices under, and pay all fees required by any licence obtained by the Employer in respect of the Site or the Works, whether relating to the Works or Operation Service on or off the Site.

At the end of the Sub-Clause, insert the following:

'The Contractor shall not be entitled to any additional payment, extension of time or other relief as a result of any failure to obtain, maintain or renew (or failure to allow sufficient time to obtain, maintain or renew) permits, licences, approvals or no objection letters'.

The following sub-clauses shall be added:

1.17 Prior Work

'Where the Contractor has carried out any design, services or works in furtherance of the Works prior to the Commencement Date, such activities shall be deemed to have been carried out pursuant to, and shall be subject to the requirements of, the Contract and the warranties and undertakings set out in this Contract apply to such activities (without prejudice to the generality of such warranties and undertakings). Payment by the Employer to the Contractor of any amounts prior to the Commencement Date shall be deemed to have been made on account of the Contract Price, such that the net amount payable in respect of the Contract Price and the advance payment shall be reduced by the total of the amount so paid.'

1.18 Confidentiality

'(a) Subject to paragraphs (b) and (c) of this Sub-Clause, each Party shall keep confidential and shall not, without the written consent of the other Party, divulge to any third party the terms and conditions of the Contract, or any documents or other information furnished directly or indirectly by the other Party in connection with the Contract or the Works, irrespective of whether such information has been furnished prior to the making of the Contract or at any time thereafter (including following termination of the Contract) ('Confidential Information').

(b) Either Party shall be entitled to disclose Confidential Information without the prior written consent of the other Party if such disclosure is made in good faith:

- I. to the extent required by applicable Laws;
- II. to the extent required by any insurer under a policy of insurance issued pursuant to the Contract;
- III. to any of its affiliates;
- IV. to its directors, employees and officers;
- V. to any Subcontractor, to the extent needed for the furtherance of the performance of that Party's obligations under the Contract;

- VI. to the Lenders or their advisors; or
 - VII. to outside consultants or advisers engaged by or on behalf of the disclosing Party and acting in that capacity in connection with the Works (including insurance, tax and legal advisers),
- provided that in the case of the persons mentioned in subparagraphs (ii) to (vi) of this Sub-Clause the disclosing Party shall have first obtained the person's agreement in writing to be bound by the same obligations of confidence, *mutatis mutandis*, as are created by the terms of this Sub-Clause 1.18. The Employer may also disclose the Confidential Information without the prior written consent of the Contractor to the other contractors if it is necessary for the performance of the other contractors' works or services.
- (c) The obligations of a Party under this Sub-Clause 1.18 shall not apply to information and documents which:
- I. now or hereafter have entered the public domain through no breach of this Sub-Clause 1.18 or other fault of that Party; or
 - II. otherwise lawfully become available to that Party from a third party under no obligation of confidentiality.
- (d) The provisions of this Sub-Clause 1.18 are continuing, shall survive and remain binding on each Party for a period of ten (10) years from the earlier of:
- I. the date on which the Engineer issues the Performance Certificate to the Contractor; and
 - II. termination of the Contract for whatever reason or the Contractor's engagement under it.

1.19 Non-Waiver and preservation of Remedies

'No relaxation, forbearance, delay or indulgence by the Employer in enforcing any of the terms and conditions of the Contract or the granting of time, additional payment or other relief by the Employer to the Contractor shall prejudice, affect or restrict the rights of the Employer under the Contract, nor shall any waiver by the Employer of any breach of the Contract operate as a waiver of any subsequent or continuing breach of the Contract.

No approval, expression of satisfaction, comment, review, test, inspection, payment or certificate made or given (or any failure to make or give or attend the same) by the Employer under the Contract, or by the Engineer, shall relieve the Contractor of any of its obligations, risks or liabilities under the Contract.

Any waiver of a Party's rights, powers or remedies under the Contract must be in writing, dated and signed by an authorised representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.'

1.20 Amendment

'No amendment of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract and is signed by a duly authorised representative of each Party hereto.'

1.21 Severability

'If the enforcement or operation of any provision of the Contract is prohibited by Law or if any provision of the Contract is by Law rendered void, invalid or unenforceable, such prohibition, voidness, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

If and to the extent any term or provision of the Contract requiring the payment of liquidated damages is adjusted by any court or tribunal or for any reason found to be void, invalid or otherwise unenforceable, such that the Employer is unable to enforce his

entitlement to full payment of the same, then the Employer shall be entitled to claim (and deduct from amounts due to the Contractor as applicable) unliquidated damages under the law governing the Contract in lieu of liquidated damages (without prejudice to the Employer's rights under Clause 15 [*Termination by Employer*]) provided that the Employer's entitlement to such unliquidated damages shall not exceed the amount the Employer would have been entitled to under the Contract in respect of the applicable breach or failure of performance, had the entitlement to liquidated damages been enforceable.'

1.22 Record Keeping and Access to Documents

The Contractor shall make and keep (and shall ensure each Subcontractor makes and keeps) accurate records of its work and services under the Contract as required by applicable Law for the Works, whether in writing or stored on any other medium whatsoever where appropriate and or required by Law and the applicable design standard for the Works, including:

- (a) all documents referred to in the Contract,
- (b) design calculations,
- (c) estimates, calculations and mark ups for Variations and claims,
- (d) records as to progress of the work under the Contract,
- (e) results of the examination and testing of any work, Plant or Materials,
- (f) quality assurance records and reports,
- (g) records relating in any way to delays, Variations and daywork and all expenses incurred by the Contractor in connection with the Contract and the Works,
- (h) all consultants' reports obtained by the Contractor in relation to the work under the Contract, and
- (i) such appropriate and up to date records as are required for the Contractor's to satisfy its obligations under Sub-Clause 6.4 [*Labour Laws*].

The Employer, its auditors and the Engineer shall have the right to inspect at the Contractor's offices and, subject to mutual agreement with the Contractor, copy the whole or part of any record or document referred to in this Sub-Clause 1.23 upon giving not less than fourteen (14) days' prior notice.

Subject to the regulations and/or applicable Law, the Contractor shall not destroy the records referred to in this Sub-Clause 1.23 for a period of ten (10) years after their creation without the prior written approval of the Employer and shall, if so required by the Employer, hand over a copy of such of those records as is identified by the Employer to the Contractor and reasonably required for this Contract as and when timely directed by the Employer.

2.1 Right of Access to the Site

After the first paragraph, insert:

'For the purpose of surveys of sub-surface investigations the Employer may grant temporary access to Site (through temporary passes) before the date specified in the Contract Data.'

After the last paragraph add:-

'The Site shall be made available to the Contractor on an 'as is, where is' basis. In addition to Sub-Clause 4.10 [*Site Data*], The Employer does not warrant that any part of the Site is fit for purpose, free of defects, either latent or apparent and/or free of soil pollution.

Except as stated in Sub-Clause 11.7 *[Right of Access after Taking Over]*, the Contractor's entitlement to Site access shall automatically cease upon the Taking Over Certificate being issued for the final Section, or if earlier upon termination of the Contract.

Access shall be subject to the terms and conditions set out in the Contract. Nothing in the Contract shall prevent and/or hinder the free access at all times of the Employer, the Employer's Personnel and Engineer to any part of the Site, including, without limitation, the monitoring and testing equipment and the laboratories. The Contractor shall provide such access free of charge. Without prejudice to the foregoing, the Employer and Engineer shall be entitled to make use of the laboratories and visitor centres at the Site on a regular basis. The Employer and any of the Employer's Personnel and the Engineer shall use reasonable efforts to procure that the Employer and the Employer's Personnel and the Engineer shall, at all times comply with all Contractor's safety and health procedures and instructions.

The Contractor shall not be entitled to grant to any third party a right of use, lease, loan for use, or any other right to (any part of the) Site or the Works, and the Contractor shall not make (any part of) the Site available to any third party without obtaining Employer's prior written consent. The Contractor shall not create, and/or give any co-operation to the creation of any security right or other interest on, over or under the Site except as otherwise instructed by the Employer.'

2.4 Employer's Financial Arrangements

Delete this Sub-Clause in its entirety.

3.2 Engineer's Duties and Authority

Amend Sub-Clause 3.2 as follows:

Delete the second paragraph and replace it with the following:

'The Engineer has no authority to amend, suspend or terminate the Contract (or the Contractor's employment hereunder), waive any right or entitlement of the Employer, make a claim under any Performance Security, or to relieve either Party of any duties, obligations or responsibilities under the Contract. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Engineer (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.'

At the end of the Sub-Clause, insert:

'Without prejudice to the foregoing, the Engineer shall obtain the specific approval of the Employer before carrying out the following duties:

- (a) Instructing or approving Variations,
- (b) Giving consent to a Subcontractor for works that should have been carried out by a different Subcontractor named in the Contract,
- (c) Issuing instructions for the expenditure of Provisional Sums or instructing the Contractor to carry out optional sections of work or supply optional major items of material and equipment, under Sub-Clause 13.4 *[Provisional Sums]*,
- (d) Instructing work to be carried out against expenditure under a provisional sum included in the Bill of Quantities,
- (e) Requiring tests to be carried out or witnessed at any place other than within Saba in accordance with Sub-Clause 7.4 *[Testing by the Contractor]*,

- (f) consenting to the Contractor's programme submitted under Sub-Clause 8.3 *[Programme]*,
- (g) issuing any Taking-Over Certificate under Sub-Clause 10.1 *[Taking Over the Works and Sections]*,
- (h) issuing a Performance Certificate under Sub-Clause 11.9 *[Performance Certificate]*, and
- (i) Removal or approval of a change in Contractors Representative or Key Personnel in accordance with Sub-Clause 4.3 *[Contractor's Representative]*.

Notwithstanding the obligation on the Engineer to obtain approval as set out above, if in the opinion of the Engineer; an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may (without relieving the Contractor of any of his duties, liabilities and responsibilities under the Contract), instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. If the approval is not granted, the Contractor may not rely on the Engineer or the Engineer's Representative's Authority to take such actions or decisions.'

3.8 Meetings

At the end of the first paragraph insert:

'The Engineer shall record the business of management meetings and supply copies of the record to those attending and to the Employer. In the record, responsibilities for any actions to be taken shall be in accordance with the Contract.'

At the end of the Sub-Clause insert:

'Before the mobilisation of the Site the regular progress meeting shall be held on a monthly basis at the Contractor's office, the Engineer's office, and/or on the Site. Further irregular meetings will be held if needed. Time and place of these meetings shall be mutually agreed taking into consideration the subject to be discussed.'

4.1 Contractor's General Obligations

Add after Paragraph 1 the following text:

'The Contractor shall carry out all of its activities in such a manner that it shall not cause the Employer to breach any Law that relates to the Project. The Contractor shall promptly inform the Employer and Engineer of any error, omission, fault or defect in the design of or specifications for the Works, which are discovered when reviewing the Contract documents, or in the process of execution of the Works.'

4.2 Performance Security

At the end of the first paragraph, insert:

'Upon issuance of the Taking Over Certificate for the final Section, the value of the Performance Security shall be adjusted to the amount specified in the Contract Data.'

In Sub-Clause 4.2.1, the third paragraph the percentage shall be changed to ten percent (10%).

At the end of Sub-Clause 4.2.1, insert:

'If (i) the Performance Security becomes invalid or unenforceable for any reason, or (ii) the issuer of the Performance Security suffers a drop in its long-term credit rating below BBB+ or becomes insolvent, the Contractor shall, within seven (7) days of becoming aware of the same, provide an acceptable replacement Performance Security on the terms set out in this Sub-Clause 4.2.

If the Contractor fails to provide the Employer with a replacement or extended Performance Security as required under this Sub-Clause 4.2, the Employer may immediately call the outstanding balance of the Performance Security and hold the proceeds as security for compliance by the Contractor with its obligations and liabilities in respect of the Contract. The Employer may make deductions against the proceeds so held in respect of any claim for which it would have been entitled to bring in relation to the Performance Security (which should have been provided). If the Contractor subsequently provides a replacement Performance Security as required (and for the amount required under the Contract less the total of any deductions made by the Employer under this Sub-Clause), the Employer shall return the balance of the proceeds (without any interest) to the Contractor.'

At the end of this Sub-Clause 4.2, insert:

'Notwithstanding any other provision of the Contract, compliance with this Sub-Clause 4.2 is a condition precedent to the Contractor's entitlement to receive any payment from the Employer under the Contract and no payment shall be due or payable until this Sub-Clause 4.2 is satisfied.'

4.3 Contractor's Representative

At the start of the seventh paragraph, insert 'Subject to the Engineer's prior written consent,'.

4.6 Co-Operation

At the end of Sub-Clause 4.6 insert:

'The Contractor shall protect any other facilities, equipment, materials (whether stored or installed) and/or any other items at the Site from possible damage resulting from the Works. Should the Contractor cause damage to the property of any other contractor, the Contractor shall promptly remedy such damage to the satisfaction of the Employer or, at the Employer's election, indemnify the Employer and/or the relevant other contractor for any claims, losses, costs and expenses incurred as a result of the damage caused by the Contractor.

The measures to be taken under this Sub-Clause shall be deemed to be allowed for by the Contractor in the programme and the Contract Price, and the Contractor shall not be entitled to any additional payment, adjustment to the Contract Price, extension of time or other relief as a result of complying with its obligations under this Sub-Clause.'

4.8 Health and Safety Obligations

At the end of sub-paragraph (a), insert:

'including the Working Conditions Act and any rules and regulations arising out of or related to this act. The Contractor indemnifies Employer against claims of third parties who are of the opinion that Employer should have been responsible for part of the obligations described in the preceding sentence and failed to fulfil its obligations. The Contractor indemnifies Employer against claims of third parties who are of the opinion that Employer

should have been responsible for part of the obligations described in the preceding sentence and failed to fulfil its obligations.'

At the end of sub-paragraph (b), insert:

'including the health and safety policies and procedures set out in the Employer's safety manual and Saba Port rules and regulations (if applicable),'

In sub-paragraph (d), insert:

'and responsibility' after 'care'.

In sub-paragraph (f), insert:

'all appropriate marine safety equipment, ' after 'provide'.

After sub-paragraph (g), insert

'The Contractor indemnifies Employer against claims from third parties resulting from the failure to fulfill the obligations referred to before or the failure to fulfill reasonably these obligations in time or properly.

The Contractor shall, throughout the progress of the Works, keep the Site and the Works in an orderly state, appropriate to the avoidance of danger to persons and property, comply with all applicable health and safety Laws and ensure that the Works and any part of the Sections where these Works are carried out shall be kept secure at all times.'

4.10

Use of Site Data

At the end of the first paragraph, insert the following paragraphs:

The Employer does not warrant that information or data provided by or on behalf of the Employer in relation to the Works, the Site and/or the Project is correct, adequate, complete or exhaustive. The Employer shall not be liable for any inaccuracy, inconsistency or incompleteness in such information or data and the Contractor hereby acknowledges that it may not rely on such information or data and waives any claim against the Employer in respect of such information or data. Soil investigations conducted by the Employer and made available as part of Volume 4 Site Data are however already considered comprehensive and representative. It is expected that Contractor shall use these soil investigations data or, in case he proposes to use other data, provides explanation why these provided data are insufficiently representative.

Subject to the Employer allowing the Contractor to access the Site, the Contractor shall be responsible, at its own cost and risk, for carrying out any further studies and investigations as it considers necessary or expedient to verify the data and information provided by the Employer.'

After the second paragraph, replace the list (a) to (e) with the following:

- (a) the form and nature of the Site, including the geological, geotechnical and sub-surface conditions, the quality of existing structures and the means of communication with and restrictions of access to the Site, pollution, environmental hazards and man-made or natural obstacles,
- (b) the hydrological and climatic conditions,
- (c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects,

- (d) the Laws, procedures and labour practices of the Country, and
- (e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services, and the extent to which these shall be paid for and coordinated and shared with other contractors.

The Contractor shall not be entitled to any payment, compensation or allowance by reasons of any extra expense or loss which may be due to or arise from any variation of levels inaccuracies mis-statements or omissions in the Contract or in any of the Documents forming part of the Contract with reference to the above information.

The Contractor shall be deemed to be familiar with the climatic and other physical conditions at the Site and to acquaint himself about the wind velocities, rainfall, wave conditions, tides and currents, morphology, topography, bathymetry and soils conditions prevailing at the Site, and the existence of any possible obstructions for his work performance as wires, cables, large stones, boulders and cobbles, etcetera.'

4.12 Unforeseeable Physical Conditions

Delete all text in Sub-Clause 4.12 after the first paragraph and substitute the following:

'Without prejudice to the generality of Sub-Clause 4.10, the Contractor shall not be entitled to any extension of time, additional payment, adjustment to the Contract Price or other relief by virtue of the Contractor encountering physical conditions (whether foreseeable or unforeseeable), variations in rock head/pile bearing strata levels, artificial obstructions (sub-surface or otherwise) or any material of any nature whatsoever (whether the same be naturally occurring or manmade), which may be encountered during or otherwise affect the execution of the Works. The Contractor shall identify and undertake all necessary measures to overcome physical conditions encountered at the Site at its own cost and risk including but not limited to modifications in Goods, labour, methodology, sequencing and the like in respect of Temporary Works and Permanent Works. The Contractor shall be fully responsible for and assume all risks in relation to such conditions or obstructions, whether or not these were foreseeable at the Base Date.

4.15 Access Route

Insert after the first paragraph:

'The Contractor shall be responsible for making all necessary arrangements for access to the Site by his and his Subcontractors' vehicles, for the Goods and the Contractor's Personnel for the Works. This shall include (as necessary for the Works) the obtaining of rights of ways, the construction and maintenance of temporary roads, the strengthening of existing roads and bridges and water transportation. The Contractor shall form all temporary roads, bridges, drainage, crossovers, footpaths, tracks, hardstanding and weighbridges within the Site, as required for his working methods.'

Add the following words after the end of the final paragraph:

'The Contractor shall take necessary precautions to keep all public or private roads clear of any spillage of materials from his traffic to the satisfaction of the Employer. All such spillage which occurs shall be cleared without delay and at the Contractor's own cost.

The Contractor shall carry out the necessary maintenance required on the access road(s) to continue safe access to the Site by any vehicle; including fire tenders. The Contractor shall carry out regular watering of all temporary access roads to avoid airborne dust.

The Contractor shall ensure that damage or contamination to any public or private roads, footpaths and tracks used by any vehicles or plant proceeding to or from the Site shall be kept to a minimum. The Contractor shall be responsible for the cost of all repairs necessary to restore such roads, tracks or footpaths, including clearing debris, to the satisfaction of the Employer and relevant local authorities.

Where the nature of the Works is such as to require the use of waterborne transport the foregoing provisions of this Sub-Clause shall be construed as though 'roads', 'routes' and 'bridges' included lock, dock, seawall or other structure related to waterway and 'vehicle' included craft.'

4.17 Contractor's Equipment

At the end of Sub-Clause 4.17, insert:

'All equipment on Site has to be approved by the Engineer. The Engineer can decide if and when he wants to conduct additional inspections. For mobilisation to Site, All marine equipment shall be inspected and approved prior to mobilisation and all land equipment shall be inspected and approved prior to access to Site. The Contractor shall notify the Engineer in writing timely prior to the approximate time that the Engineer can conduct his inspection:

- {i) not less than twenty four (24) hours notification time for inspections on Site or on Saba.
- {ii) not less than seven (7) days notification time for inspections away from Site

It is the Contractor's responsibility to establish the type, capacity and quantity of all Contractor's Equipment, including all appliances and associated plans for execution and completion of the Works and the remedying of any defects therein. The operational conditions for Contractor's Equipment, Temporary Works, materials, etc. shall be as follows: (a) all Contractor's Equipment, Temporary Works, materials, etc., obtained or furnished by the Contractor, which is to be used by the Contractor on the Site, shall be fully equipped, fully operational and well maintained, mechanically in excellent condition and suitable for the Works and in such operating condition that the Contractor can perform the Works safely, timely and efficiently in accordance with his Method Statement and the requirements of the Contract. Such equipment shall be subject to inspection and acceptance from time to time by the Engineer;

(b) any Contractor's Equipment, Temporary Works, materials, etc., which is rejected by the Engineer as not conforming with the foregoing shall be promptly removed by the Contractor and replaced by the same acceptable to the Engineer without additional costs to the Employer and without delaying the schedule for performance of the Works;

(c) the Contractor shall be responsible for insuring that all personnel employed by him have the necessary licenses, qualifications or exemptions to operate the equipment and shall bear all costs involved in maintaining such licenses, qualifications and exemptions, required during the course of the Works;

(d) the Contractor shall at all times and without any delay inform the Engineer in writing of the occurrence of any defects, shortcomings or other events which might result in the equipment not attaining its working capacity stated in the Equipment Statement. The Contractor shall in such cases review the Program of the Works and, if applicable, replace any Equipment not attaining its agreed working capacity. The Engineer may in such cases order such Equipment to be withdrawn and replaced according to Clause 7.5 and 7.6 of the General Conditions;

(e) the Contractor shall immediately make satisfactory arrangements to furnish whatever additional Plant or Equipment that may be necessary for properly and satisfactorily completing the Works, in accordance with the requirements of the Contract;

(f) in the event that the Contractor is required to replace Equipment or to supply additional Equipment it shall be clearly understood by the Contractor that he shall receive no additional payment for these actions.'

4.18 Protection of the Environment

Delete this Sub-Clause in its entirety and replace with the following:

'The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values indicated in the Employer's Requirements, permits and the obligations following from the permit and shall not exceed the values prescribed by applicable Laws. The Contractor shall provide a suitably qualified environmental officer dealing only with environmental matters. This environmental officer shall have the authority to issue instructions and take protective measures necessary to prevent environmental issues and he shall be fluent in written and spoken English and the language of the Country. The officer so designated shall be made known to all employees by the posting of his name, designation and photograph in prominent positions on Site.

The Contractor shall, within 28 days after the Commencement Date, submit to the Engineer for his consent a detailed Environmental Management Plan ('**Construction Environmental Management Plan**'). The plan shall be in accordance with current environmental management system guidelines in place in the Country.

The Environmental Management Plan shall be included as part of the quality plan and be subject to and controlled by, the requirements of the Quality Assurance / Quality Control Management System.

The Contractor shall promptly update the Environmental Management Plan to take into account generally accepted environmental management practices, the effectiveness of the existing Environmental Management Plan and any changes in any applicable Laws or the enactment of any new applicable Laws or any amendments to Employer's safety manual which affect or may affect the Contractor carrying out the Works.

If at any time the Engineer believes the Environmental Management Plan to be inadequate, he shall inform the Contractor in writing, and the Contractor shall not continue with any part of the Works which the Engineer considers affected by the inadequacy of the Environmental Management Plan.

If at any time it should appear to the Engineer that the environment on or adjacent to the Site is in any way compromised, the Contractor shall produce, at the request of the Engineer, a revised Environmental Management Plan showing the modifications to such plan necessary to ensure that an appropriate level of environmental management is restored.

The Contractor shall report in writing to the Engineer and to the relevant Authority as appropriate details of any incident involving a threat to the environment occurring on or adjacent to the Site as soon as possible after its occurrence.'

4.20 Progress Reports

At the start of Sub-Clause 4.20, insert a new paragraph:

'Daily, weekly and monthly reports shall be prepared by the Contractor as per the requirements stated in the Employer's Requirements. Periods covered and dates and times of submission shall be as follows:

- Daily reports shall be delivered the following day before 12:00
- Weekly reports shall cover the period from Monday to Sunday and be delivered on before the following Tuesday at 12:00.
- Monthly reports shall cover the calendar months and shall be delivered before the following the seventh day at 12:00.'

At the end of the list (a) to (h), insert:

'(i) cash flow forecast.'

4.24 Fire Precautions

Insert the following as a new Sub-Clause:

'The Contractor shall conform to the regulations of the Employer and any other controlling authority, in force at the Site of the Works with respect to precautions to be taken against fire hazards.'

4.25 Photographs and Advertising

Insert the following as a new Sub-Clause:

'The Contractor shall not publish any photographs of the Works nor allow the Site of to be used for any form of advertising whatsoever without the prior approval in writing of the Employer.'

4.26 Maintenance of Other Services and Structures

Insert the following as a new Sub-Clause:

'The Contractor shall acquaint himself with and ascertain the location of all watercourses, sewers, drains, gas pipes, water pipes, electricity and telecommunication cables, other services, structures and all other onshore and offshore facilities which may be encountered during the Works before any fill works, excavation, dredging, dumping, disposal, or other work likely to affect the existing services is commenced. If necessary for the Works, the Contractor shall, at its own cost and risk, temporarily support or divert and subsequently reinstate all such services and structures as necessary and to the satisfaction of the Engineer.

As soon as any such service or structure is encountered on, over, under, in or through the Site during the performance of the Works, the Contractor shall make a record of the location and description of such service or structure and shall send the same forthwith to the Engineer.

Where permanent diversion or support of such service or structure is rendered necessary as the unavoidable result of the Works, the Engineer (after consultation with the Employer) will instruct the Contractor as to the diversion or support to be provided and the Contractor shall be entitled to the Cost plus reasonable profit of carrying out the same as its exclusive remedy.

4.27 Spoil Dumps

The following Sub-Clause shall be added:

'The Contractor shall not deposit excavated material on land in Government or private ownership except where directed by the Engineer in writing or by leave in writing of the Authority responsible for such land in Government ownership or of the owner or responsible representative of the owner of such land in private ownership and only then in those places and under such conditions as the Authority, owner or responsible representative may prescribe.'

4.28 Parent Company Guarantee

The following Sub-Clause shall be added:

'The Contractor shall provide a Parent Company Guarantee from the Contractor's ultimate parent company (or any other entity approved by the Employer, in its sole discretion) within 28 days after the Commencement Date. Notwithstanding any other provision of the Contract, compliance with this Sub-Clause 4.29 is a condition precedent to the Contractor's entitlement to receive any payment from the Employer under the Contract and no payment shall be due or payable until this Sub-Clause 4.29 is satisfied.'

4.29 Diving

The following Sub-Clause shall be added:

'The Contractor shall inform itself completely and thoroughly of every circumstance connected with diving operations and every contingency that may arise. All diving procedures shall be incorporated in the occupational health, safety and rehabilitation plan.'

The Contractor shall perform all diving activities in strict compliance with the Employer's Requirements, requirements of any relevant Authority, the Employer and the Engineer and the occupational health, safety and rehabilitation plan.'

5.1 General Design Obligations

Delete the first and second paragraphs and replace with the following:

'The Contractor shall carry out, and be responsible for, the design of the Works. The Contractor shall be responsible for ensuring that its design of the Works incorporates as a minimum any works of design or specification set out in the Employer's Requirements and qualifications of Key Personnel.'

The Contractor shall adopt and shall be fully responsible for such works of design and specifications set out in the Employer's Requirements and qualifications of Key Personnel as aforesaid and the warranties, covenants and obligations of the Contractor under the Contract in relation to the design of the Works shall extend to such works of design and specification.

Without prejudice to Sub-Clause 4.1, the Contractor's design (including any works of design or specification in the Employer's Requirements adopted by him as aforesaid) shall be strictly in accordance with the reasonable standards of skill, care and diligence expected of an experienced and competent organisation specialising in work of the same type and magnitude as the Works and shall comply with the Contract and shall be prepared by qualified designers who are engineers or by professionals who comply with the criteria (if any) stated in the Employer's Requirements. For each part of the Works, the prior consent of the Engineer shall be obtained to the designer and design Subcontractor, if they are not named as such in the Contract. If consent is withheld or subsequently revoked, or if the appointed person fails to act, the Contractor shall similarly submit the names and

particulars of an alternative, having at least the same qualification, skills and expertise as the person initially appointed. Nothing contained in the Contract shall create any contractual relationship or professional obligations between any designer, or a design Subcontractor on the one hand and the Engineer or the Employer on the other hand.

Subject always to the provisions of this clause, the Contractor warrants that:

- (a) The Contractor or its Subcontractors shall be fully experienced, properly qualified, registered and licensed, equipped, organised and financed to carry out the design of the Works and have the level of skill and capability required for design of the same type and magnitude as the Works,
- (b) The design shall be carried out in full compliance with all applicable Laws and the Contract,
- (c) Every element of the design, including without limitation material specifications, calculations, measurements and drawings shall be suitable, cost-effective, correct and accurate and comply with the criteria (if any) state din the Employer's Requirements,;
- (d) The design shall be provided as per current internationally acceptable standards including but not limited to standards of stability, efficiency, reliability, health and safety;
- (e) The Contractor and its Subcontractors shall make reasonable endeavours to ensure that the Services shall reasonably be free from defects and deficiencies;
- (f) The design shall be provided to meet all safety, operability and performance criteria as per the Contract;
- (g) The design life of the Works (other than dredging works) shall be at least 50 years, except otherwise stated in the Employer's Requirements.
- (h) The design shall be provided such that the Works can be operated with a minimum of maintenance and interruption.'

5.2 Contractor's Documents

At the end of Sub-Clause 5.2, insert:

'Neither the pre-construction review of the Contractor's Documents by the Engineer as described in this Sub-Clause 5.2 nor any other review, comment or approval by the Engineer or others on the Employer's behalf shall relieve the Contractor of its responsibilities, obligations or liabilities under this Contract, or entitle the Contractor to any extension of time, additional Cost or other relief.

One copy of the Contractor's Documents, provided to or supplied by the Contractor as aforesaid, shall be kept by the Contractor on Site and the same shall at all reasonable times be available for inspection and use by the Engineer and by any other person authorised by the Engineer in writing.

If the failure or inability of the Engineer to issue any drawing or instructions is caused in whole or in part by the failure of the Contractor to submit drawings, specification or other documents which he is required to submit under the contract the Engineer shall take such failure by the Contractor into account.'

5.3 Contractor's Undertaking

At the end of Sub-Clause 5.3, insert:

'unless such documents prescribe a higher standard than that prescribed under paragraph (a) in which case paragraph (b) shall take priority over paragraph (a) in relation to such standard.'

5.4 Technical Standards and Regulations

Insert the following words at the end of the first paragraph:

‘and if there is any conflict between them, the specification, standard or regulation prescribing the higher priority shall be used.’

5.9

Alternative Designs

The following Sub-Clause shall be added:

‘Should the Contractor, after the Base Date, propose an alternative design for all or any part of the Works, he shall be entirely responsible to produce adequate design calculations and drawings to satisfy the Engineer that the alternative design is acceptable and to enable the work to be constructed or fabricated. Alternative designs must conform to all appropriate standards and the Employer’s Requirements.

The Employer may, at its sole discretion, accept or reject any alternative design proposed by the Contractor.

No claims for additional payment, adjustment of the Contract price or for extensions of time of the Contract will be considered or granted because of delays caused by the Engineer or the Employer’s review, comments or approval of any alternative proposals submitted by the Contractor.

The Contractor shall reimburse the Employer the full costs of checking these alternative design calculations, drawings and other related information deemed to be necessary by the Engineer, regardless of whether the alternative is ultimately adopted. Such costs may be recovered by deduction against the Payment Certificates or as a debt due.

The cost of any modifications to an accepted alternative found to be necessary as a result of the Engineer’s detailed checking shall be borne wholly by the Contractor.

The Contractor is obliged to ensure that his design, and any alternative designs, are compliant with the Environmental Permit for this project.

Any alternative design shall be subject to the same requirements as those set out in the Contract.’

5.10

Revised Submissions

The following Sub-Clause shall be added:

‘In certain instances the Contractor is required by the Contract to provide the Engineer with information such as catalogue details, material specifications, design details, installation drawings and procedures and the like. Where the Contractor has provided this information, and received the Engineer’s approval and subsequently proposes an alteration to the information for his own convenience, the Contractor shall reimburse the Employer for the full costs of all consequent checking by the Engineer. Such costs may be recovered by deduction against the Payment Certificates or as a debt due.’

5.11

Adequacy of Information to be Provided by the Contractor

The following Sub-Clause shall be added:

‘If information required under the Contract to be supplied by the Contractor to the Engineer is in an unreasonable form or has inadequate technical content such that the Engineer’s normal approval procedures are hampered or lengthened the Contractor shall

reimburse the Employer for all additional charges made in this respect by the Engineer. Such charges may be recovered by deduction against the Payment Certificates or as a debt due.

This principle shall apply to all cases where the Contract requires the Contractor to design Temporary or Permanent Works and where details are to be submitted under the terms of the Contract.'

6.1 Engagement of Staff and Labour

At the end of Sub-Clause 6.1, insert:

'The Contractor is encouraged to the extent that it is practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within Saba. The Contractor shall also comply with all immigration and residency laws and shall have obtained (or shall obtain) the necessary permits and licences to execute the Works by its (foreign) personnel. The Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.'

6.2 Rates of Wages and Conditions of Labour

At the end of Sub-Clause 6.2, insert:

The Contractor shall be liable to Employer to comply with its statutory obligations to pay wages and salaries tax and social security contributions that are related to the Work. Upon request, the Contractor shall provide Employer the information showing that these obligations have been/are being complied with.

Employer shall not be liable to the Contractor or to any subcontractors to contribute to the premiums, advance premiums and/or taxes collected by the insurance board or tax authorities from the Contractor or any subcontractors, which a subcontractor charged with (part of) the Works fails to pay.

The Contractor indemnifies Employer against all claims from the insurance board or tax authorities in respect of the Works and against rights of recovery from any subcontractors that shall be charged with (part of) the Works.

The Contractor shall not be permitted to wholly or partly transfer (assign) or pledge the right to the part of the balance which relates to the wages and salaries tax and social security contributions payable by the Contractor in respect of the Works, other than to the tax authorities and/or insurance board.

The Contractor shall include the provisions referred to in this Article as well as this provision in every subcontract to be entered into by the Contractor, with the provision that in this provision "the employer" shall be replaced by "the contractor" and "the contractor" shall be replaced by "the subcontractor.'

6.5 Working Hours

Delete the first sentence and replace with the following:

'The working hours shall be the working hours stated in the Contract Data, unless:'

Delete item (b) and replace with the following:

'(b) the Engineer gives consent after due consultation with the Employer and the Contractor.'

Delete item (c) in its entirety.

6.6 Facilities for Staff and Labour

Insert the following at the end of the first paragraph:

'The facilities for the Contractor's Personnel shall include:

- (a) water supply (both for drinking and other purposes),
- (b) electricity supply,
- (c) sanitation,
- (d) proper sewerage disposal
- (e) cookhouses,
- (f) fire prevention and fire-fighting equipment,
- (g) air conditioning (HVAC),
- (h) cookers, refrigerators, furniture, and
- (i) other requirements in connection with such accommodation or amenities.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the Site. The labour camps for the Contractor's Personnel shall not be located within the Site and on taking over of the Works, unless otherwise agreed with the Employer, the temporary camps/housing and laydown area provided by the Contractor shall be removed and the area reinstated to its original condition, all to the satisfaction of the Engineer (acting reasonably). The Employer shall from time to time be entitled, upon written notice to the Contractor, to inspect any such labour camps or temporary housing provided by the Contractor.

The Contractor shall be entitled to establish and maintain a laydown area within the Site provided that it does not interfere with the Works or with the works of any other contractors, tenants or operators of existing infrastructure at or near the Site.

The Contractor shall arrange the provision of a sufficient supply of suitable food for all Contractor's Personnel while they are engaged or housed in connection with the Works.

6.7 Health and Safety of Personnel

In the first paragraph, delete the text after 'Sub-Clause 4.8 [*Health and Safety Obligations*],' and insert:

'the Contractor shall ensure that the Works can be executed safely and with minimum risk to health and safety and in full compliance with the Employer's health and safety standards and applicable health and safety Laws. The Contractor will be responsible for ensuring that Contractor's Personnel has at their disposal appropriate Personal Protection Equipment (helmets, eye, ear, hand and foot protection), where appropriate. Contractor will ensure that such equipment is applied where appropriate.'

At the end of Sub-Clause 6.7, insert:

'The Contractor shall immediately notify the Engineer, if any accident occurs whether on or off Site in connection with the Works which results in any injury to any person whether directly concerned with the Site or a third party. Such notification may initially be verbal and shall be followed by a written report within 24 hours of the accident.'

The Employer and the Contractor shall establish regulations setting out the rules to be observed in the execution of the Works at the Site, taking into account the other activities being carried out on the Site and adjoining sites, which may be affected by the Works. Each Party shall comply (and the Contractor shall procure compliance by its Subcontractors) with such regulations. The Contractor shall ensure that copies of such regulations are provided to each Subcontractor and any other contractor working on the Site prior to the commencement of their work. Such regulations shall include (without limitation) rules in respect of:

- (a) site security;
- (b) gate control;
- (c) health and safety;
- (d) sanitation;
- (e) workers' accommodation;
- (f) medical care; and
- (g) fire prevention.

In collaboration with local firefighting and health authorities, the Contractor shall ensure that the Site and any accommodation for the Contractor's and Employer's Personnel contains the necessary equipment, facilities and staff in order to comply with the Employer's health, safety and environmental requirements and any requirements of the Authorities and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of fires and epidemics.

The Contractor shall be responsible for maintaining health and safety at all times, and for safety and protection against accidents. All Contractor's Personnel shall have the authority to take protective measures and to stop unsafe work at any time in order to prevent accidents. Throughout the execution of the Works, the Contractor shall maintain this policy to exercise this responsibility and authority. The Contractor shall appoint a safety liaison officer to report and discuss health, safety and environmental issues with the Engineer.

The Contractor shall develop a draft Calamity response plan and submit a near final draft of the same to the Engineer for approval no later than 21 days after the Commencement Date. The Parties shall discuss and agree in good faith as soon as practicable thereafter. The Contractor shall accommodate the Engineer's comments on the same and produce the final plan which shall be the '**Emergency Response Plan**'. The Parties shall update the Emergency Response Plan from time to time to ensure that its objective is achieved properly and adequately.

The Emergency Response Plan shall identify the potential calamities which could occur during the execution of the Works and set out a clear plan of action to be followed should any of them occur. The Contractor shall ensure that employees are aware of these procedures and display, in prominent positions, posters stating these procedures with emergency telephone contacts.

The Engineer shall be entitled to audit the compliance by the Contractor with the site safety regulations and the Emergency Response Plan at such times and as often as it may reasonably decide. The Contractor shall provide all the necessary support and assistance, at its own cost, to allow the Engineer to carry out such audit.

If a Calamity occurs, or where there is the threat of a calamity of a type mentioned in the Emergency Response Plan, the Contractor shall immediately take all the necessary and/or appropriate measures that may reasonably be required to protect the Site and to ensure compliance with the Contract. The Contractor shall as soon as possible after the occurrence of any accident at or about the Site or in connection with the execution of the Works, report such accident to the Engineer. The Contractor shall also report such accident to the competent authority, whenever law requires such report.

In case of the occurrence of a calamity, or the threat of a calamity, the Engineer shall be entitled to give binding instructions to the Contractor. These instructions may hold one or more actions, to be taken by the Contractor, to deal with the (threat of a) Calamity. The Contractor shall carry out these instructions promptly and diligently at its own cost and without any entitlement to an extension of time or additional payment unless the cause of the calamity is a ground that expressly gives rise to such an entitlement under the Contract.

If the Contractor does not comply with the Engineer's instructions promptly and diligently, and provided that the Contractor is not prevented from carrying out such instructions by a Force Majeure event, the Engineer shall be entitled to:

- (a) serve a further notice instructing the Contractor to suspend the carrying out of all or part of the affected Works on a temporary basis at the Contractor's expense and risk. Any such suspension shall be considered a suspension for Contractor breach; and/or
- (b) take such measures as the Engineer considers necessary to mitigate the effects of the Calamity (including taking preventive action) and recover the costs of the same from the Contractor.'

6.11 Disorderly Conduct

At the end of Sub-Clause 6.11, insert:

'The Contractor shall not give, barter or otherwise dispose of to any person or persons, any arms or ammunition of any kind of permit or suffer the same as aforesaid.

The Contractor shall not, otherwise than in accordance with the Law for the time being in force, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his subcontractors, agents, staff or labour.'

6.12 Key Personnel

In Sub-Clause 6.12, insert after the first paragraph:

'The Contractor shall:

- (a) employ suitably qualified, skilled and experienced Contractor's Personnel in the Key Personnel positions specified in the Contractor's organisation chart,
- (b) subject to sub-paragraph (c), not replace the Key Personnel referred to in the Key Personnel Plan without the Employer's prior written approval,
- (c) if any Key Personnel become seriously ill or incapacitated or resign from the employment of the Contractor, replace them with persons approved by the Employer of at least equivalent experience, ability and expertise, and
- (d) ensure that the Key Personnel dedicate their working time exclusively to the Works.'

6.13 Income Tax

Insert the following as a new Sub-Clause:

'If under applicable Laws, any of the Contractor's Personnel are liable to pay personal income taxes or similar taxes in the Country in respect of such of their salaries and wages as are chargeable under the Laws from time to time, the Contractor shall ensure compliance with such Laws and perform such duties in regard to deducting personal taxes in compliance with such Laws.'

6.14 Employment of Foreign Personnel and Labour

Insert the following as a new Sub-Clause:

‘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.

The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of imported Contractor's Personnel. In the event of death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.’

6.15 Employment of Persons in the Service of Others

Insert the following as a new Sub-Clause:

‘The Contractor shall not recruit or attempt to recruit his staff and labour from amongst persons in the service of the Employer or the Engineer.’

7.1 Manner of Execution

Add the following paragraphs after 7.1(c):

‘None of these warranties shall be interpreted as limited by any other warranty in the Contract.’

7.3 Inspection

In the first line of this Sub-Clause, delete the word ‘reasonable’.

At the end of Sub-Clause 7.3, insert:

‘Notwithstanding the intention and meaning of this sub-clause the following shall be valid in addition to and above this sub-clause:

(a) The Contractor shall carry out all surveys and measurements and shall furnish all personnel, equipment and material required to carry out surveys and measurements necessary to determine the quantities for progress payments of work performed as well as for final payments.

(b) All such surveys and measurements shall be subject to check and verification by the Engineer and in case desired by the Employer. The Contractor shall notify the Engineer in writing timely prior to the approximate time that he proposes to make such measurements:

(i) not less than twenty four (24) hours notification time for inspections on Site or on Saba.

(ii) not less than fourteen (14) days notification time for inspections away from Site

(c) All original field notes, rough (unprocessed) data and other records taken and computations made by the Contractor for the purpose of surveys and quantity surveys for progress statements shall be furnished to the Engineer as prescribed in Clause 14.3 (Monthly Statements) and shall become the property of the Employer and shall be used to the extent necessary in determining payments due to the Contractor under the Contract.’

7.4 Testing by the Contractor

At the end of the third paragraph, insert:

‘The Engineer shall give the Contractor not less than 72 hours’ notice of the Engineer’s intention to attend tests carried out off Site and not less than 4 hours’ notice of intention to attend tests carried out on Site, including Site laboratories. If the Engineer does not attend at the time and place agreed the Contractor may proceed with the tests, unless otherwise instructed by the Engineer.’

Replace the final paragraph with:

‘The Contractor shall promptly forward to the Engineer duly certified reports of all tests. When the specified tests have passed, the Engineer shall endorse the Contractor’s test certificate for those tests that were witnessed by him or issue a certificate to that effect. If the Engineer has not attended the tests the results will be deemed to be correct unless the Engineer registers an objection within 14 days.’

At the end of Sub-Clause 7.4, insert:

‘The Engineer shall be entitled, during manufacture, fabrication or preparation to inspect and test the Materials and Plant to be supplied under the Contract. If Materials or Plant are being manufactured, fabricated or prepared in workshops or places other than those of the Contractor, the Contractor shall obtain permission for the Engineer to carry out such inspection and testing in those workshops or places. Such inspections or testing shall not release the Contractor from any obligation or liability under the Contract.

All expenses incurred by the Engineer or Employer for travel (including but not limited to flight tickets, accommodation and out-of-pocket expenses) in connection with attending testing and inspection which is deemed by the Employer and Engineer as necessary to monitor adherence to the Quality Assurance / Quality Control Management System, shall be payable by the Contractor and shall be deductible from the Interim Payment as per clause 14.3(f).’

7.7 Ownership of Plant and Materials

Insert the following paragraphs at the end of this Sub-Clause:

‘The Contractor shall obtain written approval of the Engineer prior to removal of any Plant from the Site. Removal from the Site shall not affect the Employer’s title in such Plant.’

7.8 Royalties

At the end of Sub-Clause 7.8, insert:

‘The Contractor shall be liable for all permits, royalties, fees or compensations, if any, levied in relation to obtaining construction materials, including sand for reclamation and other purposes, as well as the dredging, transportation or disposal of any material.’

7.9 Method of measurement

Insert the following as a new Sub-Clause:

For the works quantity measurement, the Contractor shall submit for approval the documents and evidence of the detailed method he proposes to use to record progress from time to time and shall upon the request of the Engineer submit records, photos, and any other necessary materials for the determination of the progress of the Works at his own cost.

(a) All methods of measurement shall be approved by the Engineer.

(b) Except in so far as the Technical Specifications may expressly state to the contrary, all measurements for payment shall be to the lines and dimensions shown on the Detailed Engineering Design (DED) Drawings, including the acceptable tolerances, or specified in the Employer's Requirement and/or Technical Specifications and the existing levels to be determined in a joint pre-dredge survey.

(c) All Work completed under the Contract shall be measured according to the metric system for all items unless otherwise specified in the Contract Documents.

(d) The Measurement of the Works shall be performed on the basis of the stipulations set forth in the Employer's Requirements. If the results of the measurements exceed the requirements beyond the remunerative tolerances as indicated in the Technical Specifications and Drawings, such excess shall be on the account of the Contractor and he shall not be entitled to any payment or compensation therefore.

(e) Full compensation for all cost incurred in conforming to the above requirements for measuring shall be considered to be included in the unit prices; no additional separate compensation will be allowed therefore.

7.10 Vessels and Marine Equipment

Insert the following as a new Sub-Clause:

'The Contractor warrants that all Vessels to be used by or on behalf of the Contractor or Subcontractors under the Contract shall be:

- (a) covered by all required certifications, classifications and insurances,
- (b) generally seaworthy, in good working order and condition and in every way fit for service to the satisfaction of the Employer and the Saba port authorities, and
- (c) compliant with all Law.

Before any Vessel is used by the Contractor in connection with the Works, the Contractor shall enable the Employer to examine such Vessel. All Vessels are subject to a suitability survey to be undertaken by or on behalf of the Employer (the 'Vessel Survey') before such Vessel can be used for the Works.

The Contractor shall be required to recover, at its own expense, any item of material, plant, Contractor's Equipment or debris lost in the water during performance of the Works.

In the event of any Vessels or marine craft being sunk, stranded, or gone adrift, the Contractor shall bear the cost of dealing with the same (including the removal from the sea-bed) in accordance with the Employer's Requirements.

Until such items are raised and removed the Contractor shall set such buoys and display such lights and do all such things for the safety of navigation as may be required by the authorities concerned or by the Employer. In the event the Contractor does not comply with this Sub-Clause, the Employer may buoy and light such sunken items and remove the same (without prejudice to the right of the Employer to hold the Contractor liable). The cost of the same shall be to the Contractor's account and the Employer reserves the right to deduct such cost from any monies due to the Contractor.

If the Vessels which the Contractor or a Subcontractor intends to use in carrying out the Works are owned:

- i. by the Contractor or a Subcontractor, the Contractor hereby undertakes that to the extent reasonably practicable it will not, during the period from the Commencement Date until the Works have been completed, transfer or permit Subcontractor to transfer the ownership of or control of such Vessels in whole or part or mortgage or charge or otherwise encumber such Vessels without first obtaining the written consent of the Employer; or

ii. in whole or in part by a third party or are mortgaged or charged or otherwise encumbered to a third party, the Contractor shall procure or cause Subcontractor to procure, within 8 weeks of the Commencement Date, a guarantee, under seal, of unconditional availability for use of the Vessels for the Works on terms acceptable to the Employer.

The Contractor shall not be entitled, at any time during the performance of the Works, to substitute any Vessels for use in performance of the Works without prior written approval of the Employer, not to be unreasonably withheld. Any substitutions, if approved, must be made with an equivalent Vessel appropriate for the performance of the Works provided always that all costs and expenses incurred by Contractor and Employer in such substitution shall be to Contractor's account, including the cost of required procedural modifications, Vessel surveys, Vessel modifications, change in insurance premium, if any, or other items affected by the substitution and provided further that such substitution shall not disrupt or delay the orderly and scheduled progress of the Works. For the avoidance of doubt, the Contractor shall not be entitled to any extension of time, additional payment, adjustment to the Contract Price or other relief for any Vessel substitution by the Contractor.'

8.3 Programme

At the end of the first paragraph, insert:

'Together with the Programme the Contractor shall submit a schedule conform the critical path method covering the items of work in the various stages.'

Insert a new sub-paragraph (l) as follows:

'(l) a revised cash flow schedule based on the revised Programme and the methods described in the supporting report mentioned under (k).'

After the last paragraph, insert:

'The Employer and the Employer's other contractors shall be entitled to rely upon the programme when planning their activities.

The programme is intended for use as a management and reporting tool. Nothing stated in the programme, and no comment or approval given by the Engineer in respect of the programme, shall relieve the Contractor of his obligations or liabilities under the Contract.'

8.5 Extension of Time for Completion

Replace sub-paragraph (c) with:

'exceptionally adverse climatic conditions, with the exclusion of disruption to the Contractor's operations during or as a result of the recognised hurricane or monsoon periods and the effect of swell waves and sea storms at any time.'

Delete the words in sub-paragraph (d) and replace with 'not used'.

Insert the following paragraphs at the end of the Sub-Clause:

'The Contractor shall not be entitled under the Contract to an extension of time:

i. to the extent that delay is due to any breach, default or negligence of the Contractor (or any person for whom the Contractor is responsible in accordance with the Contract),

- ii. if there are two or more concurrent causes of delay and only one of those concurrent causes is a cause of delay which would entitle the Contractor to an extension of time in accordance with this Sub-Clause 8.5 and the other is not, then the Contractor shall not be entitled to an extension of time for the period of such concurrency, provided that this subparagraph (ii) shall not apply where one of the causes of delay is attributable to any delay, impediment or prevention caused by or attributable to the Employer or the Employer's Personnel, or
- iii. to the extent the Contractor failed to use best endeavours consistent with good industry practice to avoid or minimise the delay.

The Engineer may at any time (and in its sole discretion) grant or increase extensions of time, whether or not for a reason stated in the Contract and whether the delay occurs before or after the Time for Completion.

Where the Contractor is or would be entitled to an extension of time under this Sub-Clause 8.5, the Engineer may instruct the Contractor to submit a written proposal to the Engineer as soon as reasonably practicable regarding the feasibility of acceleration of the Works as an alternative to such extension of time and stating:

- (a) any lump sum which the Contractor would reasonably require to be added to the Contract Price if instructed by the Engineer to accelerate the Works, together with details showing the manner of calculation of the lump sum and proposals for the terms of payment thereof,
- (b) the extent to which the extension of time can be cancelled or reduced and any date which, as a result, would become the applicable Time for Completion (as applicable), and
- (c) any other amendments to the Contract which the Contractor would reasonably require if the Engineer were to instruct an acceleration of the Works pursuant to this Sub-Clause.

Following receipt of the Contractor's proposal, the Parties shall, acting in good faith, use their best efforts to agree:

- i. the adjustment to the Contract Price,
- ii. the extension to the Time for Completion, as applicable (including the reduction in any extension of time previously granted to take account of such acceleration),
- iii. the details of the acceleration and the alteration of sequence or timing required, and
- iv. any other appropriate amendments to the Contract.

8.8

Delay Damages

Insert the following paragraphs at the end of the Sub-Clause:

'Delay damages shall accrue daily (whether or not a notice has been served by the Employer). Any delay damages shall be deducted from the Contractor at the end of each month during the period of delay and the Contractor will pay the amount due. The Contractor shall pay financing charges compounded monthly at the rate specified in Sub-Clause 14.8 [*Delayed Payment*] on any overdue amount until payment. For the avoidance of doubt, such financing charges shall not constitute consequential losses. Notwithstanding any other provision of the Contract, the Employer shall have the right to set off any delay damages due under this Clause 8 [*Commencement, Delays and Suspension*] against any remaining payments of the Contract Price.'

If, after any deduction or payment of delay damages, an extension of time to the applicable Time for Completion is determined in accordance with the Contract, any delay damages previously paid or allowed in respect of the relevant Section or Works that is now covered by the period of such extension shall be refunded or re-credited to the Contractor by the Employer. For the avoidance of doubt, such repaid or re-credited delay damages

shall not count towards the maximum amount of delay damages stated in the Contract Data.

The Parties agree that the delay damages: (i) represent an agreed genuine pre-estimate of losses likely to be suffered by the Employer in the event of delay to achieving taking over of a Section or the Works (as applicable), (ii) there is a commercial justification and legitimate interest in imposing delay damages as a payment for such delay which would not be satisfied by a right to recover damages on an unliquidated basis, and (iii) are fair and just and are not unconscionable.

8.9 Employer's Suspension

Insert the following paragraph at the end of the Sub-Clause:

'During any period of suspension, the Contractor shall not remove from the Site any Materials, Plant or any Contractor's Equipment without the prior written consent of the Employer.'

8.11 Payment for Plant and Materials after Employer's Suspension

At the end of sub-paragraph (b) after 'the Contractor', insert:

'has presented satisfactory evidence that the Plant and/or Materials are fully owned by the Contractor and are not subject to any retention of title and'.

At the end of Sub-Clause 8.11, insert:

'The Employer or Beneficiary may then, if requested by the Contractor, take over the responsibility for protection, storage, security and insurance of such suspended Plant and/or Materials; the risk of loss or damage to the suspended works shall then pass to the Employer.'

9.1 Contractor's obligations

In the first paragraph after 'Sub-Clause 7.4 [*Testing by the Contractor*]', insert:

'and the Employer's Requirements'.

10.1 Taking Over of the Works and Sections

After sub-paragraph (e), insert:

'(f) the Performance Security and parent company guarantee continue to be valid and enforceable in compliance with Sub-Clause 4.2 [*Performance Security*],
(g) the Contractor has confirmed in writing to the Employer that there are no outstanding liens in favour of any Subcontractor in connection with the Works or Section,
(h) all other requirements or pre-conditions for taking over of the Works or a Section stated in the Contract have been satisfied, and
(i) except as allowed in sub-paragraph (a) below, a Taking-Over Certificate for the Works or Section has been issued or is deemed to have been issued in accordance with this Sub-Clause.

As a proof of its strength and stability, the Contractor shall remain responsible for the Black Rocks Harbor until at least after the first hurricane after Taking Over '

At the end of Sub-Clause 10.1, insert:

'The Contractor shall not delay the remaining Works pending issuance of a Taking-Over Certificate for a particular Section.

The Contractor acknowledges that the Employer may enter upon and operate individual Sections for which a Taking-Over Certificate has been issued. The operation of a Section that has achieved taking over by the Employer shall not entitle the Contractor to apply for a Taking-Over Certificate and shall not be deemed as any grounds for taking over of any remaining Sections or Works or as grounds giving rise to any entitlement for an extension of time, additional costs, adjustment to the Contract Price or other relief.

Notwithstanding the issuance of any Taking-Over Certificate, the Contractor shall remain responsible for the care, custody and reinstatement of the Works until such time as care and custody has passed to the Employer in accordance with Sub-Clause 17.2 [*Contractor's Care of the Works*].

10.3 Interference with Tests on Completion

Delete the first two paragraphs of this Sub-Clause.

In the third paragraph, replace 'this delay' with 'the Employer preventing the Contractor'.

11.1 Completion of Outstanding Work and Remedying Effects

At the end of Sub-Clause 11.1, insert:

'Failure to meet any of the Employer's Requirements, including the guarantees undertaken within the Schedules shall be considered defect under these conditions of contract.'

11.2 Cost of remedying Defects

In the first paragraph, replace:

'if and to the extent that the work is attributable to'

With

'except to the extent that the Contractor demonstrates that the defect is not attributable to'.

11.3 Extension of Defects Notification Period

In the second paragraph replace 'two' with:

'one'.

11.8 Contractor to Search

After the words 'under Sub-Clause 11.2 [*Cost of Remedying Defects*]', insert the words 'or where, although the search fails to disclose non-compliance with the Contract, such search was instigated as a result of problems or failures having been discovered in similar items of Materials, Plant or the Works, and the Engineer had reasonable grounds to believe that such a problem or fault existed in the items of Materials, Plant or Works on which the search was carried out,'.

12.1 Procedure for Tests after Completion

In the second sentence, replace 'the Employer' with:

'the Contractor'.

In sub-paragraph (b)(iii), replace 'such guidance as the Contractor' with:

'such guidance as the Employer'

and replace 'Contractor's Personnel' with:

'Employer's Personnel'.

13.1 Right to Vary

Insert the following paragraph at the end of the Sub-Clause:

'Notwithstanding anything else in this Contract, no change, modification, addition or deletion to, in or from the Employer's Requirements or the Contractor's Documents, the Works or the Contractor's conditions and methods of working made necessary due to any breach of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Variation and any such matter shall not result in any adjustment of the Contract Price, extension of time or other relief.

The Contractor shall bear its own costs incurred in connection with the preparation and submission of variation proposals.'

13.5 Daywork

Delete this Sub-Clause after the second paragraph and replace with:

'Contractor shall submit a quotation of the planned Daywork for approval by the Engineer. No Daywork shall be subject to compensation without the prior approval by the Engineer.'

13.7 Adjustment for Changes in Cost

Delete this Sub-Clause in its entirety.

14.1 The Contract Price

Add the following points after Sub-Clause 14.1 (d):

'The Lump sum prices included in the Bill of Quantities will be used to derive the value of Work complete for inclusion in the valuations in accordance with Sub-Clause 14.1.'

Insert the following at the end of the Sub-Clause:

'The Contract Price is exclusive of VAT applicable in the Country but inclusive of all taxes, royalties, levies, withholding, duties, customs duties, port dues, imposts and other similar charges (including any related fine, penalty, surcharge or interest in relation to the same) applicable within and outside of the Country in connection with the Works, and the Contractor shall bear the cost of the same without any entitlement to reimbursement or 'gross-up' of payments by the Employer.'

14.2 Advance Payment

At the end of this Sub-Clause, insert the following:

'If (i) the guarantee becomes invalid or unenforceable for any reason, or (ii) the issuer of the guarantee suffers a drop in its long-term credit rating below BBB+ or becomes insolvent, the Contractor shall, within seven (7) days of becoming aware of the same, provide an acceptable replacement guarantee on the terms set out in this Sub-Clause 14.2.

If the Contractor fails to provide the Employer with a replacement or extended guarantee as required under this Sub-Clause 14.2, the Employer may immediately call the outstanding balance of the guarantee and hold the proceeds as security for compliance by the Contractor with its obligations and liabilities in respect of the Contract. The Employer may make deductions against the proceeds so held in respect of any claim for which it would have been entitled to bring in relation to the guarantee (which should have been provided). If the Contractor subsequently provides a replacement guarantee as required (and for the amount required under the Contract less the total of any deductions made by the Employer under this Sub-Clause), the Employer shall return the balance of the proceeds (without any interest) to the Contractor.

Notwithstanding any other provision of the Contract, compliance with this Sub-Clause 14.2 is a condition precedent to the Contractor's entitlement to receive any payment from the Employer under the Contract and no payment shall be due or payable until this Sub-Clause 14.2 is satisfied.'

14.3 Application for Interim Payment

In sub-paragraph (c) after 'is entitled', insert:

'by reference to

(i) where the Bill of Quantities specifies that payment is to be made upon achievement of certain milestones, evidence satisfactory to the Engineer (acting reasonably) of the particular milestone(s) completed in accordance with the Contract and applying the corresponding amounts specified in the Bill of Quantities, and/or

(ii) where the Bill of Quantities specifies that payment is to be made based upon progress achieved in the Works, the value of the Works executed, actual progress made in the performance of the Works, calculated in accordance with the rates set out in the Bill of Quantities.

14.4 Schedule of Payments

In the last paragraph replace the first sentence with:

'The Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period together with an explanation of these amounts.'

14.6 Issue of IPC

At the end of sub-paragraph (a) remove:

'and'

At the end of sub-paragraph (b) , insert:

'(c) any Statement that is inaccurate, incomplete or lacks the supporting documents required by this Clause 14 shall not, to the extent of that deficiency, constitute a valid

application for the issuance of an Interim Payment Certificate and shall not be approved by the Engineer until the deficiency is remedied; and
(d) where the Schedule of Payments specifies that payment is to be made upon achievement of certain milestones, the Contractor shall only be paid in respect of milestones that have been fully completed and no payment shall be due for partially-completed milestones.'

14.7 Payment

At the end of the final paragraph, insert:

'No Payment Certificate issued under the Contract, and no consent or approval given or payment made by the Employer to the Contractor, shall be conclusive evidence that the Contractor has performed any of its obligations under the Contract or that any design or work or Materials are in accordance with the Contract.'

If for any reason either Party has paid the other sums in excess of those properly due under the Contract, the overpaying Party may require that such excess be repaid and the other Party shall promptly make such repayment.

Payment by the Employer shall not be evidence that the Works have been carried out satisfactorily or are accepted by the Employer.'

14.16 Set-Off

Insert the following as a new Sub-Clause 14.16:

'The Employer shall be entitled to set off against any sum payable by the Employer to the Contractor under the Contract:

- (a) any debt or other moneys due from the Contractor to the Employer; and
- (b) any claim to money which the Employer may have against the Contractor whether for damages (including delay damages) or otherwise.'

15.2 Termination for Contractor's Default

At the end of Sub-Clause 15.2.1 sub-paragraph (h), insert:

',' including the award of this Contract.'

At the end of Sub-Clause 15.2.1, insert:

'(i) Subject to Sub-Clause 8.4 [*Extension of Time for Completion*], if the Contractor fails in any substantial respect to carry out the Works with promptness and due diligence or complete the Works in whole within the period specified in Sub-Clause 8.4, the Employer may, without prejudice to any other rights or remedies the Employer may have, terminate the contract.'

16.4 Payment after Termination by Contractor

Delete the words in sub-paragraph (b) and replace with:

'not used'.

17.1 Responsibility for Care of the Works

At the end of the last paragraph, insert:

‘All forces of nature up to Hurricane force 4 are for the account of Contractor.’

17.2 Liability for the Care of the Works

Add the end of sub-paragraph (d), insert:

‘All forces of nature up to and including hurricane category 5.’

17.3 Intellectual and Industrial Property Rights

Delete the third paragraph in its entirety.

18.1 Exceptional events

Delete sub-paragraph (f) and replace with the final paragraph:

‘The Contractor shall take all risk on site and climatic conditions, including hurricanes and the hurricane season, that may affect the Works, weather window and workability of equipment. Consequently, wear, tear and other maintenance and additional costs are included in the Accepted Contract Amount and Programme.’

19.2 Insurances to be provided by the Contractor

At the end of Sub-Clause 19.2.1, insert:

‘Such insurance shall provide for compensation to be payable in currencies needed to cover the loss or damage incurred.

The insurance shall also include normal marine risks of plant (including ships) supplied by the Contractor for use on the Works whether owned or taken on charter by the Contractor.

The Contractor shall obtain and submit to the Employer within twenty (20) days of the acceptance of his Tender, certificates signed by his insurers or their duly authorised agents that insurances in accordance with the provisions of General Conditions Clause 18 have been effected provided always that the submission of any such certificate or certificates shall not prejudice the right of the Employer at any time to require the production of the policy or policies of insurance and receipt for current premiums in accordance with the provisions of the above-mentioned clause of the General Conditions.’

At the end of Sub-Clause 19.2., insert:

‘The minimum amount for insurance’s is stated in the Contract Data.

The Contractor shall insure against such liability all local labour force to a standard of at least the local (government) regulations.’

19.3 Uninsurable Risks

Insert the following as a new Sub-Clause 19.3:

‘For the purposes of this Sub-Clause ‘Uninsurable Risk’ means where a risk required to be insured under the Contract becomes:

- (a) generally uninsurable with reputable insurers of good standing;
- (b) only insurable with reputable insurers of good standing at unreasonable levels of premium materially in excess of those envisaged on execution of the Contract such that no prudent person engaged in similar activities would insure such risk and the risk is generally not being insured with such insurers; or
- (c) only insurable with reputable insurers of good standing on such other terms of insurance that no prudent person engaged in similar activities would insure such risk and the risk is generally not being insured with such insurers,

but, does not include any of the Employer's Risks under Sub-Clause 18.1 [*Exceptional Events*].

Where a Party required to maintain an insurance under the Contract becomes aware that there is an Uninsurable Risk, it shall promptly notify the other and the Parties shall immediately discuss alternative means of protecting the Parties and the Works against the relevant Uninsurable Risk, including adjusting any affected terms of the Contract, the Employer instructing any Variation and other activities which might mitigate or protect against the relevant Uninsurable Risk.

Upon the existing cover lapsing, the Party otherwise required to insure the Uninsurable Risk shall be relieved of its obligation to maintain insurance in respect of the Uninsurable Risk.

Unless and to the extent an Uninsurable Risk arises due to the default of the Contractor, or from the Contractor's acts or omissions, if following notification of an Uninsurable Risk but prior to the Parties agreeing and taking any necessary alternative means of protection, the existing cover in respect of the relevant risk lapses and the relevant risk occurs, any monies which would have otherwise been recoverable by the other Party under the relevant insurance, shall be paid or allowed by the Party originally required to insure to the other Party (unless the other Party has approved the omission of such Uninsurable Risk from the required insurance cover).'

21 Disputes and Arbitration

Delete Clause 21 in its entirety and insert:

'This Contract shall be construed in accordance with and be governed by the laws of Saba and BES islands. Any dispute and/or difference of interpretation arising out of or in connection with this Contract shall, if no amicable settlement can be reached through negotiations, be settled by the competent court in Saba.'

Additional Clauses

22 Confidentiality of documents and details

Insert the following as a new Clause 22:

'The Contractor shall treat the details of the Contract as private and confidential, save in so far may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the Employer or the Engineer. If any dispute arises as to the necessity of any publication or disclosure for the purpose of the Contract the same shall be referred to the decision of the Employer whose award shall be final.'

23 Joint liability

Insert the following as a new Clause 23:

'If the Contractor is a Joint Venture of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfilment of the terms of the Contract and shall designate one of such persons to act as leader with authority to bind the Joint Venture. The composition or the constitution of the Joint Venture shall not be altered without the prior consent of the Employer.'

End of Particular Conditions of Contract, Part B - Special Provisions

Appendices

APPENDIX: PARTICULAR CONDITIONS OF CONTRACT, PART A - CONTRACT DATA

NOTE: The Appendix forms part of the Tender. The Tenderer is required to complete the blank spaces in this Appendix and submit the forms as part of his Tender.

Item	Sub-Clause	Data
Employer's name and address	1.1.30 and 1.3	Public Entity Saba Power Street 1 The Bottom Saba Caribbean Netherlands
Contractor's name and address	1.1.13 and 1.3	<i>[To be completed after Award of Contract]</i>
Engineer's name and address	1.1.35 and 1.3	<i>[To be completed after Award of Contract]</i>
Commencement Date	1.1.6	as specified in the Contract Agreement
Percentage of profit	1.1.20	5 %
Defects Notification Period	1.1.27	365 days from the date of completion of the last Section
Key Personnel	1.1.48	Contractor's key personnel are specified in <i>[document and section to be specified]</i>
Time for Completion of the Works	1.1.86	From the Commencement Date: ¹ — 1,065 days [1 January 2024 till 1 December 2026] — Fort Bay Harbor Upgrade shall start before 1 December 2025. — Fort Bay Harbor Upgrade roll on-roll off ramp widening shall only start after completion of the Black Rocks New Harbor works.
Electronic transmission systems	1.3	E-mail backed up with a written document
Law of the country	1.4	The laws of Saba and BES islands
Ruling language	1.4	English
Language for communications	1.4	English
Limit of Liability	1.15	100 % of the Accepted Contract Amount
Right of Access to the Site	2.1	As of Base Data and only after approval of the Contractor's Health and Safety Plan and Mobilisation Plan

Item	Sub-Clause	Data
Amount of Performance Security	4.2	— Initial amount: An amount in USD equal to 10% of the Accepted Contract Amount. — Upon issuance of the Taking Over Certificate for the final Section: An amount in USD equal to 5% of the Accepted Contract Amount.
Duration of Performance Security	4.2	Until issue of the Performance Certificate at the end of the Defects Notification Period and subject to Sub-Clause 11.11 Clearance of Site
Threshold value for subcontracts that require approval	4.4	USD 10,000
Subcontractors used by Contractor	4.4	<i>[To be completed after Award of Contract]</i>
Nominated subcontractors	4.5	None
Normal working hours	6.5	24 hours per day, 7 days per week and in compliance laws of Saba and BES islands.
Amount of delay damages	8.7 and 14.15(c)	0.05 % per day or pro rata for part days with a maximum of 10% of the Accepted Contract Amount.
Maximum amount of delay damages	8.7	10 % of the Accepted Contract Amount
Taking Over the Works and Sections	10.1	As a proof of its strength and stability, the Contractor shall remain responsible for the Black Rocks Harbor main breakwater at least after the first hurricane after Taking Over.
Percentage for adjustments of Provisional Sums	13.4(b)	10 %
Basic prices subject to adjustments in cost	13.7	not used
Number and timings of instalments	14.2	— A first advance payment instalment equal to 2.5% of the Accepted Contract Amount at the start of the Project. — A second and final advance payment instalment equal to 7.5 % at completion of the design. — Thereafter, no more than one Statement and no more than one instalment per month
Percentage of retention	14.3	10%
Limit of Retention Money	14.3	10% of the Accepted Contract Amount
Delayed Payment	14.8	2 % above the base rate of the European Central Bank
Currency/currencies of payment	14.15	the United States Dollar, as named in the Letter of Tender
Insurances to be provided by the Contractor	19.2	— CAR insurance

Notes: * To be inserted by the Tenderer.

 ** To be listed by the Tenderer.



APPENDIX: ANNEXURES TO TENDER

NOTE: The Appendix forms part of the Tender. The Tenderer is required to complete the blank spaces in this Appendix and submit the forms as part of his Tender.

II.A Annex A - Letter of Tender

To: **The Chairman of the Tender Committee**
Public Entity of Saba
Power Street 1
The Bottom
Saba
Caribbean Netherlands

We have examined the Conditions of Contract, Employer's Requirements, Schedules, the attached Annexes and Notices to Tenderers No. 1 to No., and all other documents in the tender package of the above-named Works. We have examined, understood and checked these documents and have ascertained that they contain no errors or other defects. We accordingly offer to design, execute and complete the Works and remedy any defects therein, in conformity with this Tender which includes all these documents and the enclosed Proposal, for the lump sum of:

- For Option 1: Black Rocks Harbor New Build - Package A and Fort Bay Harbor Upgrade Works

United States Dollars.....

(USD).....

- For Option 2: Black Rocks Harbor New Build - Package B and Fort Bay Harbor Upgrade Works

United States Dollars.....

(USD).....

We agree to abide by this Tender until and it shall remain binding upon us and may be accepted at any time before that date. We acknowledge that the Contract Data forms part of this Letter of Tender.

If this offer is accepted, we will provide as per the Conditions of Contract, the specified Performance Security from a bank registered in Saba, commence the Works as soon as is reasonably practicable after the Commencement Date, and complete the Works in accordance with the above-named documents within the Time for Completion.

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

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

Dated this.....day of.....202

(Continued.....)

Signature.....in the capacity of.....
duly authorised to sign tenders for and on behalf of
.....

(In block capitals)

Address:
.....
.....
.....

Signature of Witness

Address:
.....
.....
.....

Occupation:

II.B Annex B - Form of Agreement

This agreement is made on

Day :

Month :

Year :

between the 'Employer' : **Public Entity of Saba**

**Power Street 1
The Bottom
Saba
Caribbean Netherlands**

of the one part

and the 'Contractor' : _____

of the other part.

Employer and the Contractor hereinafter jointly referred to as: "**the Parties**"

WHEREAS:

- 1 Employer has executed a public tender procedure in order to select a Contractor for **DESIGN AND BUILD OF BLACK ROCKS HARBOR NEW BUILD AND FORT BAY HARBOR UPGRADE WORKS**
- 2 This contract includes the engineering, procurement and construction of the Black Rocks Harbour (hereinafter: the Works).
- 3 Employer wishes to assign the execution of the Works to the Contractor, and the Contractor wishes to accept this assignment.

1. Assignment

- 1.1 In this Agreement, the words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
- 1.2 In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to design, execute, complete the Works and remedy any defects therein in conformity with the provisions of the Contract.
- 1.3 The Employer hereby covenants to pay the Contractor, in consideration of the design, execution, completion of the Works and the remedying of defects therein, the Contract Price at the times and in the manner prescribed by the Contract.
- 1.4 The following documents shall be deemed to form and be read and construed as a part of this Agreement. In case of conflict between these documents, the order of preference of the documents shall be as follows whereby an earlier mentioned document takes precedence unless this Agreement provides otherwise:
 - (a) the Contract Agreement
 - (b) The additional Letter of Acceptance dated [];
 - (c) The Letter of Acceptance dated [];
 - (d) the Particular Conditions of Contract including the Special Provisions and Contract Data;
 - (e) The FIDIC Conditions of Contract for Plant & Design Build, second edition 2017;
 - (f) The Information Notices [] through [];
 - (g) The Request for Proposal dated [] ("**RfP**");
 - (h) The Employer's Requirements as included in:
 - The RfP;
 - The annexes to the RfP.
 - (i) The Schedule of Payments;
 - (j) The Contractor's Proposal dated [] and the clarifications received [].

2. Applicable provisions

- 2.1 The FIDIC General Conditions of Contract Yellow Book (FIDIC Conditions of Contract for Plant & Design Build, second edition 2017) ("**Conditions of Contract**") shall apply to this Agreement if and to the extent that this contract nor its annexes do not explicitly state otherwise.

3. Waiver of right

- 3.1 The Contractor explicitly and unconditionally waives any right of retention it may have as referred to in section 3:290 of the BES Civil Code in respect of the Works.
- 3.2 The Contractor shall stipulate that each of its subcontractors likewise waives any rights of retention they may have in respect of the Works and shall ensure that the clause to this effect is included in the subcontract concerned.

4. Governing Law and Disputes

- 4.1 This Agreement shall be construed in accordance with and be governed by the laws of Saba and BES islands.
- 4.2 Any dispute and/or difference of interpretation arising out of or in connection with this Agreement shall, if no amicable settlement can be reached through negotiations, be settled by the competent court in Saba.

Agreed and signed in duplicate in on2024:

Employer:

Name:

Position:

Contactor:

Name:
Position:

SCHEDULE OF PAYMENTS

[illegible]

II.C Annex C - Power of Attorney

To: **The Chairman of the Tender Committee**
 Public Entity of Saba
 Power Street 1
 The Bottom
 Saba
 Caribbean Netherlands

Ref.: **DESIGN AND BUILD OF BLACK ROCKS NEW HARBOR AND FORT BAY HARBOR UPGRADE WORKS**

Power of Attorney

The managing director of [company], [name of managing director hereby grants the Power of Attorney to [name of employee] employee of [company], to represent [company] during the proposal phase of the project:

DESIGN AND BUILD OF BLACK ROCKS NEW HARBOR AND FORT BAY HARBOR UPGRADE WORKS

including the signing of the proposal for this project on behalf of [company]

The Power of Attorney shall be exercised with due observance of the [company] and [specify other relevant company codes], and the applicable law(s) and regulation(s). The authorized representative shall act in accordance with the above rules when using his/her authorisation.

This Power of Attorney is valid until [...] or will be automatically terminated in the event [...] is no longer employed by [company]. The board of [company] reserves the right to revoke this Power of Attorney unilaterally and with immediate effect.

The law of [specify applicable law] is applicable to this Power of Attorney.

Signed in [place and country of signing] on [date of signing]

..... [name of managing director]
..... [position]

II.D Annex D - Statement of Acknowledgement, Understanding and Compliance with the Tender Documents

To: **The Chairman of the Tender Committee**
Public Entity of Saba
Power Street 1
The Bottom
Saba
Caribbean Netherlands

Ref.: **DESIGN AND BUILD OF BLACK ROCKS NEW HARBOR AND FORT BAY HARBOR UPGRADE WORKS**

Statement of Acknowledgement, Understanding and Compliance with the Tender Documents

The undersigned, having studied the tender submission for the abovementioned project, hereby states that:

- 1 The content and information received as part of the Tender Documents is acknowledged and understood for the purpose of the preparation of this Tender.
- 2 The Tender Documents have been scrutinised and informed Employer of any pages which appear to be missing and/or any other inconsistencies and/or mistakes prior to submission of his Tender.
- 3 The submitted Tender is in compliance with the Tender Documents.
- 4 If the legal, technical or financial conditions, or the contractual capacity of the firm or joint venture changes, we commit ourselves to inform you and acknowledge your sole right to review the Tender made.
- 5 We enclose all the required forms and all other documents and supplemental information required for the Tender evaluation.
- 6 In signing this declaration we sign a waiver to any claims we may have if we are not qualified by the Employer for this project.

Date :

Name :

Position :

Signature :

Address :

.....

.....

Occupation :

Stamp :

II.E Annex E - Statement of Compliance with Code of Conduct of Public Entity of Saba

To: The Chairman of the Tender Committee
Public Entity of Saba
Power Street 1
The Bottom
Saba
Caribbean Netherlands

Ref.: **DESIGN AND BUILD OF BLACK ROCKS NEW HARBOR AND FORT BAY HARBOR UPGRADE WORKS**

Statement of Compliance with Code of Conduct of Public Entity of Saba

The undersigned, having studied the tender submission for the abovementioned project, hereby states that:

- 1 He has studied and is aware of the Code of Conduct of the Public Entity of Saba and its contents.
2 His Tender is in compliance with the Code of Conduct of the Public Entity of Saba.
3 That if the legal, technical or financial conditions, or the contractual capacity of the firm or joint venture changes, we commit ourselves to inform you and acknowledge your sole right to review the Tender made.

Date :

Name :

Position :

Signature :

Address :

.....

.....

.....

.....

Occupation :

Stamp :

II.F Statement of Non-Reliance

To: **The Chairman of the Tender Committee**
Public Entity of Saba
Power Street 1
The Bottom
Saba
Caribbean Netherlands

Ref.: **DESIGN AND BUILD OF BLACK ROCKS NEW HARBOR AND FORT BAY HARBOR UPGRADE WORKS**

Statement of Non-Reliance

The undersigned, having studied the tender submission for the abovementioned project, hereby states that:

- 1 He has visited the Site and familiarised himself with all conditions which may affect his Tender.
- 2 He has no queries on any matter concerning the Contract in compliance with Clause 4.10 of the General Conditions of Contract.

Date :

Name :

Position :

Signature :

Address :
.....
.....
.....

Occupation :

Stamp :

II.G Annex G - Declaration of Accuracy of Information

To: **The Chairman of the Tender Committee**
 Public Entity of Saba
 Power Street 1
 The Bottom
 Saba
 Caribbean Netherlands

Ref.: **DESIGN AND BUILD OF BLACK ROCKS NEW HARBOR AND FORT BAY HARBOR UPGRADE WORKS**

Declaration of Accuracy of Information

The undersigned, having studied the tender submission for the abovementioned project, hereby declares that:

- 1 The information furnished in our Tender is true and accurate to the best of my knowledge.
- 2 The Tender Documents have been scrutinised and informed Employer of any pages which appear to be missing and/or any other inconsistencies and/or mistakes prior to submission of his Tender.
- 3 In case of being invited for contract negotiations, we acknowledge that this grants us the right to participate in due time in these contract negotiations on the basis of provisions made in the Tender Documents.
- 4 If the legal, technical or financial conditions, or the contractual capacity of the firm or joint venture changes, we commit ourselves to inform you and acknowledge your sole right to review the Tender made.
- 5 We enclose all the required forms and all other documents and supplemental information required for the Tender evaluation.
- 6 In signing this declaration we sign a waiver to any claims we may have if we are not qualified by the Employer for this project.

Date :

Name :

Position :

Signature :

Address :

.....

.....

.....

Occupation :

Stamp :

II.H Annex H - Form of Key Personnel

(Complete a separate form for each person, maximum 3 pages per CV)

1 Name:

2 Proposed position in the project team:

3 Education and qualifications:

4 Total years of experience

5 Number of years with Company

6 Pen portrait:

7 If item 5 is less than 5 years, give names, length of service and positions held with previous employers covering the five-year period.

8 Construction experience:

Please provide a minimum of 3 project examples for this individual within the last 5 years, describing the following:

- Name of project.
- Character and nature of project.
- Contract value and project total cost.
- Location of project.
- Periods of engagement in project.
- Title and responsibilities of the individual in project.
- Sufficient detail of any relevant special tasks and responsibilities.