

JAMAICA SOCIAL PROTECTION FOR INCREASED RESILIENCE AND OPPORTUNITY (SPIRO) (P178582)

LABOUR MANAGEMENT PROCEDURES (LMP)

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INTRODUCTION

Jamaica through funding provided by the World Bank is seeking to embark on the Social Protection for Increased Resilience and Opportunity (SPIRO) Project (P178582). The Project development objective is to expand the coverage of social insurance and employment services in Jamaica and improve the ability of its social protection system to respond to shocks. The social insurance coverage will be increased by the establishment of a national unemployment insurance program (UI). This should make workers and their families more resilient to shocks by expanding the risks encompassed under social insurance. Employment services will also be expanded by linking these services to UI.

Pursuant to the World Bank, Environmental and Social Framework for Investment Project Financing (IPF) Operations and given that ESS2: Labour and Working Conditions is a relevant standard for the project, the Borrower (in this case Jamaica) is required to develop Labour Management Procedures (LMP). The purpose of the LMP is to identify the main labour requirements and risks associated with the Project and to assist Jamaica to determine the resources that will be needed to address project related issues. The LMP specifies the way in which project workers will be managed, in accordance with national law and ESS2.

The following constitutes the LMP for this Project.

LMP SECTION 1.

OVERVIEW OF LABOUR USE ON THE PROJECT

a) *Number of Project Workers:*

It is difficult to estimate the number of Project Workers at this stage. However, it is evident that the Planning Institute of Jamaica (PIOJ) and the Ministry of Labour and Social Security (MLSS) will have to assign staff to act as focal points. A Project Implementation Unit (PIU) will be established and staffed, and will include: a Project Manager, Project Coordinator (PIOJ), procurement and financial specialist, environmental and social specialist, IT staff, administrative officers and external Consultants will have to be engaged. The different types of workers who will be engaged in the project are direct¹ and contracted workers². Additionally, there may be a limited number of public officers who are seconded to the Project upon approval by the World Bank for a fixed period/the duration of the contract. A public servant who is on secondment to the project will retain their substantive post in their Ministry, Agency or Department. However, they will be governed by the terms and conditions of the project contract for their contracted period. Upon the expiration/termination of their contract with the project, the public officer shall return to their substantive post in their Ministry, Agency or Department³. Based on the nature of this project some of the Consultants engaged will be independent contractors engaged pursuant to a ‘*contract for service*’.

b) *Characteristics of Project Workers:*

¹ ESS2 defines a ‘**direct worker**’ as a “*worker with whom the Borrower has a directly contracted employment relationship and specific control over the work, working conditions, and treatment of the project worker. The worker is employed or engaged by the Borrower, paid directly by the Borrower, and subject to the Borrower’s day to day instructions...*”

² A ‘**contracted worker**’ is defined in ESS2 as a worker “*employed or engaged by a third party to perform work or provide services related to the core functions of the project, where the third party exercise control over the work, the working conditions, and treatment of the project worker...In such circumstances, the employment relationship is between the third party and the project worker, even if the project worker is working on an ongoing basis on project activities*”.

³ Paragraph 1.9.4 of the Staff Orders for Public Service provides that “A secondment is the assignment of a public officer, usually from the Central Government Service to another part of the wider public service or to other organizations, with the approval of the appropriate authority; ii) A secondment may be either for a fixed term with a guarantee to return, or it may be an interim arrangement for a specified period leading to a permanent change in employment; iii) During the period of secondment, the officer’s position within the Central Government Service must be protected”. Public officers who are on secondment, pursuant to Paragraph 1.9.4, will have their post and accompanying entitlements (such as their salary and benefits) in their respective Ministry/Agency/Department, frozen and protected for the duration of their secondment. They will therefore be subjected to the terms and conditions of the project contract until the expiration/termination of same. After the expiration/termination of their contract, the public officer will then return to their substantive post in their respective Ministry/Agency/Department.

It is anticipated that the Project Workers will be local persons and that there will be a mix of male and female skilled workers.

c) *Timing of Labour Requirements:*

The PIU will be established within 90 days of Project effective date. Contracted workers are expected to be engaged prior to the start of minor refurbishment activities.

d) *Contracted Workers:*

It is possible that contracted workers will be engaged under components 1, 2 & 3 of the Project as the activities will include engaging consultants to provide goods and undertake services throughout the duration of the project.

LMP SECTION 2.

ASSESSMENT OF KEY POTENTIAL LABOUR RISKS

a) *Project Activities:*

The project will consist of five (5) components as follows:

- (1) enhanced resilience through UI;
- (2) increased opportunity through Integrated Employment Services;
- (3) strengthened systems and capacity for Resilience;
- (4) Project Management and;
- (5) Contingency Emergency Response Component (CERC).

Component (1) and its subcomponents will involve the provision of support for the development of the (UI) scheme. It will involve the development and implementation of the policy, regulatory, institutional and operational framework of the UI. This will also include adaptive social protection considerations including the development of protocols to respond to emergency situations including climate-induced and natural disasters. The project will also entail the provision of seed financing for the UI fund and the initial UI cash benefits.

Component (2) and its subcomponents will entail *inter alia* enhancing employment services (ES) for vulnerable workers. It will also entail the enhancement of the MLSS Labour Management Information System (LMIS) platform. It will also involve the collection, analysis and dissemination of data on labour markets.

Component (3) and its subcomponents will encompass the development and implementation of an integrated social protection information system (SPIS).

Component (4) involves project management and will cover key positions for project management such as specialists in information technology, procurement and audit and an environmental and social specialist.

Component (5) will address contingency emergency response.

b) Key Labour Risks:

The majority of the activities to be carried out under this Project will be performed through consultancies. Consequently, based on the nature of the Project, it is expected that the labour risks will be minimal.

The key labour risks which may be associated with the project are related to potential sexual exploitation and abuse, and sexual harassment (SEA/SH), possible accidents or emergencies, and breaches of terms and conditions of employment. The Sexual Harassment Act 2021, contains provisions that deals with sexual harassment in the workplace. It should be noted however that the Act does not deal with harassment in the general sense but deals specifically with harassment of a sexual nature.

LMP SECTION 3.

BRIEF OVERVIEW OF LABOUR LEGISLATION: TERMS AND CONDITIONS

Jamaica does not have one overarching law that addresses the terms and conditions of employment. The terms and conditions of employment are therefore dispersed throughout several legislation and are most times encompassed in the contract of employment and collective labour agreements, in the context where a trade union with bargaining rights is recognized by the employer.

A comparative review of labour legislation in this country was developed to compare the requirements of ESS2 and the requirements of Jamaican legislation. The aim of this comparative review was to assess whether there are any gaps in this country's legislation when compared with ESS2 requirements. Please find the Comparative Review attached as Annex 1.

As it relates to Paragraph 11 of ESS2, the legislation considered were the: **Minimum Wage Act, 1938** and the supporting **National Minimum Wage Order, 1975**, **Holidays With Pay Act, 1947** and its supporting **Holidays With Pay Order, 1973** and the **Maternity Leave Act, 1979**. The main gaps identified were that currently national law does not address the frequency of payments to workers and there is no requirement in legislation for workers

to be advised as to the conditions under which deductions from wages will be made. However, the frequency of payments is normally addressed in the contract of employment and collective labour agreements, (where applicable) and in many instances these agreements address the statutory deductions to be made from the wages of workers.

As it relates to public officers, the **Financial Administration and Audit Act**, Financial Instructions⁴ (which is a policy document) provides some guidance as to the date of payment of salary and allowances for monthly paid officers. These officers are to be paid on the 25th day of the month, unless the 25th falls on a Friday, Saturday, Sunday or Monday, in which case payment is to be made on the Thursday immediately preceding the 25th.

The **Minimum Wage Act** which is supported by Orders such as the **National Minimum Wage Order** sets out certain terms and conditions of employment of workers who fall within the remit of that legislation. These workers are normally persons who are paid the stipulated minimum wage and who do not have the bargaining power to negotiate for fair wages. **Section 2** defines the term “minimum wage” as:

“any national minimum wage or the minimum wages fixed as hereinafter provided in respect of the particular occupation followed by the person concerned and applicable to that person”.

The term “national minimum wage” is defined as the wage fixed under **Section 3** as a national minimum wage. In accordance with **Section 3(1)** of the **Act**,

“the Minister may by order published in the Gazette fix minimum rates of wages for any occupation in the Island either generally or in any specified area, place or district in any case in which he is satisfied that the wages being paid to any persons employed in any such occupation are unreasonably low, and may, if he is satisfied that it is desirable so to do, fix a national minimum wage applicable...”

The **Minimum Wage Act** and its supporting Orders are therefore not of widescale application to all workers in Jamaica. However, in practice the Act and Orders are used as a guide by some employers even though the workers in question receive payment in excess of the prescribed minimum wage. It is noteworthy that it is a criminal offence to pay workers sums which are less than the prescribed minimum wage.⁵ The **Minimum Wage Act** and **National Minimum Wage Order** address issues such as:

- the minimum payments to be made to workers;
- the hours of work, rest day, overtime payment and;
- deductions from wages.

⁴ July 25, 2019.

⁵ **Section 5** of the **Minimum Wage Act, 1938**.

It must be noted that by virtue of the **Employment (Flexible Work Arrangements) Miscellaneous Provisions Act, 2014**⁶ there are no set hours of work per day or set workdays. This means that an employer and worker can make arrangements to vary the work schedule and determine the start and end time of the work day, the number of hours worked each day, the number of days worked each week and/or the day of the week to work.

The legislation governing holidays with pay (vacation leave) and sick leave entitlements is the **Holidays With Pay Act** and its supporting **Holidays With Pay Order**. Pursuant to **Section 3 of the Holidays With Pay Act**:

“The Minister may by order direct that workers including casual workers, in any occupation shall be entitled to be allowed such holidays with pay, such sick leave with pay, such gratuities and such sick benefit as may be determined in such order”.

Section 2 of the Holidays With Pay Order defines “worker” as:

*“any person who has entered into or works under a contract with an employer, whether the contract be by way of manual labour, clerical work or otherwise, be express or implied, oral or in writing and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour, but does not include-
(a) any person employed by the Government...”*

Provisions relating to maternity leave and pay can be found in the **Maternity Leave Act, 1979. Section 2** of this **Act** defines a “worker” as:

“an individual of the female sex who works under or enters into a contract with an employer. This contract can be expressed or implied, oral or in writing and includes contracts of service or of apprenticeship”.

The definition includes individuals employed in the service of the Government.

The **Staff Orders for the Public Service, 2004** set out the vacation, sick and maternity leave entitlement for public officers. In this regard note Chapter 7 of the Staff Orders.

The following are the main provisions in these legislation and the relevant provisions which will guide this Project:

⁶ An enabling legislation which amended several legislation which restricted the implementation of Flexible Work Arrangements.

a) Minimum Wage Act, 1938 and National Minimum Wage Order, 1975

- Wages, Deductions and Benefits-
 - ✓ **Paragraph 4** of the **National Minimum Wage Order** (as amended in 2024) specifies the current national minimum wage. With effect from June 1, 2024, minimum wage earners are to be paid J\$375.00 per hour for work done during any period not exceeding 40 hours in any week. This works out to J\$15,000.00 per week (this rate is commonly referred to as the 'single-time rate'). These workers are to be paid the sum of J\$562.50 per hour for work done during any period in excess of 40 hours in any week (commonly referred to as the time and a half rate). If the worker works during any period on a rest day or on a public holiday, the applicable rate is currently J\$750.00 per hour (commonly referred to as the double time rate). If the minimum wage is updated, the legal rates are to be considered and applied accordingly.
 - ✓ Under the project no worker will be paid below the minimum wage as established in the most recent **National Minimum Wage Order**.
 - ✓ As it relates to direct and contracted workers, the parties will arrive at the sums to be paid via negotiation. Public Officers will be paid in accordance with the relevant Government of Jamaica (GOJ) Circulars and/or any relevant Staff scale for the Public Service.
 - ✓ Statutory deductions will be made for direct workers and Government workers. Contracted workers will be responsible for making their own payments to the relevant statutory authorities (**National Insurance, National Housing Trust, Education Tax and Income Tax**).
 - ✓ Workers are to be informed of the conditions under which deductions are being made.

- Rest Breaks-
 - ✓ Paragraph 3(1) of the National Minimum Wage Order allows the worker one day as a rest day. By virtue of Paragraph 3(2), the day on which the rest day is to fall in any particular week is to be determined by agreement between that worker and his employer.
 - ✓ By custom and practice several workers obtain two days of rest depending on the industry in which they work.
 - ✓ Under the project, workers will be entitled to at least one (1) rest day in each week, or such longer period as agreed in the contract of engagement/employment or collective agreement, if applicable. This will be applicable to all the types of workers engaged/employed to the project.
 - ✓ A meal break of at least one (1) hour will be applicable.

b) Holidays with Pay Act, 1947 and Holidays with Pay Order, 1973

- Vacation and sick leave-
 - ✓ The minimum standard in relation to annual holiday (commonly referred to as “vacation leave”) is set out in the Holidays With Pay Order.
 - ✓ There is a qualifying threshold for a worker to be entitled to access vacation leave in a qualifying year. Any worker (other than a casual worker⁷) should work for the employer for not less than 110 days in a qualifying year (Paragraph 3).
 - ✓ Vacation leave earned during the year is not normally granted until the next succeeding year. However, the employer and worker can agree for vacation leave to be granted during the year (Paragraph 4).
 - ✓ The minimum remuneration payable during vacation leave is specified in Paragraph 5. The worker is to be paid the normal wages earned in respect of the last normal working week prior to the commencement of vacation leave.
 - ✓ Paid vacation leave excludes public holidays.
 - ✓ Casual workers are entitled to the payment of a gratuity, where they have worked for not less than 110 days for the employer. (Paragraph 6).
 - ✓ The duration of vacation leave/ holiday with pay depends on the number of days on which the worker has worked for the employer during the year.
 - ✓ A worker who has worked for more than 220 days in a qualifying year and who has 10 or more years of service is entitled to 3 normal working weeks of vacation leave.
 - ✓ If the person works for more than 220 days, the entitlement is 2 normal working weeks.
 - ✓ If the person works for 110 days to 220 days, he/she earns 1 day for every 22 days worked. Any fraction of a day is to be reckoned as 1 day. (See the Schedule to the Order).
 - ✓ If at the time of termination, the employee has any unused vacation leave, to which he is entitled, that should also be paid on separation, irrespective of who terminates the contract.
 - ✓ The **Holidays with Pay Order** also addresses sick leave entitlement. By virtue of sub-paragraph (1) of paragraph 8, any worker (other than a casual worker) who becomes ill during the first 12 months of

⁷ The term “casual worker” means “any worker who is employed-(a) from day to day; or (b) for the performance of a particular task which normally cannot be performed in less than one working day”. (Section 2(1) of the Holidays With Pay Act.

employment is entitled to be granted sick leave with pay of a duration of 1 day for every 22 days worked. After the worker has completed the first 12 months of his employment, he/she will be entitled to be granted sick leave with pay for a duration of 2 normal working weeks.

- ✓ Casual workers are entitled to sick benefit (Paragraph 9).
- ✓ Vacation leave and sick leave entitlements are to be governed by the provisions of the **Holidays with Pay Act and Order** as relates to direct workers. The contract of engagement/employment and collective agreements, if applicable can make provision for greater entitlements than those specified in the Act/Order. The entitlement of public officers are governed by the Staff Orders for the Public Service.
- ✓ Contract workers engaged under a contract for service (independent contractors) are not normally entitled to vacation and sick leave entitlement.

c) Maternity Leave Act, 1979

- ✓ Women are entitled to at least 12 weeks maternity leave, with 8 weeks paid if they have been working for an employer for 52 continuous weeks or, in the case of seasonal employment, for a period of 52 weeks during the previous 5 years and if they have fulfilled the other requirements for accessing the entitlement under **Sections 3 and 5** of the Act.
- ✓ Maternity leave may be extended by another 14 weeks without pay, for medical reasons, upon production of a medical certificate.
- ✓ An employee is not entitled to paid maternity leave more than three times per employer.
- ✓ Neither women under the age of 18 nor female domestic workers are eligible for paid maternity leave; domestic workers may access the benefit under the National Insurance Act.
- ✓ The provisions of the **Maternity Leave Act** will be applicable to direct and indirect project workers. The entitlement to leave and pay will depend on the fulfilment of the requirements/conditions under the Act.
- ✓ The entitlement of public officers are governed by the **Maternity Leave Act** and Chapter 7 of the Staff Orders for the Public Service.

Workers' Rights and Associations

The Labour Relations and Industrial Disputes Act, along with its associated Regulations and the Labour Relations Code of 1976, uphold the fundamental rights to strike and freedom of

association. These provisions ensure that workers can freely organize, join unions, and advocate for their rights without fear of retaliation.

Grievance Redress Mechanism (GRM)

The Grievance Redress Mechanism (GRM) for labour issues are addressed under the provisions of the Labour Relations and Industrial Disputes Act, Labour Relations and Industrial Disputes Regulations, the Labour Relations Code of 1976, and the Ministry of Finance Grievance Policy for the Public Sector (2012) (“Grievance Policy for the Public Sector”). The MLSS in establishing a GRM will utilize the aforementioned legislation, codes and policy (as outlined in LMP Section 9 herein) which will ensure that direct or contract workers have in place a system to raise work place concerns.

Workplace Safety and Harassment Prevention

The Sexual Harassment Act 2021, which became effective July 3, 2023, specifically targets sexual harassment in the workplace. This Act mandates comprehensive measures to prevent sexual harassment, ensuring a safe and respectful work environment for all employees.

Non-Discrimination in the Workplace

There exists anti-discrimination provisions in different pieces of legislation:

- The Jamaica Charter of Fundamental Rights and Freedoms (Chapter III of the Jamaican Constitution) guarantees fundamental human rights, including protection against discrimination.
- The Disabilities Act 2014 ensures equal opportunities and rights for persons with disabilities.
- The Employment (Equal Pay For Men and Women) Act 1975 mandates equal pay for equal work, promoting gender equality in the workplace.

LMP SECTION 4.

BRIEF OVERVIEW OF LABOUR LEGISLATION: OCCUPATIONAL SAFETY AND HEALTH

- a) Given the nature of this project the risks to health and safety is likely to be low.
- b) Chapter 12 of the *Staff Orders for the Public Service* addresses health, safety and welfare. Chapter 12 also requires that Permanent Secretaries/Heads of Departments should seek to access and make available to employees, services in consultation, referral and counselling on a range of health and life style issues to include ‘*inter alia*’ Occupational Health, Physical Fitness, Mental Health, Stress Management, Depression, Violence in the Workplace and Personal Hygiene. In addition, Chapter 12

outlines that Permanent Secretaries/Heads of Departments should take steps to provide a working environment, which is safe, environmentally friendly and accessible to persons who might be physically challenged.

- c) The **Factories Act 1943** and its attendant regulations address health and safety in factories, construction projects and docks but same is limited in application. The **Occupational Safety and Health Bill 2017** was tabled in Parliament and is now being revised.
- d) As a result of the limited application of the **Factories Act and its attendant Regulations** and the absence of occupational safety and health legislation that provides coverage for all workers, the following will apply to the project:
- ✓ Steps must be taken by the employer of project workers to ensure that the health and safety of project workers is protected in the workplace. The term “employer” is being used widely to incorporate all persons who employ/engage all types of project workers.
 - ✓ Steps must be taken to identify the potential hazards and their associated risks in the workplace of project workers.
 - ✓ Every effort must be made by the employer to eliminate hazards in the workplace after the relevant hazards and associated risks are identified. However, where such hazards cannot be eliminated, every effort must be made to minimize the risks to health and safety by appropriate mitigation measures such as the provision of suitable personal protective equipment at no cost to the worker.
 - ✓ Employers should ensure that the machinery, equipment and processes in the workplace which are under their control are safe and are as far as is reasonably practicable, without risk to the health and safety of project workers. Project workers are to report defective machinery or equipment or dangerous processes that pose a threat to their health and safety to their immediate supervisor, the Human Resource Department or Manager for the workplace, if any, Safety and Health Officer, if any, or trade union with bargaining rights for workers in the workplace, if any.
 - ✓ Project workers are to make every effort to preserve their own health and safety and that of their co-workers.
 - ✓ There should be adequate training of project workers in safety and health (as appropriate to the hazards and the risks that they may face) at the commencement of their engagement/employment and throughout their period of engagement/employment. The employer is to ensure that records of training are maintained and updated. These records should include: a description of the training provided, the number of hours of training provided, attendance records and the results of any evaluations conducted during the training exercise.
 - ✓ An adequate mechanism must be introduced for the reporting of occupational accidents, diseases and incidents in the workplace and for the proper investigation of same.
 - ✓ Safe means of access is to be provided and maintained at the workplace.

- ✓ Suitable first aid equipment should be made readily available to protect workers when needed.
- ✓ Where practical suitable ergonomic equipment should be provided.
- ✓ Effective steps are to be taken to ensure that project workers are familiar with the means of escape in the case of an emergency.

LMP SECTION 5.

RESPONSIBLE STAFF

The MLSS Human Resource Management Department (HRMD) will be responsible for the engagement of the project workers who are direct workers.

Contractors/Sub-Contractors will be engaged through the procurement process, where applicable. Contractors will be managed by the designated Project Manager. Sub-Contractors will be managed by the Contractor with whom they work. The contracts signed with Contractors under this project will contain LMP and ESS2 provisions with respect to terms and conditions of engagement.

The MLSS which has oversight responsibility for health and safety should provide guidance in relation to the management of health and safety.

The MLSS/Project Implementation Unit will have the responsibility for training of direct workers and civil servants engaged in the implementation of the project. The MLSS will also provide guidance on the required training to be provided by contractors and subcontractors to their employees. Training will include raising awareness about health and safety matters that may arise in the workplace and how safety can be maintained in the workplace.

LMP SECTION 6.

POLICIES AND PROCEDURES

The following are additional policies and procedures applicable to this project:

- i. Project workers will be provided with information and documentation that is clear and understandable regarding their terms and conditions of employment.
- ii. Decisions relating to the employment and treatment of project workers should not be made on the basis of personal characteristics of workers which are unrelated to inherent job requirements.
- iii. The employment of project workers will be based on the principle of equal opportunity and treatment and there will be no discrimination. This includes discrimination on the basis of disability and gender. There will be no discrimination with respect to any aspects of the employment relationship, such as recruitment and

hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, job assignment, promotion, termination of employment and disciplinary practices.

- iv. Measures will be implemented to protect against sexual exploitation and abuse (SEA) and sexual harassment (SH) (in keeping with the Sexual Harassment Act (2021))⁸. These measures include:
 - a) the training of workers (including workers of contractors and their supervisors);
 - b) the signing by all project workers (public officers, direct and contracted workers) of a Code of Conduct with specific provisions related to SEA and SH. (A sample Code of Conduct is attached as Annex 2); and
 - c) including provisions in the grievance mechanism to ensure that SEA/SH grievances can be received, including the training of persons to be able to receive those grievances.
- v. Reasonable arrangements as defined under Section 2, of the Disabilities Act, 2014 and in keeping with Chapter 12 of the *Staff Orders for the Public Service* are to be made for project workers who are persons with disabilities.
- vi. The health and safety of project workers are to be protected, meaning all reasonable practicable measures should be undertaken to prevent occupational accidents, injuries or illnesses. Where necessary, project workers should be provided with appropriate personal protective equipment, at no cost to them.

LMP SECTION 7.

AGE OF EMPLOYMENT

The **Child Care and Protection Act, 2004** specifies the minimum age of employment of children. The term “child” is defined as a person under the age of 18 years. For the purpose of this project no person under the age of 18 years will be employed.

⁸ Sexual Exploitation and Abuse (SEA) is defined as any actual or attempted abuse of a position of vulnerability, differential power, or trust for sexual purposes, including but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Sexual abuse is defined as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

Sexual Harassment as defined by section 2 of the Sexual Harassment Act 2021, means the making of any unwelcome sexual advance towards a person, by another person, which (a) is regarded as offensive or humiliating by the person towards whom the sexual advance is made; or (b) has the effect of (i) interfering with the work performance of the person to whom the sexual advance is made; or (ii) creating an intimidating, offensive or a hostile work environment).

LMP SECTION 8.

GRIEVANCE MECHANISM for PROJECT WORKERS

The MLSS can be guided by the **Labour Relations Code, 1976** made under the **Labour Relations and Industrial Disputes Act, 1975** and the Ministry of Finance Grievance Policy for the Public Sector.⁹

The **Labour Relations Code** sets out the mechanism for the resolution of industrial disputes as defined under **Section 2** of the **LRIDA**. The purpose of the Code is to set out guidelines which in the opinion of the Minister will be helpful for the purpose of promoting good industrial relations.¹⁰ Paragraph 21 of the Code specifies the individual grievance procedure which includes the following:

- i. The procedure should be in writing and should indicate:
 - o That the grievance be first discussed by the worker and immediate supervisor at the first stage;
 - o That if unresolved at the first stage, the grievance should be referred to a department head, and that the worker delegate may accompany the worker at this stage;
 - o If the grievance is still not resolved after the second stage, same can be referred to higher management.

The **Ministry of Finance Grievance Policy for the Public Sector** (2012) is applicable to all employees in Ministries, Departments and Agencies and is to be adopted in the public sector. The procedure includes the various stages of individual grievance and the steps to be taken at each stage such as raising the grievance with the immediate supervisor in the first instance and escalating the grievance to the Head of Department/Section/Division. The policy document also specifies that where the grievance relates to sexual harassment against the worker's immediate supervisor, the matter should be reported directly to the Human Resource Department. The stages of collective grievance are also specified.

The Grievance Mechanism to be utilized by the MLSS is as follows:

Staff

- a) Aggrieved staff member meets with the Supervisor.
- b) A written complaint is prepared by the aggrieved staff member.
- c) If the grievance is not resolved, the grievance will be referred to the Director of HR.
- d) The Director of HR can refer the grievance to the Human Resource and Employment Committee (HREC).

⁹ Refer to the sections in the attached Matrix which address this Act and the Code.

¹⁰ Refer to the Matrix of Labour Legislation in the Appendix for a more fulsome discussion.

The contractors/sub-contractors engaged to the project are required to provide a Grievance Mechanism (GM) for their workers and inform the workers about the GM.

There should be no retaliation against workers who lodge a grievance.

LMP SECTION 9.

CONTRACTOR MANAGEMENT

Each contractor engaged by the Project will be expected to adopt the protective measures outlined in this LMP. The contracts will include provisions, measures, and procedures to be put in place by the contractors to manage and monitor relevant Occupational Health and Safety (OHS) and labour issues.

Measures required of Contractors as part of the **bidding/tendering process will include:**

- Provision of medical insurance, sick pay, vacation leave and compensation in the event of death.
- Specific procedures relating to the workplace and the conduct of the work.
- Regular reporting on OHS and Environmental, Social, Health and Safety (ESHS) measures and matters during project execution.
- Code of Conduct including provisions for sexual exploitation and abuse and sexual harassment.
- Labour GRM for workers. This will include identifying focal points and communication channels (for example, WhatsApp, SMS, and email) within the company to address workers' concerns on an ongoing basis and ensure that such channels are adequately resourced.

The contractor must provide workers with evidence of all payments made, including Social Security benefits, pension contributions or other entitlements regardless of the worker being engaged on a fixed term contract, full-time, part-time, or temporarily.

ANNEX1
SAMPLE CODE OF CONDUCT

I, _____, staff at the PIU in [name of Ministry/Agency where the PIU sits] for the Project [name of Project], acknowledge that adhering to environmental, social, health and safety (ESHS) standards, following the project's occupational health and safety (OHS) requirements, and preventing Gender Based Violence (GBV), including sexual exploitation and abuse (SEA), and sexual harassment (SH) at the workplace, is important in and outside the context of this project, as further set out in this Code of Conduct. As such, we acknowledge this Code of Conduct identifies the behavior that is expected of all PIU staff for the Project [name of the Project].

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

For the purpose of this Code of Conduct, it is important to note that GBV is an umbrella term for any harmful act that is perpetrated against a person's will and that is based on socially ascribed (that is, gender) differences between male and female individuals. GBV includes acts that inflict physical, mental, or sexual harm or suffering; threats of such acts; and coercion and other deprivations of liberty, whether occurring in public or in private life. GBV includes the following concepts:

- Sexual Exploitation and Abuse (SEA): Sexual exploitation is defined as any actual or attempted abuse of a position of vulnerability, differential power, or trust for sexual purposes, including but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Sexual abuse is defined as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.
- Sexual harassment (SH): Sexual harassment occurs between personnel and staff of the project and means any unwelcome sexual advance, request for sexual favors, and other verbal or physical conduct of a sexual nature.

A violation to this Code of Conduct, including failure to follow ESHS and OHS standards, or engaging in activities constituting GBV including SEA/SH—be it on the workplace, work sites, work site surroundings, at workers' camps, or the surrounding communities—, constitute acts of serious misconduct, which contravenes the terms of employment, and are therefore grounds for disciplinary action up to and including termination of employment for PIU staff. Acts that may violate the laws of Jamaica will be additionally referred to the corresponding legal authorities, including for potential prosecution under criminal law.

Commitments under this Code of Conduct

I agree that while working on the project I shall:

General:

1. carry out my duties competently and diligently.
2. comply with this Code of Conduct and all applicable laws, regulations and other requirements, including requirements to protect the health, safety and well-being of other Project staff, workers, and any other person.

Regarding ESHS and OHS

3. Attend and actively partake in training courses related to ESHS and OHS as requested by my employer.
4. Always wear my personal protective equipment (PPE) when at the work site or engaged in project related activities.
5. Implement the OHS Management Plan.
6. Adhere to a zero-alcohol policy during work activities, and refrain from the use of narcotics or other substances which can impair faculties.
7. Report work situations that are not safe or healthy and remove myself from a work situation which I reasonably believe presents an imminent and serious danger to my life or health.

Regarding equality of opportunity and treatment

8. Treat women, children (persons under the age of 18), and men with respect regardless of race, color, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Regarding discrimination and violence based on gender

9. Not use language or behavior towards women, children or men that is inappropriate, harassing, abusive, sexually provocative, demeaning or culturally inappropriate.
10. Not engage in SEA with project beneficiaries and members of the surrounding communities.
11. Not engage in sexual harassment with other project personnel and staff —for instance, comments on the appearance of another worker (either positive or negative) and sexual desirability; making unwelcome sexual advances, looking somebody up and down; kissing, howling or smacking sounds; hanging around somebody; whistling and catcalls; and offering or giving personal gifts.
12. Not engage in sexual favors —for instance, making promises of favorable treatment (e.g. promotion), threats of unfavorable treatment (e.g. loss of job) or payments in kind or in cash, dependent on sexual acts or other forms of humiliating, degrading or exploitative behavior.

13. Unless there is the full consent by all parties involved, not have sexual interactions with members of the surrounding communities or work colleagues. This includes relationships involving the withholding or promise of actual provision of benefit (monetary or non-monetary) to community members in exchange for sex (including prostitution). Such sexual activity is considered “non-consensual” within the scope of this Code.

Regarding children under the age of 18

14. Not engage in any form of sexual contact or activity with children under the age of 18—including grooming or contact through digital media. Mistaken belief regarding the age of a child or his/her consent is not a defense or excuse.

15. Bring to the attention of my manager the presence of any children on the construction site or engaged in hazardous activities.

16. Wherever possible, ensure that another adult is present when working in the proximity of children.

17. Not invite unaccompanied children unrelated to my family into my home, unless they are at immediate risk of injury or in physical danger.

18. Not use any computers, mobile phones, video and digital cameras or any other medium to exploit or harass children or to access child pornography.

19. Refrain from hiring children below the minimum age of 18.

20. Comply with all relevant local legislation, including labour laws in relation to child labour.

21. When photographing or filming a child for work related purposes, I must:

a) Before photographing or filming a child, assess and endeavor to comply with local traditions or restrictions for reproducing personal images.

b) Before photographing or filming a child, obtain informed consent from the child and a parent or guardian of the child. As part of this I must explain how the photograph or film will be used.

c) Ensure photographs, films, videos and DVDs present children in a dignified and respectful manner and not in a vulnerable or submissive way. Children should be adequately clothed and not in poses that could be sexually suggestive.

d) Ensure images are honest representations of the context and the facts.

e) Ensure file labels do not reveal identifying information about a child when sending images electronically.

Disciplinary measures

The Ministry of Labour and Social Security (MLSS) shall be responsible for making decisions on the specific sanctions to be imposed on workers for violations to this Code of Conduct. I understand that if I breach this Code of Conduct, the MLSS will take disciplinary action according to the seriousness of the offense which could include:

- verbal notification (For Public Officers)/ warning for PIU staff employed by the Permanent Secretary

- written notification (For Public Officers)/ warning for PIU staff employed by the Permanent Secretary
- termination of employment

Infringements sanctioned with verbal notification

Those behaviors that do not cause relevant risks to the MLSS, other workers and/or its relationship with the communities. Verbal warnings may involve a reminder of the Code of Conduct and its applicability.

Infringements sanctioned with written notification

Those behaviors that cause minor risk to the MLSS, other workers and/or its relationship with the communities and/or the environment.

Infringements sanctioned with termination of employment

Those behaviors that cause substantive risks to the MLSS, other workers and/or its relationship with the communities and/or the environment, or behaviors that constitute serious misconduct in accordance with this Code of Conduct. In such cases, the termination of employment may be accompanied by a referral to the corresponding legal authorities. Cases of SEA or SH will always be considered serious misconduct. Recurrent offences to the Code of Conduct will also be considered serious misconduct.

Termination of employment shall be carried out in accordance with the laws of Jamaica.

I understand that it is my responsibility to ensure that the environmental, social, health and safety standards are met; that I will adhere to the occupational health and safety management plan; and, that I will avoid actions or behaviors that could be construed as GBV, including SEA and SH. Any such actions will be a breach of this Code of Conduct. I do hereby acknowledge that I have read the foregoing Code of Conduct, agree to comply with the standards contained herein, and understand my roles and responsibilities to prevent and respond to ESHS, OHS, and GBV issues. I understand that any action inconsistent with this Code of Conduct or failure to act, may result in disciplinary action.

Staff Signature: _____

Printed Name: _____

Title: _____

Date: _____