

**Government of the People's Republic of Bangladesh
Prime Minister's Office
Bangladesh Economic Zones Authority (BEZA)
Support to Capacity Building of Bangladesh Economic Zones Authority
Project
BDBL Bhaban (Level-15)
12, Karwan Bazar, Dhaka, Bangladesh.**

Bangladesh Economic Zones Authority

REQUEST FOR PROPOSALS (RFP)

**TO DESIGN, BUILD, FINANCE, OWN, OPERATE AND
TRANSFER**

MIRSORAI ECONOMIC ZONE IN BANGLADESH

SEPTEMBER 2015

Government of the People's Republic of Bangladesh
Prime Minister's Office
Bangladesh Economic Zones Authority (BEZA)
Support to Capacity Building of Bangladesh Economic Zones Authority Project
BDBL Bhaban (Level-15)
12 Karwan Bazar, Dhaka, Bangladesh.

Memo No: 03.761.011.01.11.037.2015-1417

Date: 23 September 2015

Dear Prospective Bidder:

1. Bangladesh Economic Zones Authority (BEZA) under the Prime Minister's Office (PMO) of Bangladesh invites proposals from firm(s) to submit sealed proposals to participate in the RFP in the selection of Economic Zone (EZ) Developer for execution and completion of the EZ to Design, Build, Finance, Own, Operate and Transfer, as Developer for MIRSORAI Economic Zone.
2. Firm(s) will be selected on the proposal and project plan submitted to Bangladesh Economic Zones Authority.
3. All proposals must be accompanied by a RFP bid security of USD\$ 25,000 (USD Twenty five Thousand only). The last date for receipt of the proposals under this RFP is 01 December 2015 by 3.00 pm at the office of the undersigned. Late receipt of proposals will be rejected. Proposals shall be opened in the presence of bidders or their authorized representatives who choose to attend at the address and at the time set out in the RFP documents.

Any information or clarifications may be sought in writing latest by 28 October 2015 from The Project Director, Support to Capacity Building of Bangladesh Economic Zones Authority, BDBL Bhaban (Level-15), 12 Karwan Bazar, Dhaka-1215, and Bangladesh, by Fax + 880-2-8180172 or by E-mail: bezaprojectgov@gmail.com

Yours Sincerely,

(Md. Harunur Rashid)

Project Director (Joint Secretary)

Support to Capacity Building of Bangladesh Economic Zones Authority

Enclosures:

1. Request for Proposal (Bid Document - including Annex A)
2. Annex B Draft Form of Developer Agreement
3. Annex B General Conditions (GC)
4. Annex B GC Appendix 1 Special Conditions of Developer Agreement
5. Annex B GC Appendix 2 Terms and Procedures of Payment
6. Annex B GC Appendix 3 O&M and Quality Assurance Manuals
7. Annex B GC Appendix 4 Site
8. Annex B GC Appendix 5 Liquidated Damages
9. Annex B GC Appendix 6 Developer's Expertise
10. Annex B GC Appendix 7 Developer's Bid
11. Annex B GC Appendix 8 Escrow Agreement
12. Annex B GC Appendix 9 Substitution Agreement

Bangladesh Economic Zones Authority (BEZA)
Support to Capacity Building of Bangladesh Economic Zones Authority
Project, Dhaka, Bangladesh

REQUEST FOR PROPOSALS (RFP)

COUNTRY: BANGLADESH

PROJECT NAME: MIRSORAI ECONOMIC ZONE

SELECTION OF ECONOMIC ZONE DEVELOPER

TO

DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER (DBFOOT)

INSTRUCTIONS TO BIDDERS
To
DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER
MIRSORAI ECONOMIC ZONE
IN BANGLADESH

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INSTRUCTIONS TO BIDDERS

SECTION I - INTRODUCTION

1.1 Bangladesh Economic Zones Authority

(1) Bangladesh Economic Zones Authority under the Prime Minister's Office of Bangladesh hereinafter referred to as 'Authority' invites eligible firms to participate in the RFP for selection of Developer to:

- i. Develop the MIRSORAI Economic Zone (hereinafter, the "Economic Zone" or "EZ") on Design, Build, Finance, Own, Operate and Transfer to Authority at the end of the predetermined period; and
- ii. Operate, Manage and Maintain the entire Economic Zone and facilities during the predetermined Period;

The eligible firms are now invited to participate and submit their proposal in response to the RFP for a Public-Private Partnership project to Design, Build, Finance, Own, Operate and Transfer (DBFOOT) the Economic Zone on 550 acres of land provided by the Authority, at MIRSORAI, Bangladesh on lease for a period of 50 years. The Successful Bidder shall be called as Developer subject to the Successful Bidder fulfilling the conditions specified in ITB section 6.3, 6.4, 6.5, 6.6 and 6.7. The Developer shall transfer the Economic Zone along with all facilities to the Authority at the end of the lease period in reasonably good condition at no cost either financial or any other associated cost whatsoever to the Authority.

(2) Developer shall be responsible for:

- (a) Developing & Operating the EZ for multi-purpose or multi-use EZ activities (EZ to comprise of Multiple EZ Users for employees of Bangladesh nationality and other foreign nationalities)
- (b) Conducting environmental impact assessment and proposed mitigation measures;
- (c) Scheduling of EZ design, construction, and activation, including phased development;
- (d) Marketing the EZ; and
- (e) Operating and Maintaining the EZ.

1.2 Eligible Bidders

Bidders shall be aware of the unethical practices defined in Instructions to Bidders ("ITB" Section 6.8 (A) that may result in a rejection of a Bid for award pursuant to ITB Section 6.8 (B).

1.3 Economic Zone Facilities and Services

(1) For the purposes of these RFP Documents, the words "Economic Zone", "Facility" and "Services" shall be construed in accordance with the definitions given to them in the Developer Agreement that forms part of these RFP Documents.

(2) All Economic Zone Facilities to be established and Services to be carried out under the Developer Agreement may have their origin in any country, and subject to ITB Section 1.3(3), and all expenditures made under the Developer Agreement shall be limited to such Facilities and Services.

(3) For purposes of this ITB Section 1.3, "origin" means the place where the goods and services or component parts thereof are mined, grown, or produced. Goods are produced when,

through manufacturing, processing or substantial and major assembling of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.

(4) The origin of the Goods and Services is distinct from the nationality of the Bidder. List of ineligible countries is set out in Bid Data Sheet (BDS).

1.4 Cost of Bidding

- a) The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Authority shall in no case be responsible for these costs, regardless of the conduct or outcome of the bidding process.
- b) A complete set of bidding documents in English may be purchased by interested bidders on the submission of a written application to the address below and upon payment of a nonrefundable fee of BDT 7800.00 or US\$100. The method of payment will be through Demand Draft drawn in favour of Project Director, Support to Capacity Building of Bangladesh Economic Zones Authority, Bangladesh. The bidding documents will be sold at the Authority's office or shall be sent by courier services for overseas and surface mail deliveries. Last Date for purchase of bid documents 30 November, 2015.

Bidders who have downloaded the RFP document from the Authority's website (www.beza.gov.bd) should submit a Demand Draft of BDT 7,800 or US\$ 100 in favour of "Project Director, Support to Capacity Building of Bangladesh Economic Zones Authority" payable at Dhaka, Bangladesh towards the cost of bidding document along with their Bid.

The fee towards purchase of bidding documents is non-refundable

1.5 Eligibility of Bidders

(1) Bidder may be a private entity, a government-owned entity or any combination of such entities in the form of a Joint Venture (JV) / Consortium under an existing or with the intent to enter into such an agreement supported by a letter of intent.

(2) Bidder and all partners constituting the Bidder may have the nationality of any country, except Israel and any other country that may be excepted by the Government of Bangladesh. The Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of subcontractors or suppliers for any part of the Developer including related Services. For the purpose of clarification, it may be noted that the bidders belonging to the nationalities as defined under section 1.3 (iv) shall not be eligible for participation in this RFP.

1.6 Conflict of Interest

(1) Bidder shall not have any conflict of interest. Bidders found to have any conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if it:

- (a) Directly or indirectly controls, is controlled by or is under common control with another Bidder; or
- (b) Receives or has received any direct or indirect subsidy from another Bidder; or
- (c) Has the same legal representative as another Bidder; or
- (d) Has a relationship with another Bidder, directly or through common third parties, that puts it in a position to have access to information about or influence the bid of another Bidder, or influence the decisions of the Authority regarding this bidding process; or
- (e) Participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
- (f) or Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid; or
- (g) or Any of its affiliates has been hired (or is proposed to be hired) by the Authority as Engineer for the Contract implementation; or
- (h) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
- (i) Has a close business or family relationship with a professional staff of the Authority who:
 - i) Is directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or
 - ii) Would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Authority throughout the procurement process and execution of the contract.

1.7 Qualification Criteria

(1) Qualification to participate in the RFP was based on Bidders meeting the criteria regarding their general experience in the designing, building, financing, owning and operating and particular experience in developing an Economic Zone/Special Economic Zone/Industrial Park/Free Port; and financial position, and more specific information required by the Authority in the Information Forms included in Annex A.

Bidders may submit a Bid either as:

- (A) a stand-alone firm or entity; or
- (B) a joint venture/consortium

provided that they meet the requirements prescribed in the RFP document.

(2) Any international stand-alone firm or entity or a joint venture/consortium awardee prior to signing the Developer Agreement should be registered as a legal entity, as required under the laws of Bangladesh.

1.8 Subcontracting

Bidders may identify and nominate subcontractors in respect of major works and submit this information in their bids. Such bids will be evaluated additionally as set out in the Bid.

1.9 Economic Zone Developer Responsibility

After award of the Developer, the Developer shall remain responsible for the acts, defaults, and neglects of all sub-contractors during Developer Agreement implementation, and shall indemnify the Authority for the acts of the Developer and its Representatives (permitted assigns, agents and any other authorized personnel) or subcontractors as the case may be.

1.10 Type of Developer

The type and the term of the Developer shall be as indicated in the Bid Data Sheet (BDS).

1.11 Economic Zone Information

General information with respect to the service area is as indicated in the BDS.

SECTION 2 – THE REQUEST FOR PROPOSAL (RFP) DOCUMENTS

2.1 Content of RFP Documents

(1) The nature of the Economic Zone, the services, the site and facilities that are to be designed, built, financed, owned, operated and transferred by the Bidder, the procedures that are to be followed during the bidding process and the Developer's terms and technical requirements are as prescribed in the RFP Documents. The RFP Documents consist of:

- (A) the Instructions to Bidders (**ITB**);
- (B) the Bid Data Sheet (**BDS**);
- (C) Annex A to the RFP Documents – Forms:
 - (i) Bidder's Bid Form;
 - (ii) Bidder's Financial Offer Schedules;
 - (iii) Format of Curriculum Vitae for Proposed Key Staff;
 - (iv) Form for Clarification Questions; and
 - (v) Information Forms – 1, 2A, 2B, 2C, 3A, 3B, 3C, 4&5;
- (D) Annex B to the RFP Documents –consisting of:
 - (i) Draft Form of Developer Agreement;
 - (ii) General Conditions of the Developer Agreement; and
 - (iii) Appendices to the General Conditions, including:
 - (a) Special Conditions of Contract;
 - (b) Terms and Procedures of Payment Appendix;
 - (c) Technical Specifications consisting of

- i. Design-Build Services
- ii. Operations Service
- iii. Technical Specifications;
 - (d) Site Appendix;
 - (e) Liquidated Damages – Operations Appendix;
 - (f) Developer’s Expertise Appendix; and
 - (g) Developer’s Bid
- (h) Escrow Agreement
- (i) Substitution Agreement
- (j) Draft Land Lease Agreement

- (E) The Authority shall issue Addenda to the documents listed in ITB Section 2.1(1) (A) to (E), if any.

The documents listed in ITB Section 2.1(1) (A), (B), (C), (D), and (E) are collectively referred to as the “RFP Documents”.

(2) Each Bidder shall examine all instructions, terms and conditions, forms, specifications and other information contained in the RFP Documents. If the Bidder:

(A) fails to provide all documentation and information required by the RFP Documents; or

(B) submits a Bid which is not substantially responsive to the terms and conditions of the RFP Documents,

then such action shall be at the Bidder’s risk, and the Authority may determine such Bid as non-responsive to the RFP Documents and may reject it.

2.2 Clarification of RFP Documents

(1) A prospective Bidder requiring any clarification of the RFP Documents may notify the Authority in writing by registered mail, courier, email, fax or hand delivery at the Authority’s mailing address indicated in the BDS. Similarly, if a Bidder feels that any important provision in the RFP Documents, such as those listed in ITB Section 3.3, will be unacceptable, such an issue must be raised during the clarification stage.

(2) All such queries and requests for clarification shall be submitted using the Form for Clarification Questions contained in Annex A to the RFP Documents.

(3) The Authority shall respond in writing to any request for clarification or modification of the RFP Documents that it receives on the Form for Clarification Questions no later than the date set out in the timetable in the BDS. Written copies of the Authority’s response, including an explanation of the query but not identification of its source, (“Response to Questions Document”) will be added to those raised at the Pre-Bid Meeting pursuant to ITB Section 2.5

and sent after the Pre-Bid Meeting to all prospective Bidders that have received the RFP Documents. If Bidders make similar or repeated queries, the Authority may list those queries as one query and respond to such query only once.

2.3 Site Visit

Each Bidder is advised to visit and inspect the site of the proposed Economic Zone (the “Site Visit”) and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into the Developer Agreement. The Authority will inform all Bidders that acquire the RFP Documents about the time and date for such a visit. The costs of visiting the site shall be at the Bidder’s own expense. The Bidder shall be deemed to have full knowledge of the site conditions, whether physically inspected or not, if Bidder submits a Proposal for this project.

2.4 Data Room and Background Information

(1) Unless otherwise stated or indicated in the BDS, the Authority shall establish a data room (the “Data Room”) with a collection of relevant data to be accessible to Bidders or their authorized representatives until the deadline for submission of Bids (the “Submission Deadline”) specified pursuant to ITB Section 4.2, in accordance with a schedule established by the Authority.

(2) The Authority may provide prospective Bidders with a separate background information document (the “Background Information Document”) if indicated in the BDS. The Background Information Document is not a RFP Document.

2.5 Pre-Bid Meeting

Each prospective Bidder is invited to attend a pre-bid meeting, which will take place at the venue, date and time stipulated in the BDS. While attendance at the pre-bid meeting is not mandatory, Bidders are strongly encouraged to attend. The purpose of the pre-bid meeting is to provide a technical presentation and to clarify issues and answer questions on any matter that may be raised at the meeting. Each prospective Bidder is requested, as far as possible, to submit any question in writing to reach the Authority not later than seven calendar days before the pre-bid meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted as indicated hereafter. Minutes of the pre-bid meeting will be transmitted without delay to all prospective Bidders that have procured RFP Documents and shall also be uploaded on the website of the Authority. All responses to questions raised at the pre-bid meeting will be included in the Response to Questions Document in accordance with ITB Section 2.2 (3).

2.6 Amendment of RFP Documents

(1) At any time prior to the Submission Deadline, the Authority may, for any reason, whether at its own volition, or in response to a clarification requested by a prospective Bidder, amend the RFP Documents by addendum. No other communications of any kind whatsoever, including, without limitation, the minutes of the pre-bid meeting or the Response to Questions Document, shall modify the RFP Documents.

(2) Addenda, if any, shall be sent in writing by registered mail or courier or facsimile in addition to email, to all prospective Bidders that have procured the RFP Documents and shall be binding on them. In addition, the same shall also be uploaded on the Authority’s website. Bidders shall immediately acknowledge receipt to the Authority of any such amendment, and it

shall be assumed that the Bidder in its Bid has taken the information contained therein into account.

(3) In order to afford prospective Bidders reasonable time in which to take the amendment into account in preparing their Bids, the Authority may, at its discretion, extend the Submission Deadline pursuant to ITB Section 4.2, in which case, the Authority will notify all prospective Bidders, who procured the RFP documents from the Authority, in writing of the extended deadline. In addition, the Authority shall also post the notification at its website.

2.7 Contact with the Authority For the Purpose of Clarification

The prospective Bidders and Bidders shall contact only the persons named at the addresses in the BDS for the purpose of requesting information and clarification or for any other purpose relating to the bidding process. From the time of Bid opening to the time of Developer Agreement award, if any Bidder wishes to contact the Authority on any matter related to the bidding process, it might do so in writing.

2.8 Information Provided by the Authority/Bidders Due Diligence

(1) Each Bidder shall be solely responsible for conducting its own independent research, due diligence, and any other work or investigations and for seeking any other independent advice necessary for the preparation of Bids, negotiation of agreements, and the subsequent delivery of all services to be provided by the Bidder that has been successful in the bidding process (the “Successful Bidder”).

(2) Bidders shall not rely on any oral statements made by the Authority or its advisors, employees, consultants or agents.

(3) All Bidders shall, prior to submitting their Bid, review all requirements with respect to corporate registration and all other requirements that apply to companies that wish to conduct business in Bangladesh. The Bidders shall be solely responsible for all matters relating to their legal capacity to operate in the jurisdiction to which this bidding process applies.

2.9 Timetable

(1) The timetable set out in the BDS, covering from the issuance of the RFP Documents to the identification by the Authority of the Successful Bidder and the execution of the Developer Agreement, is an estimate.

(2) The Authority may, in its sole discretion and without prior notice to the Bidders, amend the estimated timetable specified in the BDS. Bidders shall not rely in any way whatsoever on the estimated timetable specified in the BDS and the Authority shall not incur any liability whatsoever arising out of amendments to the estimated timetable. The Authority shall give notice of timetable changes, if any, by addenda. This would be communicated to the prospective bidders, who have procured the RFP document from the Authority, in writing. In addition, the same shall also be posted on the Authority’s website.

SECTION 3 - PREPARATION OF BIDS

3.1 Language of Bid

The Bid prepared by the Bidder, all correspondence and documents related to the Bid exchanged by the Bidder and the Authority and the bidding process shall be written in the language specified in the BDS. If any printed literature furnished by the Bidder is written in another language, then such literature must be accompanied by a translation of its pertinent passages in the language specified in the BDS, in which case, for purposes of interpretation of the Bid, the translation shall govern.

3.2 Documents Comprising the Bid

(1) Each Bidder shall submit only one Bid, which shall consist of:

(A) One Technical Section which shall contain the following parts in the following order:

- (i) Part I – the information required by ITB Section 3.3;
- (ii) Part II – the Bid Security required by ITB Section 3.4;
- (iii) Part III – the Bid Form required by ITB Section 3.5
- (iv) Part IV – where applicable, the joint venture/consortium documents required by ITB Section 3.6;
- (v) Part V – the power of attorney required by ITB Section 3.7;
- (vi) Part VI – separately bound pre-printed literature required by ITB Section 3.8; and

(B) One Financial Section, which shall consist of the Financial Offer Schedules, completed in accordance with ITB Section 3.9.

(2) Each Bidder shall also submit an initialed Draft Developer Agreement, in accordance with ITB Section 3.15(2), in the same envelope as its Technical Section.

3.3 Technical Section – Part I – Technical and Organizational Information

Technical Section of the Bid shall consist of the following sub-parts in the following order;

(A) An Executive Summary of the **Technical and Organizational** information, which shall be detailed in accordance with the sub-sections that follow.

(B) A detailed design-build-finance-own-operate and transfer work plan including a detailed program timetable (the “DBFOOT Work plan”) setting out the manner in which the Bidder proposes to carry out the DBFOOT services as defined in the Developer Agreement (the “DBFOOT Services”). The DBFOOT Work plan shall be divided into the following sections:

- (i) A section entitled “**Design Philosophy, Drawings & Project Concepts**”, which shall consist of conceptual drawings, sufficiently detailed to communicate the Bidder’s design intent for all aspects of

the proposed Economic Zone. The conceptual drawings shall include the following:

(a) A proposed site plan showing the Bidder's development plan, for various elements such as industrial plots/plants, buildings, utilities including electric power, water purification and waste water treatment, external areas, common facilities, including any zoning or phasing in construction on the 550 acres of land (showing all proposed works listed in the BDS). Detailed descriptions shall include:

- i) Land use plan and phasing plan with intended uses of the land, estimated Floor Area Ratio (FAR) and total square meters of structures to be built;
- ii) Detailed description of each type of building per land use and other development in EZ; and
- iii) A conceptual description of proposed Standard Factory Building (SFB) type(s), to be provided to End Users, to include: Standard sizes and layouts; and Degree of external and internal finishes;

(b) General arrangement drawings/Scheme drawings sufficient to understand the Bidder's architectural layout, appearance & aesthetics;

(c) A detailed narrative in support of the conceptual drawings setting out the Bidder's plan, construction, quality assurance, standards to be adopted and control; (d) A

detailed schedule setting out all major milestones for the Site preparation, Design Phase, Procurement of Construction & other major items, Construction Phase, Completion & Operational Phase. In addition, an indicative list of raw materials and components procured locally, manufactured in Authority's country;

(e) An itemized list of the principal codes of practice and standards proposed for the Economic Zone facilities;

(f) The Bidder is required to incorporate international best practices in designing the EZ and utilize international building standards and comply with national building codes. These standards should be present in successful EZ projects undertaken in the past. Lessons learnt should be highlighted; and

(g) Bidder may preferably adopt Green standards for buildings such as LEED certifications or equivalent and prefer low carbon emission industry.

All maps, drawings, plans and database shall be developed electronically in addition to printed manuscript copies.

(ii) A section entitled "**Project Marketing Concept**" which shall include the following:

(a) A Vision for the Economic Zone describing the long, medium and short term vision, assessment of the Economic

Zone's competitive advantages, how the Bidder intends to position the Economic Zone in the long term, key industry segments Economic Zone would focus upon, and a list of all value added services that the Bidder intends to provide;

(b) A description of the unique selling proposition of the Economic Zone, which will be used to attract a wide variety of industry sectors that promote value additions to establish and operate in the Economic Zone;

(c) A detailed description of the Bidder's strategy to market the Economic Zone to companies, list of potential target investors; and

(d) A detailed description of the marketing capability of the Bidder in terms of personnel, alliances and marketing network

(iii) A section entitled "**Implementation Plan**" which shall include the following:

(a) A description & sequence (method statement) of all implementation activities including enabling works, utilities, temporary works, internal & external works for the entire site;

(b) A detailed overall program and schedule setting out the proposed sequence of works to be undertaken, including estimated start date, finish date subject to conditions mentioned in the BDS, and time allocations for individual elements of the works, proposed resources to be allocated and the identification of all major milestones for the commissioning of individual work components of the Economic Zone facilities;

(c) A detailed program and work plan of the Economic Zone project, indicating in months/years, phase wise development for fully achieving completion of all components of the Economic Zone viz., Serviced Land, Pre-Built Factories and Buildings, Utilities, and Amenities; and

(d) Projection of the year-wise minimum commitment in terms of tenants/occupancy of the companies within the proposed Economic Zone, attaching letters of interest from target investors where possible.

(C) An "**Environmental and Social Development Impact**" section containing the following:

(i) A detailed description of the Bidder's plans and methodologies to ensure the requirements of the applicable Environmental Management Plan (EMP) for the proposed Economic Zone facilities and the Site will be implemented and monitored;

(ii) The degree to which population displacement and relocation, if any, resulting from the development of the site can be moderated and clearly justified by the social and economic costs and benefits of the proposed EZ;

- (iii) The degree to which “green-zone” techniques and procedures are included in the plan for the proposed EZ. These techniques can include energy efficiency, co-generation, renewable energy use, waste recycling, efficient water management, and alternative transportation options;
- (iv) The degree to which the proposed EZ will promote and facilitate female-gender opportunities; and
- (v) Number of small and medium-sized Enterprises (SME) proposed as EZ Users at the planned EZ.

(D) An “**Operation and Maintenance**” section containing the following:

A detailed operational strategy in operations and maintenance of the Economic Zone, services provided, facilities developed, Operational and Maintenance Standards, Safety Standards and Good Industry Practices. Bidders shall have experience in Operating & Maintaining Economic Zone of comparable scale & complexity. Bidders shall give reference list & track record of at least one other site. Bidders shall submit outline of the Bidder’s plans & strategies for operating & maintaining the Economic Zone in an efficient manner to the highest international standards for its tenants & clientele.

Each Bidder shall, at a minimum, provide for the operation of basic services within the parcel to a standard sufficient to meet the needs of the EZ. All proposed utility services shall be able to connect to and coordinate with the backbone infrastructure and common services. In providing the Operation and Maintenance, each Bidder shall undertake to provide the following services within its proposed on-site part of EZ:

- (i) Subterranean facilities, such as sewer collection system, including drains and pipeline network, storm water system, including drains and pipeline network, a pipeline network system sufficient to accommodate power cables and telecommunication wiring;
- (ii) Solid waste management and collection and effluent treatment;
- (iii) Each Bidder shall identify any additional services that it chooses to provide. Such services may include, but are not limited to or required to be, provision of utilities (electric power, water purification, waste water treatment, etc.), communications center, training & skills development centre, technical workshops and machine shop, commuting and transportation services, cafeteria and restaurants, post office (facility only), civil defense center, social facilities for the workforce, retail outlets, operation of a day care center, operation of a medical clinic, firefighting equipment and systems.

Each Bidder shall be bound to provide any such services so enumerated in “Operation and Maintenance”. Each Bidder shall furthermore provide an indicative pricing schedule and projected volume of service delivered for each enumerated service, as well as how the Bidder will ensure that systems meet international safety, health, environmental and social standards, if applicable.

(E) A “**Key Staff, Organization & Development Agreement Administration Plan**” containing the following:

A narrative of the Bidder’s **Resourcing plans**, including **key staff, Organization, and Administrative Processes** which the Bidder intends to have in place at each stage of the project life cycle (design, construction, marketing, operations & maintenance of the facility). In particular, the Bidder’s “**Staffing Plan**” setting out the Bidder’s proposed staffing arrangements for carrying out the DBFOOT Services shall be divided into the following sections:

(i) A section entitled “*Summary of Staff Qualifications*” which shall consist of a summary table setting out for the Key Staff positions, the names of the Bidder’s employees who will occupy the Key Staff positions;

(ii) A section entitled “*Curriculum Vitae*” which shall contain the signed curriculum vitae for each of the Key Staff, in the format set out in Annex A to the RFP Documents, and any special visa requirements for non-Bangladeshis; and

(iii) A section containing evidence that key staff that will form part of the Economic Zone project team have had relevant experience in building, marketing & operating similar Economic Zone successfully. (Reference list & track record)

For the purpose of Section (E)(i) and (ii), “Key Staff” means those individuals that will fill the positions as stated in BDS.

(F) An “**Economic Growth and Job Creation**” section containing the following:

(i) The degree to which the international trade or financial effect, including the projected value of exports and re-exports and value-added processing potential of the proposed EZ will have an impact on overall economic growth and jobs

(ii) The extent to which investment and any transfer-of-technology impact of the proposed EZ will improve Bangladesh’s national capital, infrastructure, basic services, agricultural base or the quality of the labor force;

(iii) Potential of the proposed EZ to increase domestic employment opportunities, including skilled and semi-skilled labor positions for Bangladesh nationals, through organisations and job-creation, as well as technical training and capacity-building;

- (iv) Employment creation at the end of each year for first five years and estimates for subsequent each 5 years period;
- (v) Creation of new or expanded business opportunities, diversification of products, new emerging areas and any related new sector or sub-sector to Bangladesh in the projected value chain; and
- (vi) Any other economic benefits to the project.

3.4 Technical Section – Part II – Bid Security

(1) In Part II of the Technical Section of its Bid, the Bidder shall furnish, as part of its Bid, a Bid security in the amount stipulated in the BDS in Bangladesh Taka.

(2) The Bid Security shall, at the Bidder's option, be in the form of a certified cheque, but only if the certified cheque shows a validity date, letter of credit or a bank guarantee from a reputable bank (with credit rating 'A' or equivalent or public sector Bank) selected by the Bidder and located in Authority's country. If the bank issuing the security is located outside the country of the Authority, it shall have a correspondent bank located in the country of the Authority to make it enforceable. The format of any bank guarantee provided by a Bidder shall be in accordance with the form of Bid Security contained in Annex A to the RFP Documents. Other formats may be permitted, subject to the prior written approval of the Authority. The Bidder shall ensure that the Bid Security remains valid for a period of 60 days after the end of the original Bid Validity Period, as defined in ITB Section 3.13(1), and 60 days after any extension subsequently requested by the Authority in accordance with ITB Section 3.13(2).

(3) Any Bid not accompanied by an acceptable Bid Security shall be rejected by the Authority as being non-responsive.

(4) The Authority shall return the Bid Securities of the unsuccessful Bidders as promptly as possible, and not later than 30 days after the expiration of the Bid Validity Period.

(5) The Bid Security of the Successful Bidder shall be returned when the Bidder has provided the required performance security as set out in the ITB Section 6.6.

(6) The Bid Security may, in the discretion of the Authority, be forfeited:

- (A) if the Bidder withdraws its Bid during the Bid Validity Period;
- (B) in the case of the Successful Bidder, if the Successful Bidder fails within the specified time limit to furnish the Performance Security to the Authority in accordance with ITB Section 6.6; or
- (C) If the Bidder is found to be engaging in collusive or corrupt behavior

3.5 Technical Section – Part III – Bid Form and Qualification Information

In Part III of the Technical Section of its Bid, each Bidder shall provide a completed Bid Form in the same form and substance as the Bid Form contained in Annex A to the RFP Documents.

(i) Qualification Criterion 1 – General Economic Zone Experience

The Bidder shall:

1. Developing and Operating Economic Zones / Special Economic Zones / Industrial Parks / Free Ports;

2. Developing a master plan, commensurate with the size and nature of proposed Economic Zone at Mirsora, Chittagong, Bangladesh.

(ii) Qualification Criterion 2 - Particular Economic Zone Experience

The Bidder shall have, as prime developer, or proportionately as a member of a JV/Consortium, or as operator, {Rule 6(a) & 6(b) of Bangladesh Economic Zones (Appointment of Developer, etc.) Rules, 2014}

- (a) experience in establishing of sole, multiproduct economic zone, special economic zone, industrial park or free port and operation thereof, or experience in development, construction of infrastructure, management and operation of any large project ;
- (b) experience in designing of or financing in at least one economic zone, special economic zone, industrial park or free port, or any large project;

(iii) Qualification Criterion 3 - Financial Capabilities

The Bidder shall have:

- (c) the amount of gross revenue of 10 (ten) million US Dollar per year within last 3 (three) years for operation of economic zone, special economic zone, industrial park or free port, or any large project ; and
- (d) net worth of at least 25 (twenty five) million US Dollar.

The Bidder's current financial position shall be sound and prospectively long-term profitable.

3.6 Technical Section – Part IV - Joint Venture/consortium Documents and Requirements

(1) Each Joint Venture/Consortium Bidder shall submit, as Part IV of the Technical Section of its Bid, a written commitment, in the form of a letter duly executed by an authorized officer of each joint venture/consortium participant, which:

- (A) Confirms joint venture/consortium participant's commitment to the joint venture/consortium and acceptance of the joint venture/consortium arrangements described in the Bid in accordance with ITB Section 3.6(2);
- (B) Confirms that all joint venture/consortium participants are jointly and severally liable and should provide its willingness of joint and several guarantee to the Authority to underwrite the performance of the joint venture/consortium in respect of the Developer Agreement; and
- (C) Identifies which joint venture /consortium participant
 - (i) Will assume the leading role on behalf of the other joint venture/consortium participants;; and
 - (ii) Will have the authority to commit all joint venture/consortium participants.
- (D) Confirms the lead joint venture/consortium participant has a shareholding not less than 35% in the joint venture/consortium equity. The lowest

shareholding of a joint venture/consortium participant in the equity shall be 11%.

- (E) Confirms that Joint Venture/consortium participants combined meet the requirements of eligibility criteria technical and financial.

(2) If the Successful Bidder is a Joint Venture/consortium Bidder and the Developer Agreement is awarded to the Successful Bidder, the Successful Bidder shall incorporate a separate legal entity registered in Bangladesh (the “Joint Venture Company”)/consortium, which shall enter into the Developer Agreement with the Authority. At the time of Bid submission, only the intention of the joint venture/consortium participants to incorporate a separate legal entity as required by this ITB Section 3.6(2) needs to be demonstrated. The Successful Bidder shall ensure that the Joint Venture/consortium Company to be registered in Bangladesh has the full legal capacity to carry out its obligations under the laws of Bangladesh and that it meets all requirements of the applicable law as referenced in the Developer Agreement.

(3) If the Developer Agreement is executed between the Authority and a Joint Venture /consortium Company, a performance security, in the amount and in the same form and substance as set out in ITB Section 6.6, will be required from the Joint Venture/consortium Company. The Joint Venture/consortium Company shall be jointly and severally liable for the execution of the Developer Agreement in accordance with the Developer Agreement’s terms and conditions.

3.7 Technical Section – Part V – Power of Attorney

Each Bidder shall provide, as Part V of the Technical Section of its Bid, a written power of attorney in accordance with ITB Section 3.15(3).

3.8 Technical Section – Part VI – Pre-Printed Literature

If the Bidder wishes to provide pre-printed literature about the Bidder or the Joint Venture/consortium Bidders, that pre-printed literature shall be contained in Part VI of the Technical Section of the Bid only and shall be separately bound.

3.9 Financial Section – Financial Proposal

Each Bidder shall submit a Financial Proposal in accordance with the following requirements.

1. Financial Analysis

(1) The Bidder shall submit a financial plan in electronic form, including pro-forma financial statements, to show that the proposal is financially feasible. The Bidder will base the analysis on a base-case scenario and shall include sensitivity analysis to demonstrate the impact of feasibility over a range of possible assumptions and scenarios. The feasibility analysis shall include the following information, clearly identified and sequenced as follows:

- a. Break-down capital investment and operating cost over the development period and associated debt/equity arrangements, identified by key development phases;
- b. Resulting cash flow projections over the development period;

- c. Breakdown and source of proposed debt/equity financing and other sources of financing, projected at least quarterly, in the development financial spreadsheet for years one (1) through the development phase and until completion;
- d. Breakdown of projected revenue streams, during the development phase or until break-even point, whichever is sooner. Revenue breakdown should be based on the marketing plan's projected results and shall include:
 - i. Income from leases (land/Standard Factory Buildings) sorted by phases;
 - ii. Ancillary services sorted by phases;
 - iii. Utility commercialization including demonstration of capabilities to deliver such services or contracting for such services with other competent entities as applicable sorted by phases;
- e. Expected financial indicators such as payback, internal rate of return, return on investment, etc.; and,
- f. Ratio of land lease versus Standard Factory Building lease relative to proposed development phases.

(2) In the event that the Bidder is selected as a Developer for the EZ, the Bidder's Technical Proposal and the Financial Proposal shall constitute the basis of the commercial performance conditions of the Developer and shall form an integral part of its Developer Agreement. These commercial performance conditions shall be monitored by the Authority throughout the life of the Agreement, and the Authority shall:

- i) Ensure overall implementation compliance (eg. how the zone and infrastructure are constructed as compared to the master plan, etc.);
- ii) Approve required adjustments based on demonstrable and reasonable conditions; and
- iii) Communicate to the Developer any areas of defaults allowing for reasonable timelines for cures prior to exercising any step-in rights.

2. Financial Proposal

Each Bidder in its Financial Proposal is required to:

(1) Propose a payment structure to the Authority over the life of the Development Agreement based on a combination of one or more of the following:

- a. Revenue sharing arrangement;
- b. An annual land lease payment in United States Dollars (US\$) per square meter of released land from the date the land is released to the Developer;
- c. A one time up-front payment (non-refundable) in United States Dollars (US\$) payable upon signature of contract : and

(2) Include an escalation formula ensuring that the annual lease payments described above are regularly adjusted according to the rate of inflation, changing land values and currency fluctuations.

3.10 Financial Section – Financial Offer Schedules

Each Bidder shall submit completed and properly executed Financial Offer Schedules in the form contained in Annex A to the Bidding Documents. Bidders shall complete the Financial Offer Schedule in full and shall not amend or change the form in any way. The Financial Section of each Bidder's Bid shall consist of only completed and properly executed Financial Offer Schedules. The Financial Offer Schedules shall consist of the following sub-parts in the following order:

- a) Projected Capital Investment, Operational Costs & Revenues
- b) Projected Sources of Financing
- c) Financial Returns to the Authority

3.11 Financial Section – Financial Offer by Bidders

(1) Bidders shall submit their investment proposal for the entire Economic Zone and all of the services on a "single responsibility" basis such that the Financial Offer covers all of the Bidder's obligations mentioned in, or to be reasonably inferred from, the RFP Documents in respect of designing, building, financing, owning, marketing and operating the Economic Zone and the performance of the Services as set out in the Developer Agreement. This includes all requirements under the Bidder's responsibilities for developing Economic Zone including the acquisition of all permits, approvals, the design, building, operation, marketing, managing and maintenance services, and such other items and services as may be specified in the RFP Documents.

(2) For the purpose of submitting Bids, Bidders should note that the Financial Offer shall take into consideration all applicable taxes, duties, levies or charges and exemptions if any applicable in Bangladesh.

3.12 Financial Section – Bid Currencies

Bidders may quote their proposals in **US Dollars** and the date for calculation of equivalency mentioned in BDS.

3.13 Bidding of Alternatives not to be considered

(1) The Bidders shall base their Bids on the terms and conditions of the RFP Documents and, without limiting the generality of the foregoing, shall:

- (A) submit their bids based on the terms and conditions in the RFP Documents;
- (B) submit their Bids based on the assumption that the Draft Developer Agreement will be the same as the Draft Developer Agreement and shall not base their Bids on the premise that they may be able to change the Draft Developer Agreement; and
- (C) include in their Bids the Draft Developer Agreement initialed on each page in accordance with ITB Section 3.15(2)(C).

(2) No Bidder shall submit a Bid that contains statements that are inconsistent with the RFP Documents.

(3) A Bidder shall not submit a Bid that proposes an arrangement between the Authority and the Bidder, which, in the discretion of the Authority, is different than the arrangement set out in the RFP Documents (an “Alternative Bid”). The Authority intends to enter into an agreement to design, build, finance, own, operate and transfer Economic Zone based on the terms and conditions of the RFP Documents. If a Bidder submits an Alternative Bid, it will be returned to the Bidder and will be considered as non-responsive by the Authority.

3.14 Period of Validity of Bid

(1) Bids shall remain valid for the period named in the BDS after the Submission Deadline or any extension thereof prescribed by the Authority for the receipt of Bids, pursuant to ITB Section 3.13(2) (the “Bid Validity Period”). A Bid valid for a shorter period shall be rejected by the Authority as being non-responsive.

(2) In exceptional circumstances, the Authority may solicit the Bidders’ consent to an extension of the Bid Validity Period. The request and responses thereto shall be made in writing and sent by registered mail, courier or fax in addition to email. If a Bidder accepts to prolong the Bid Validity Period, the Bid Security shall also be suitably extended. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request will not be required nor permitted to modify its Bid, except as provided in ITB Section 4.4.

3.15 Format and Signing of Bid

(1) Each Bidder shall prepare and submit one signed and initialed original of its Bid and the number of copies of the Bid as set out in the Bid Data Sheet, clearly marking each one as “Original Bid”, “Copy No. 1”, or “Copy No. 2”, etc. as appropriate. In the event of any discrepancy between the copies and the original, the original shall govern.

(2) The original and all copies of the Bid, each consisting of the documents listed in ITB Section 3.2, shall be typed or written in indelible ink. The person or persons duly authorized to bind the Bidder to the Bid and Developer Agreement shall sign the Bid by:

(A) Signing the original of the Bid Form;

(B) Initialing all of the pages of the original of the Bid, except for unamended printed literature; and

(C) Initialing the Draft Form of Developer Agreement and initialing all pages of the Developer Agreement.

(3) The authority of the person or persons signing the Bid to bind the Bidder shall be demonstrated by a written and duly notarized power of attorney included in the Bid and submitted as Part V of the Technical Section of the Bid and which shall bind the Bidder for the full length of the Bid Validity Period.

(4) The Bid shall contain no alterations, omissions or additions, unless the person or persons signing the Bid, before submission of Bid, initial such corrections.

SECTION 4 - SUBMISSION OF BIDS

4.1 Sealing and Marking of Bids

(1) Each Bidder shall seal the original and each copy of the Bid in separate envelopes, duly marking the envelopes as “Original Bid” and “Copy No. [number]”. The envelopes shall then be sealed in an outer envelope.

(2) The inner and outer envelopes shall:

- (A) be addressed to the Authority at the address specified in the BDS; and
- (B) bear the Developer Agreement name indicated in the BDS and the statement “DO NOT OPEN BEFORE _____”, with the date and time specified in the BDS pursuant to ITB Section 5.1.

(3) The inner envelopes shall indicate the name and address of the Bidder so that the Bid can be returned unopened in the event that it is declared “late”.

(4) If the outer envelope or package is not sealed and marked as required by this ITB Section 4.1, the Authority shall assume no responsibility for the Bid’s misplacement or premature opening. If any of the outer envelope or package discloses the Bidder’s identity, the Authority will not guarantee the anonymity of the Bid but this disclosure shall not constitute grounds for Bid rejection.

4.2 Deadline for Submission of Bids

(1) Bids must be received by the Authority at the address specified in the BDS, no later than the time and date stated in the BDS as the Submission Deadline.

(2) The Authority may, at its discretion, extend the Submission Deadline by amending the RFP Documents in accordance with ITB Sections 2.6 and 2.9(2), in which case all rights and obligations of Authority and Bidders will thereafter be subject to the Submission Deadline as extended.

(3) Each Bidder shall deliver its Bid by hand or by courier. A Bidder shall not submit a Bid by facsimile or electronic means. Each Bidder shall be responsible for the timely delivery of its Bid to the address set out in the BDS irrespective of any delivery or local difficulties.

4.3 Late Bids

Any Bid received by the Authority after the Submission Deadline prescribed by the Authority, pursuant to ITB Section 4.2, will be rejected and returned unopened to the Bidder.

4.4 Modification, Substitution and Withdrawal of Bids

(1) The Bidder may modify, substitute, or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to the Submission Deadline.

(2) The Bidder’s modifications or substitution, if any, shall be prepared, sealed, marked and dispatched as follows:

- (A) The Bidder shall provide an original and the number of copies specified in the BDS of any modifications or substitution to its Bid, clearly identified as such, in two inner envelopes marked “Bid Modifications or Bid Substitution – Original” and “Bid Modifications or Bid Substitution – Copies” respectively. The inner envelopes shall be in an outer envelope, which shall be duly marked, “Bid Modifications” or “Substitution”; and
- (B) Other provisions concerning the marking and dispatch of Bid modifications or substitution shall be in accordance with ITB Section 4.1(2), 4.1(3) and 4.1(4).

(3) A Bidder wishing to withdraw its Bid shall notify the Authority in writing prior to the Submission Deadline. The notice of withdrawal shall:

- (A) be delivered by hand or courier, subject to ITB Section 4.4(5);

- (B) be addressed to the Authority at the address named in the BDS; and
- (C) bear the Developer Agreement name, as set out in the BDS, and the words “BID WITHDRAWAL NOTICE.”

(4) Bid withdrawal notices received by the Authority after the Submission Deadline will be ignored, and the submitted Bid shall be deemed to be a validly submitted Bid.

(5) A Bidder may send a notice of withdrawal to the Authority electronically or by facsimile but a signed confirmation copy postmarked no later than the Submission Deadline must follow it.

(6) No Bid may be modified, substituted or withdrawn in the interval between the Bid Submission Deadline and the expiration of the Bid Validity Period. Withdrawal of a Bid during this interval may result in the Bidder’s forfeiture of its Bid Security, pursuant to ITB Section 3.4(6).

SECTION 5 - BID OPENING AND EVALUATION

5.1 Opening of Bid by Authority

(1) The Authority shall open the Bids, including withdrawals and modifications made pursuant to ITB Section 4.4, that were submitted prior to the Submission Deadline:

- (A) in the presence of the general public and
- (B) the Bidders’ representatives who choose to attend the opening; and
- (C) at the time, date and location specified in the BDS.

(2) Bidders’ representatives who attend the opening of the Bids shall sign a register to record their attendance.

(3) Envelopes marked “Withdrawal” shall be opened first and the name of the Bidder shall be read out. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Section 4.4 shall not be opened.

(4) At the Bid opening, the Authority will announce:

- (A) the Bidders’ names;
- (B) Bid modifications and withdrawals;
- (C) the presence, or absence, of Bid Security;
- (D) the Bidders’ Financial proposals; and
- (E) any other details as the Authority may consider appropriate.

(6) Subsequently, the Authority shall open and read, in appropriate detail as determined by the Authority, all envelopes marked “Modification”. The Authority shall not reject any Bid at a Bid opening except for late Bids in accordance with ITB Section 4.3.

(7) The Authority shall prepare minutes of the Bid opening including the information disclosed to those present in accordance with ITB Sections 5.1(2) and 5.1(3).

(8) Bids not opened and read out at a Bid opening shall not be considered further for evaluation, irrespective of the circumstances.

5.2 Clarification of Bids

During Bid evaluation, the Authority may, at its discretion, ask the Bidder for a clarification of its Bid. The request for clarification and the response shall be in writing.

5.3 Preliminary Examination of Bids

(1) The Authority will examine each Bid to determine whether it is complete, whether any computational errors have been made, whether required securities have been furnished, whether the documents have been properly signed, and whether the Bid is generally in order.

Arithmetical errors in the Bids will be rectified on the following basis:

- (A) If there is a discrepancy between subtotals and the total amount, the unit or subtotal amount shall prevail, and the total amount shall be corrected; and
- (B) If there is a discrepancy between words and figures, the amount in words shall prevail.
- (C) If the Bidder does not accept the correction of arithmetical errors, its Bid shall be rejected.

(2) The Authority may waive any minor informality, nonconformity or irregularity in a Bid that does not constitute a material deviation, and that does not prejudice or affect the relative ranking of any Bidder as a result of the technical & financial evaluation pursuant to ITB Sections 5.4 & 5.5.

(3) Prior to the detailed evaluation, the Authority will determine whether each Bid is of acceptable quality, is complete and is substantially responsive to the RFP Documents. For purposes of this determination, a substantially responsive Bid is one that conforms to all the terms, conditions and specifications of the RFP Documents without material deviations, objections, conditionalities or reservations. A material deviation, objection, conditionality or reservation is one:

- (A) that affects in any substantial way the scope, quality or performance of the Developer Agreement;
- (B) that limits in any substantial way, inconsistent with the RFP Documents, the Authority's rights or the Successful Bidder's obligations under the Developer Agreement; or
- (C) whose rectification would unfairly affect the competitive position of other Bidders who are presenting substantially responsive Bids.

(4) If a Bid is not substantially responsive, it will be rejected by the Authority, and may not subsequently be made responsive by the Bidder by correction of the nonconformity. The Authority's determination of a Bid's responsiveness is to be based on the contents of the Bid itself without recourse to extrinsic evidence. The following reasons are sufficient for declaring a bid "non-responsive" (this list is not all-inclusive): bid being found incomplete, bid being handed in past the stipulated close date and time, bid containing a conflict of interest, bid being conditional in nature, bidder delay in submitting information and clarifications, bidder making a misrepresentation.

5.4 Technical Evaluation

The Authority shall evaluate each Technical Proposal, which satisfies the requirements of the RFP. Bids will be evaluated according to the following criteria:

- a. Design Philosophy, Drawings & Project Concepts - see ITB Section 3.3(B)(i). (10 Points)

- b. Project Marketing Concept - see ITB Section 3.3(B)(ii). (10 Points)
- c. Implementation Plan - see ITB Section 3.3(B)(iii). (10 Points)
- d. Environmental and Social Development Impact - see ITB Section 3.3(C) (10 Points)
- e. Operation and Maintenance- see ITB Section 3.3(D) (10 Points)
- f. Key Staff, Organization & Development Agreement Administration Plan - see ITB Section 3.3(E) (10 Points)
- g. Economic Growth and Job Creation - see also ITB Section 3.3(F) (10 Points)

A weightage of 70% will be accorded to the Technical Proposal. Passing score for technical evaluation will be 70% of the overall technical weightage.

5.5 Financial Evaluation

The Authority shall evaluate only those Financial Proposals that are submitted by Bidders whose Technical Proposals have received passing scores.

The Authority shall evaluate each Financial Proposal according to the following three criteria:

- a. Soundness of Assumptions and Projections concerning capital and operating costs and revenues. See ITB Section 3.9 (1) -(10 Points)
- b. Financial Capacity will be measured by a range of factors that demonstrate the Bidder's financial capacity to commence, complete, develop/operate the MIRSORAI EZ, which include levels of debt, sources of finance and realistic projections. See ITB Section 3.9 (1) (10 points)
- c. Returns to the Authority will be measured by calculating the Net Present Value (NPV) of the revenue stream(s) to the Authority over the life of the Developer Agreement. The revenue stream(s) will comprise the projected payments to the Authority, including but not limited to fixed/variable lease payments, revenue sharing arrangements and a one time up-front payment. See ITB Section 3.9 (2) - (10 points)

A weightage of 30% will be accorded to the Financial Proposal.

Permit for EZ Developer – Prequalification Permit Process

Item	Description	Maximum Score
1	Technical Proposal	
1 a	Design Philosophy, Drawings & Project Concepts	10
1 b	Project Marketing Concept	10
1 c	Implementation Plan	10
1 d	Environmental and Social Development Impact	10
1 e	Operation and Maintenance	10
1 f	Key Staff, Organization & Developer Agreement Administration Plan	10
1 g	Economic Growth and Job Creation	10
2	Financial Proposal	
2 a	Projected Capital Investment, Operational Costs & Revenues	10
2 b	Projected Sources of Financing	10
2 c	Financial Returns to the Authority	10
	Total Technical and Financial Points	100

5.6 Contacting the Authority

(1) From the time of bid opening to the time of Developer Agreement award, if any Bidder wishes to contact the Authority, it must do so in writing.

(2) Any effort by a Bidder to influence the Authority, its advisors, employees, consultants or agents, in the Authority's Bid evaluation, Bid comparison, or Developer Agreement award decision, may, in the discretion of the Authority, result in rejection of the Bidder's Bid.

SECTION 6 - AWARD OF PREQUALIFICATION PERMIT

6.1 Award Criteria

Subject to ITB Section 6.2, the Authority shall award the prequalification Permit to the Bidder whose Bid has been determined, by the technical and financial evaluation, to be substantially responsive, has secured the highest combined score in technical and financial evaluation as specified in clause 5.4 and 5.5. The Authority shall execute the Developer Agreement after the award of the prequalification Permit subject to the criteria laid out for final Permit following the due process mentioned in the ITB & BDS.

6.2 Authority's Right to Accept or Reject and Waive Irregularities

(1) The Authority reserves the right to:

- (A) accept any Bid;
- (B) reject any Bid;
- (C) annul the bidding process and reject all Bids;
- (D) annul the bidding process and commence a new process; and
- (E) waive irregularities, minor informalities, or minor non-conformities which do not constitute material deviations in the submitted Bids from the RFP Documents,

at any time prior to the award of the Developer Agreement without incurring any liability to the affected Bidder or Bidders and without any obligation to inform the affected Bidder or Bidders of the grounds for the Authority's actions.

(2) Nothing in ITB Section 6.2(1) is intended to permit the Authority to refuse to provide reasons for rejection to an unsuccessful Bidder.

6.3 Notification of Award and Prequalification Permit

Prior to the expiration of the Bid Validity Period, the Authority shall notify the Successful Bidder in writing by courier, fax or email (with a scanned copy of the letter) that its Bid has been accepted by the Authority and is notified for award of prequalification Permit.

6.4 Requirement for Final Permit

The requirements for granting the Final Permit are the following:

(a) The Successful Bidder submits a comprehensive master plan that includes land use planning and zoning, on-site infrastructure plans and phasing plans;

(b) The feasibility study demonstrates that the project is economically and financially viable and commercially sustainable;

(c) The environmental and social impact assessments contain approved environmental management plans which meet the Equator Principles and sufficient health and safety schemes to mitigate negative impacts;

(d) The feasibility study demonstrates that the project will provide benefits to Bangladesh (viz., increased investment, job creation, diversification of exports) that outweigh the costs incurred by the government to facilitate the project.

(e) For sake of clarification, it may be noted that the plans and designs submitted by the bidder as part of ITB section 6.4 (a), (b), (c) and (d) shall in no way be inferior to the designs and plans submitted by the bidder in its Technical proposal in accordance with the ITB section 3.3 (B), (C), (D), (E) and (F).

6.5 Signing the Form of Developer Agreement –Final Permit

(1) The Authority shall send the Successful Bidder:

- (A) a Draft Form of Developer Agreement; and
- (B) the other Developer Agreement Documents.

(2) No later than 15 days after the Successful Bidder's receipt of the requirements pursuant to section ITB 6.4, the Draft Form of Developer Agreement and the other Developer Agreement Documents, the Successful Bidder shall sign and date the Form of Developer Agreement and the final permit to develop the EZ, and the Successful Bidder shall initial each page of the Developer Agreement and return them to the Authority.

6.6 Performance Security

No later than 30 days after the Successful Bidder's receipt of the Notification of Award, the Successful Bidder shall provide the Authority with the Performance Security in the amount given in the BDS and in the substance and form set out in Annex A or in another form approved by the Authority.

6.7 Failure to Sign the Form of Developer Agreement or Provide the Performance Security

If the Successful Bidder fails to comply with the provisions of ITB Sections 6.6, this failure shall constitute sufficient grounds for annulment of the award and forfeiture of the Bid Security, in which event the Authority may make the award to the next highest evaluated Bidder, or call for new bids.

6.8 Arbitration

Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Arbitration Act, 2001.

6.9 Corrupt or Fraudulent Practices

The Authority requires that all Bidders, suppliers and subcontractors observe the highest standard of ethics during the procurement and execution of such Developer Agreements. In pursuance of this policy, the Authority:

- (a) defines, for the purposes of this provision, the terms set forth as follows:
 - (i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including but not limited to influencing improperly the actions of another party;
 - (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering, or concealing evidence material to the investigation or making false statements to investigators in order to materially impede a Authority investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (bb) acts intended to materially impede the exercise of the Authority’s inspection and audit rights.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice in competing for the contract in question;
- (c) will sanction a firm or individual, at any time, including by publicly declaring such firm or individual ineligible;

Bid Data Sheet

The following bid-specific data for the facilities and services to be procured shall amend or supplement the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in the ITB.

ITB SECTION REFERENCE	REQUIRED INFORMATION
ITB 1.1(1)	Name of the Authority: Bangladesh Economic Zones Authority, under the Prime Minister's Office, Bangladesh.
ITB 1.3(4)	List of Ineligible Countries: Israel and as updated by the Government of Bangladesh from time to time
ITB 1.8	<u>Maximum Percentage of Subcontracting</u> Discretion of the Bidder
ITB 1.10	<u>Type of Developer Agreement</u> Economic Zone established through public and private partnership under section 4(a) of the BEZA Act, 2010 on Design, Build, Finance, Own, Operate and Transfer (DBFOOT).
ITB 1.11	<u>MIRSORAI Economic Zone– Information</u> Mirshorai EZ site is located at eastern side of the Bay of Bengal, surrounded by the coast and Mirshorai Town. It is only 10 Km west of Bangladesh National Highway (Dhaka-Chittagong Highway) and 11.5 Km west of the nearby Railway Station, with Chittagong City 60 Km south of this location. The Shah Amanat International Airport at Chittagong is located south of the site at a distance of 79 Km, and, the seaport is 67 Km south of the site. MIRSORAI EZ shall be developed to international standards to attract the best in class companies to operate at the Economic Zone. Developer shall develop a complete master plan for developing the EZ comprising of elements such as but not limited to industrial plots, buildings, utilities, external areas, and common facilities, complying with internationally recognized codes, national codes, standards, practices on the 550 acres of land. Developer will preferably adopt green standards for buildings, may acquire certifications such as LEED or equivalent and will prefer low-carbon emission industry in the EZ. Units in the zone can be 100% exports oriented or pure play domestic market industry or a combination of both, and units can be in warehousing, assembly, manufacturing, further processing or re-exporting with value addition. BEZA is offering most competitive Fiscal & Non – Fiscal Incentives to EZ Developer & Unit Investors. Details pertaining to the same can be downloaded from BEZA website www.beza.gov.bd

ITB SECTION REFERENCE	REQUIRED INFORMATION
ITB2.2(1)	<p>Address of Authority, and telephone and facsimile numbers:</p> <p>Project Director (Joint Secretary) Support to Capacity Building of Bangladesh Economic Zones Authority Bangladesh Economic Zones Authority, BDBL Bhaban (Level 15), 12 Karwan Bazar, Dhaka 1215, Bangladesh Telephone: +880-2-8180-170 Facsimile: +880-2-8180-172 E-mail: bezaprojectgov@gmail.com</p>
ITB 2.4	<p>Data Room:</p> <p>The Data Room will be established after the issue of the RFP. Please refer to the timetable.</p>
ITB 2.5	<p>Venue and time of pre-bid meeting:</p> <p>Date: 04 November 2015 Time 11 AM</p> <p>Venue: Shall be informed later, please visit our website regularly for updates (http://beza.gov.bd/) Telephone: +880-2-8180-170 Facsimile: +880-2-8180-172 E-mail: bezaprojectgov@gmail.com</p>

ITB SECTION REFERENCE	REQUIRED INFORMATION																																								
ITB 2.2(3), 2.3, 2.4(1), 2.9(1), 2.9(2), 3.12	<p>The estimated timetable is:</p> <table border="0"> <tr> <td>(a) Issue of RFP Documents</td><td>23 Sep, 2015</td></tr> <tr> <td>(b) Data Room Opens</td><td>23 Sep, 2015</td></tr> <tr> <td>(c) Site Visits</td><td>23 Sep to 28 Nov ,2015</td></tr> <tr> <td>(d) Last Day for Bidders to Submit Questions on RFP Documents</td><td>28 Oct,2015</td></tr> <tr> <td>(e) Pre-Bid Meeting</td><td>04 Nov,2015</td></tr> <tr> <td>(f) Last Day for Bidders to Submit Supplementary Questions (arising out of Site Visits only)</td><td>11 Nov,2015</td></tr> <tr> <td>(g) Issue of Response to Questions Document</td><td>18 Nov,2015</td></tr> <tr> <td>(h) Deadline for Submission of Bids (Submission Deadline)</td><td>03:00:00 PM, 01 Dec, 2015</td></tr> <tr> <td>(i) Opening of Bids</td><td>03:05:00 PM, 01 Dec,2015</td></tr> <tr> <td>(j) Identification of Successful Bidder</td><td>10 Jan,2016</td></tr> <tr> <td>(k) Notification of Award – Prequalification Permit</td><td>10 Feb,2016</td></tr> <tr> <td>(l) Performance Security</td><td>24 Feb, 2016</td></tr> <tr> <td>(m) Completion-Final Feasibility & Environment Impact Assessment</td><td>07 Mar,2016</td></tr> <tr> <td>(n) Developer agreement Signature</td><td>21 Mar,2016</td></tr> <tr> <td>(o) Design-Build Starting Date Approximately</td><td>11 Apr,2016</td></tr> <tr> <td>(p) Completion of Phase - I (10%)</td><td>11 Apr,2017</td></tr> <tr> <td>(q) Completion of Phase – II (40%)</td><td>11 Apr,2018</td></tr> <tr> <td>(r) Completion of Phase – III (70%)</td><td>11 Apr,2019</td></tr> <tr> <td>(s) Completion of Phase – IV (100%)</td><td>11 Apr,2020</td></tr> <tr> <td>(t) Calculation Date for Conversion of Currency (Date for Equivalency)</td><td>01 Sep,2015</td></tr> </table>	(a) Issue of RFP Documents	23 Sep, 2015	(b) Data Room Opens	23 Sep, 2015	(c) Site Visits	23 Sep to 28 Nov ,2015	(d) Last Day for Bidders to Submit Questions on RFP Documents	28 Oct,2015	(e) Pre-Bid Meeting	04 Nov,2015	(f) Last Day for Bidders to Submit Supplementary Questions (arising out of Site Visits only)	11 Nov,2015	(g) Issue of Response to Questions Document	18 Nov,2015	(h) Deadline for Submission of Bids (Submission Deadline)	03:00:00 PM, 01 Dec, 2015	(i) Opening of Bids	03:05:00 PM, 01 Dec,2015	(j) Identification of Successful Bidder	10 Jan,2016	(k) Notification of Award – Prequalification Permit	10 Feb,2016	(l) Performance Security	24 Feb, 2016	(m) Completion-Final Feasibility & Environment Impact Assessment	07 Mar,2016	(n) Developer agreement Signature	21 Mar,2016	(o) Design-Build Starting Date Approximately	11 Apr,2016	(p) Completion of Phase - I (10%)	11 Apr,2017	(q) Completion of Phase – II (40%)	11 Apr,2018	(r) Completion of Phase – III (70%)	11 Apr,2019	(s) Completion of Phase – IV (100%)	11 Apr,2020	(t) Calculation Date for Conversion of Currency (Date for Equivalency)	01 Sep,2015
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ITB 3.1	Language of Bid: English																																								
ITB 3.3(B)(i & iii)	A concept Master Plan to be proposed for the development of the Economic Zone for evaluation by the Authority.																																								
ITB 3.3(E)	<p>List of Key Staffs:</p> <ul style="list-style-type: none"> • Project Director • Operations Manager • Marketing Manager 																																								
ITB 3.4(1)	<p>Amount of Bid Security:</p> <p>2,000,000 BDT - (US\$ 25,000 @ BDT 80 to US \$1)</p>																																								
ITB 3.5 (i)	<p><u>Experience:</u></p> <p>The Bidder shall demonstrate, at a minimum, successful experience as follows:</p> <p>1. Developing and Operating Economic Zones / Special Economic Zones / Industrial Parks / Free Ports;</p>																																								

ITB SECTION REFERENCE	REQUIRED INFORMATION
	2. Developing a master plan, commensurate with the size and nature of proposed Economic Zone at Mirsora, Chittagong, Bangladesh.
ITB 3.5 (ii)	Particular Economic Zone Experience (a) experience in establishing of sole, multiproduct economic zone, special economic zone, industrial park or free port and operation thereof, or experience in development, construction of infrastructure, management and operation of any large project ; (b) experience in designing of or financing in at least one economic zone, special economic zone, industrial park or free port, or any large project;
ITB 3.5 (iii)	<u>Financial Capabilities</u> (a) the amount of gross revenue of 10 (ten) million US Dollar per year within last 3 (three) years for operation of economic zone, special economic zone, industrial park or free port, or any large project ; and (b) net worth of at least 25 (twenty five) million US Dollar.
ITB 3.14(1)	Bid Validity Period: The validity period shall be one hundred eighty (180) days.
ITB 3.15(1), 4.1(1) and 4.4(2)(A)	Submission of Bids: Each Bidder shall prepare and submit one signed and initialed original and 7 copies plus one soft copy (CD) included in the bid package at submission.
ITB 4.1(2)(A), 4.2(1), 4.2(3), 4.4(3)(B)	Address of Bid submission: Project Director (Joint Secretary) Support to Capacity Building of Bangladesh Economic Zones Authority Bangladesh Economic Zones Authority, BDBL Bhaban (Level 15), 12 Karwan Bazar, Dhaka 1215, Bangladesh. Telephone: +880-2-8180-170 , Facsimile:+880-2-8180-172 E-mail: bezaprojectgov@gmail.com Submission Deadline: 01 December 2015 at 03:00 PM
ITB 4.1(2)(B), 4.4(3)(C)	Name of Developer Agreement: Design, Build, Finance, Own, Operate and Transfer (DBFOOT), Economic Zone, MIRSORAI.
ITB 5.1(1)(C)	Location, date and time of opening of Bid: BEZA Office, BDBL Bhaban (Level 15), 12 Karwan Bazar, Dhaka-1215, Bangladesh, 01 December 2015 , at 03:05 PM
ITB 5.4, 5.4	Technical Evaluation Criteria: The Authority shall evaluate each Technical Proposal, which satisfies the requirements of the RFP. Bids will be evaluated according to the following criteria. a. Design Philosophy, Drawings & Project Concepts - 10 b. Project Marketing Concept - 10 c. Implementation Plan - 10

ITB SECTION REFERENCE	REQUIRED INFORMATION
	<div data-bbox="451 321 1291 504"> d. Environmental and Social Development Impact - 10 e. Operation and Maintenance - 10 f. Key Staff, Organization & Development Agreement Administration Plan - 10 g. Economic Growth and Job Creation - 10 </div> <p>A weightage of 70% will be given to the Technical Proposal. Passing score for technical evaluation will be 70% of the overall technical weightage.</p>
ITB 5.5	<p>Financial Proposal Evaluation:</p> <p>The Authority shall evaluate each Financial Proposal according to the following three criteria:</p> <div data-bbox="451 793 1396 903"> a) Projected Capital Investment, Operational Costs & Revenues - 10 b) Projected Sources of Financing - 10 c) Financial Returns to the Authority- 10 </div> <p>A weightage of 30% will be given to the Financial Proposal.</p>
ITB 6.4	<p>Requirements for Final Permit:</p> <p>(a) Bidder submits a comprehensive master plan that includes land use planning and zoning, on-site infrastructure plans and phasing plans; (b) The feasibility study demonstrates that the project is economically and financially viable and commercially sustainable; (c) The environmental and social impact assessments contain approved environmental management plans and sufficient health and safety schemes to mitigate negative impacts; (d) The feasibility study demonstrates that the project will provide benefits to Bangladesh (viz., increased investment, job creation, diversification of exports) that outweigh the costs incurred by the Government to facilitate the project; and (e) Such other requirements, as the Authority considers necessary for any particular EZ and/ or under any special circumstances.</p>
ITB 6.6	<p>Amount of Performance Security:</p> <p>1 percent of the proposed total project Investment by the Bidder.</p>

Annex A
to the RFP Documents

- (i) Bidder's Bid Form**
- (ii) Bidder's Financial Offer Schedules**
- (iii) Form of Bid Security**
- (iv) Form of Performance Security**
- (v) Format of Curriculum Vitae for Proposed Key Staff**
- (vi) Form for Clarification Questions**
- (vii) Information Forms 1 through 5**

(Letter Head Pad)

**BIDDER'S BID FORM –
Mirsorai Economic Zone**

Date: _____

To:

Project Director (Joint Secretary)
Support to Capacity Building of Bangladesh Economic Zones Authority
Bangladesh Economic Zones Authority,
BDBL Bhaban (Level 15), 12 Karwan Bazar, Dhaka 1215

Subject: Bid for Development of Mirsorai Economic Zone on Public-Private Partnership.

Ref: Developer Agreement No: _____

Sir,

Having examined the RFP Documents, including Addendum Nos. *[insert numbers]*, the receipt of which is hereby acknowledged, we, the undersigned, offer to design, build, finance, own, operate and transfer the Economic Zone and perform the Services under the above-named Developer Agreement in full conformity with the said RFP Documents as per the details furnished below:

- a) Projected Capital Investment, Operational Costs & Revenues
(Total investments, costs, revenues contemplated should be indicated).
- b) Projected Sources of Financing
(Sources of Financing, Debt/Equity should be indicated)
- c) Financial Returns to the Authority
(Projected payments to the Authority, including but not limited to fixed/variable lease payments, revenue sharing arrangements and a one time up-front payment to be indicated)

While indicating the amounts above, information should be provided mentioning [amount of currency in words], [amount in figures], or such other sums. The above amounts are in accordance with the Bidder's Financial Offer Schedules attached herewith and are made part of this Bid.

We undertake, if our Bid is accepted, to commence the Economic Zone and to achieve Completion within the respective times stated in the RFP Documents.

If our Bid is accepted, we undertake to provide a Performance Security in the form, in the amounts, and within the times specified in the Bidding Documents.

We agree to abide by this Bid, which consists of this letter and the other documents listed in ITB Section 3.2, for the period identified in the Bid Data Sheet as the length of the Bid Validity Period, and it shall remain binding upon us and may be accepted by you at any time before the expiration of that period. Until a formal Developer agreement (final Permit) is executed between us, this Bid, together with your written acceptance thereof and your notification of award of prequalification Permit, shall constitute a binding Developer Agreement between us.

We understand that you are not bound to accept any Bid you may receive.

Dated this _____ day of _____, *[Year]*.

[signature]

In the capacity of _____
[position]

Duly authorized to sign this bid for and on behalf of _____
[name of Bidder]

BIDDER'S FINANCIAL OFFER SCHEDULES

PREAMBLE TO THE FINANCIAL OFFER SCHEDULES

1.0 General

1.1 The Financial Offer Schedules are divided into separate Schedules as follows:

Schedule 1(A&B) Projected Capital Investment, Operational Costs & Revenues

Schedule 2 Projected Sources of Funding

Schedule 3 Financial Returns proposal to Authority

1.2 The Financial Offer Schedules do not give a full description under each item. Bidders are deemed to have read the proposed Developer Agreement and other sections of the Bidding Documents to ascertain the full scope of the requirements included in each item prior to filling in the details. The entered amounts are deemed to include the full scope as aforesaid, including overheads and profit.

1.3 If Bidders are unclear or uncertain as to the scope of any item, they shall seek clarification in accordance with the Instructions to Bidders in the Bidding Documents prior to submitting their Bid.

2.0 Financial amounts

2.1 Financial amounts shall be filled in indelible ink, and the Bidder shall initial any alterations necessary due to errors.

2.2 The financial amounts shall be quoted in the manner indicated and in the currency specified in the instructions to bidders in the Bidding Documents. For each item, Bidders shall complete each appropriate column in the respective Schedules, giving the financial breakdown as indicated in the Schedules. Financial amounts given in the Schedules against each item shall be for the scope covered by that item as detailed in the Bidding Documents.

Schedule 1A. Projected Capital Investment, Operational Costs & Revenues

Year	Capital Investment	Operational Costs	Revenues
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

Schedule 1B: Details of investments

Year	Major category	Sub Categories	Unit	Value	Amount
1					
2					
3					

Schedule 2. Projected Sources of Funding

Source	Equity	Debt

Schedule 3. Financial Returns proposal to Authority

SN	Projected Head	Amount
1	Revenue sharing arrangement	
2	An annual land lease payment in United States Dollars (US\$) per square meter of released land from the date the land is released to the Developer	
3	A one-time up-front payment (non-refundable) in United States Dollars (US\$) payable upon signature of contract	
4	An escalation formula ensuring that the annual lease payments described above are regularly adjusted according to the rate of inflation, changing land values and currency fluctuations.	

FORM OF BID SECURITY (BANK GUARANTEE)

WHEREAS,(name of Bidder including names of all Joint Venture/consortium Participants) (hereinafter called “the Bidder”) has submitted its Bid (hereinafter called the “Bid”) dated (date) for the performance of (name of Developer Agreement).

NOW KNOW ALL PEOPLE by these presents that We (Name of Bank) of (Name of country) having our registered office at (hereinafter called “the Bank”) are bound unto (hereinafter called “the Authority”) in the sum offor which payment well and truly to be made to the said Authority, the Bank binds itself, its successors, and assigns .

[The Bidder should insert the amount of the guarantee in words and in figures. This figure should be the same amount as set out in ITB Section 3.4(1) and the Bid Data Sheet. The details related to the Bid Security are set out in the same ITB Section 3.4.]

The CONDITIONS of this obligation are:

- (1) if the Bidder withdraws its Bid after the Bid Validity Period; or
- (2) if the Bidder, having been notified of the acceptance of its Bid by the Authority during the period of Bid validity but fails to provide the Performance Security to the Authority in accordance with and when required by ITB Section 6.6.

We undertake to pay to the Authority up to the above amount upon receipt of its first written demand, without the Authority having to substantiate its demand, provided that in its demand the Authority will note that the amount claimed by it is due to it owing to the occurrence of one or more of the conditions set out above, specifying the occurred condition or conditions.

This Guarantee will remain in full force up to and including 60 days after the expiry of the Bid Validity Period and it may be extended by the Authority in accordance with the Bidding Documents, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date or the extended date.

SEALED with the Common Seal of the said Bank this day of, [Year].

WITNESSES/Notarized SIGNATURE OF THE BANK

(signature, name and address)

SEAL

Name: _____

Position: _____

FORM OF PERFORMANCE SECURITY

_____ *[Bank's Name, and Address of Issuing Branch or Office]*

Beneficiary: _____ *[Name and Address of Authority]*

Date: _____

PERFORMANCE GUARANTEE NO.: _____

We have been informed that _____ *[name of Bidder]* (hereinafter called "the Bidder") has been notified and awarded prequalification Permit to develop/operate EZ No. _____ *[reference number of the prequalification Permit]* dated _____ with you, concerning a Developer Agreement to design, build, finance, own, operate and transfer a Economic Zone in MIRSORAI, Bangladesh (hereinafter called "the Developer Agreement").

Furthermore, we understand that, according to the conditions of the Developer Agreement, a performance guarantee is required.

At the request of the Bidder, we _____ *[name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ *[amount in figures]* (_____) *[amount in words]*, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Developer Agreement is in breach of its obligations under the Developer Agreement, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than the earlier of:

- (a) twelve months after fifteen (15) years [from the date of its granting]; or
- (b) twelve months after the date of termination of the Developer Agreement pursuant to its terms.

Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, (ICC Publication No. 458 except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

Yours truly,

[Name of Bank]

Authorized Signature

FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED KEY STAFF

Proposed Position: _____

Name of Firm: _____

Name of Staff: _____

Profession: _____

Date of Birth: _____

Years with Firm/Entity: _____ Nationality: _____

Membership in Professional Societies: _____

Detailed Tasks Assigned: _____

Key Qualifications:

[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations. Use about half a page.]

Education:

[Summarize college/university and other specialized education of staff member, give names of schools, dates attended, and degrees obtained. Use about one quarter of a page.]

Employment Record:

[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employment organizations, titles of positions held, and locations of assignments. For experience in last ten years, also give types of activities performed and client references, where appropriate. Use about two pages.]

Languages:

[For each language indicate proficiency: excellent, good, fair or poor in speaking, reading and writing.]

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, these data correctly describe me, my qualifications, and my experience. I also certify that I have only given permission for my CV to be included in the Bid submitted by

_____ Date: _____
[Signature of staff member and authorized representative of the firm]
Day/Month/Year

Full name of staff member: _____

_____ *[Fill in name of Bidder here.]*

Full name of authorized representative: _____

Form for Clarification Questions

Bidder's Name: _____

Bidder's Address: _____ Date Submitted: _____

Item No.	Section Reference	Page No.	Section or Article No.	Question/Query/Clarification/Comment
1.				
2.				
3.				
4.				
5.				
6.				

Information Forms

Supplementary information may be provided by Bidders in a separate volume.

Forms 1 to 5

Information Form (1)

General Information

All individual firms and each participant in a joint venture/consortium are required to complete the information in this form. Nationality information should be provided for all owners or Bidders that are partnerships or individually owned firms.

If the Bidder proposes to use nominated subcontractors, the following information should also be supplied for the subcontractor(s).

1.	Name of firm	
2.	Head office address	
3.	Telephone	Contact
4.	Fax	Telex
5.	Place of incorporation / registration	Year of incorporation / registration

Nationality of firm's owners/partners ¹		
Name		Nationality
1.		
2.		
3.		
4.		
5.		

¹To be completed by all owners of partnerships or individually owned firms.

Information Form (2A)

General Design, Build, Finance, Own and Operation Experience Information

Name of Bidder or participant of a joint venture/consortium

All individual firms and all participants of a joint venture/consortium are requested to complete the information in this form with regard to their experience in designing, building, financing, operating, and owning an Economic Zone/ Special Economic Zone/ Industrial Parks/ Free Ports.

Description	
Name of Joint Venture/consortium Participant Responsible	
Name of City/Urban area	
Country	
Area in Acres	
Project size – Investment	
Role (joint venture/consortium participant, prime, subcontractor, etc.) and percentage share in the total contract	
Nature, role and extent of participation (describe fully)	
Date of commencement of operations	
Single product or Multiproduct and categories of Industry – (describe fully)	
Annual Revenue stream - value (US\$)	
Individual for reference	
Address, Telephone, Fax for reference	

Information Form (2B)

General Turnover Information

Name of Bidder or participant of a joint venture/consortium

All individual firms and all participants of a joint venture/consortium are requested to complete the information in this form with regard to their experience in designing, building, financing, owning and operating an Economic Zone/Special Economic Zone/Industrial Park/Free Port. The information supplied should be the annual turnover of the Bidder (or each member of a joint venture/consortium), converted to U.S. dollars. The annual periods should be calendar years, with partial accounting for the year up to the date of submission of Applications.

Note: Use a separate sheet for each participant of a joint venture/consortium.

Annual turnover data (EZ/SEZ/Industrial Park/Free Port only)		
Year	Turnover (amounts billed)	US\$ equivalent (converted at the rate of exchange rate at the end of the period reported)
<i>[Year]</i>		
<i>[Year]</i>		
<i>[Year]</i>		

Information Form (2C)

Joint Venture/Consortium Summary

Names of all participants of a joint venture/consortium
1. Joint Venture/Consortium Representative
2. Participant
3. Participant
4. Participant

Total value of annual turnover relating to designing, building, financing, owning and operating an Economic Zone/Special Economic Zone/Industrial Park/Free Port, in US\$ equivalent, converted at the rate of exchange at the end of the period reported:

Annual turnover data (US\$ equivalent)				
Participant	Information Form (2B) page no.	[Year]	[Year]	[Year]
1. Joint Venture/ Consortium Representative				
2. Participant				
3. Participant				
4. Participant				
Totals				

Bidders shall append to Form 2C:

- a) A document confirming the percentage shareholding of each joint venture/consortium participant in the company to be established;

- b) A description of the role and responsibility of each joint venture/consortium participant. (Bidders shall make the precise role of each joint venture/consortium participant clear in this description);
- c) Bidders are reminded to submit the appropriate powers of attorney and to provide all other information required in the powers of attorney;
- d) A confirmation of each JV/Consortium participant's agreement to joint and several liability; and
- e) A copy of the Joint Venture/Consortium Agreement (JV/CA) or letter of intent to execute a JV/CA entered into by the participants.

Information Form (3A)

Designing an Economic Zone/Special Economic Zone/Industrial Park/Free Port

Name of Bidder or participant of a joint venture/consortium

Description of Work	
Name of Joint Venture/Consortium Participant Responsible	
Name of City/Urban area	
Country	
Investment, Area in Acres, Facilities and Categories of Industry	
Role (joint venture/consortium participant, prime, subcontractor, etc.) and percentage of shareholding	
Nature, role and extent of participation (describe fully)	
Contract value (US\$)	
Individual for reference	
Address, Telephone, Fax for reference	

Information Form (3B)

Development of an Economic Zone/Special Economic Zone/Industrial Park/Free Port

Name of Bidder or participant of a joint venture/consortium

Description of Economic Zone/Special Economic Zone/Industrial Park/Free Port	
Name of Joint Venture/Consortium Participant Responsible	
Name of City/Urban area	
Country	
Area in Acres	
Role (joint venture/consortium participant, prime, subcontractor, etc.) and percentage of shareholding	
Nature, role and extent of participation (describe fully)	
Total Investment in (US\$)	
Source of Funding	
Facilities and Categories of Industry	
Date of commencement of operations	
Annual Revenue – value in (US\$)	
Individual for reference	
Address, Telephone, Fax for reference	

Information Form (3C)

Operation of a Economic Zone/Special Economic Zone/Industrial Park/Free Port

Name of Bidder or participant of a joint venture/consortium

Description of EZ/SEZ/IP/FP	
Name of Joint Venture/Consortium Participant Responsible	
Name of City/Urban area	
Country	
Area in Acres	
Role (joint venture/consortium participant, prime, subcontractor, etc.) and percentage of shareholding	
Nature, role and extent of participation (describe fully)	
Facilities, Utilities etc	
Categories of Industry	
Date of contract commencement& termination (if any)	
Annual Revenue - value in (US\$)	
Individual for reference	
Address, Telephone, Fax for reference	

Provide a complete description of the services provided under this contract.

Information Form (4)

Financial Capabilities

Name of Bidder or participant of a joint venture/consortium

Bidders, including each partner of a joint venture/consortium, shall provide financial information to demonstrate that they meet the requirements stated in the RFP Documents. Each Bidder or participant of a joint venture/consortium shall complete this form. If necessary, separate sheets shall be used to provide complete banker information. A copy of the audited balance sheets shall be attached.

Autonomous subdivisions of parent conglomerate businesses shall submit financial information related only to the particular activities of the subdivision.

Banker	Name of banker	
	Address of banker	
	Telephone	Contact name and title
	Fax	Telex

Summarize actual assets and liabilities in US\$ equivalent (at the rates of exchange current at the end of each year) for the previous five years. Based upon known commitments, summarize projected assets and liabilities in US\$ equivalent for the next five years, unless the withholding of such information by stock market listed public companies can be substantiated by the Bidder.

Financial information in US\$ equivalent	Actual: Previous five years					Projected: Next two years	
	[Year]	[Year]	[Year]	[Year]	[Year]	[Year]	[Year]
1. Total assets							
2. Current assets							
3. Total liabilities							
4. Current liabilities							
5. Profits before taxes							
6. Profits after taxes							

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total development cash flow demands of the subject Developer Agreement.

Source of Financing	Amount (US\$ equivalent)
1.	
2.	
3.	
4.	

Attach audited financial statements—including, as a minimum, profit and loss account, balance sheet, and explanatory notes—for the period (for the individual Bidder or each participant of a joint venture/consortium).

If audits are not required by the laws of Bidders' countries of origin, partnerships and firms owned by individuals may submit their balance sheets certified by a registered accountant, and supported by copies of tax returns.

Information Form (5)
Historical Non-Performance of Concession/Contract

[The following table shall be filled in for the Bidder and for each partner of a Joint Venture/consortium]

Bidder's Legal Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture/consortium Party Legal Name: *[insert full name]*

No. and title: *[insert number and title]*

Page *[insert page number]* of *[insert total number]* pages

Non-Performing Concession/Contracts			
Concession/Contract non-performance did not occur during the [number] years			
Concession/Contract(s) not performed during the [number] years			
Year	Non performed portion of concession/contract	Concession/Contract Identification	Total Concession/Contract Amount (current value, US\$ equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/number, and any other identification]</i> Name <i>[insert full name]</i> Address <i>[insert street/city/country]</i> Reason(s) for non-performance: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
Pending litigation			
No pending litigation			

Draft Developer Agreement

between

Bangladesh Economic Zones Authority

and

- (i) Draft Form of Developer Agreement
- (ii) Appendices to the Developer Agreement

DRAFT DEVELOPER AGREEMENT
TO
DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER
MIRSORAI ECONOMIC ZONE IN BANGLADESH
SEPTEMBER 2015

DRAFT DEVELOPER AGREEMENT
TO DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER AN ECONOMIC
ZONE AT MIRSORAI, BANGLADESH

DEVELOPER AGREEMENT

THIS DEVELOPER AGREEMENT is made and entered into this ____ day of _____, [Year]

B E T W E E N

Bangladesh Economic Zones Authority established under the Prime Minister's Office,
Government of Bangladesh and having its principal place of business at *BDBL Bhaban*
(Level 15), 12 Karwan Bazar, Dhaka 1215

(hereinafter the "Authority")

– AND –

[Name of Developer Company goes here] incorporated under the laws of *[place of*
incorporation] with its principal place of business at *[Address of the Developer]*
(hereinafter the "Developer")

– AND –

_____*LIMITED, a company registered under the Companies Act, 1994, and*
having its registered office at _____, hereinafter referred to as "the Developer" (which
expression shall, unless repugnant to the context or meaning thereof, include its successors and
permitted assigns).

WHEREAS:

1. The Authority, in exercise of the powers conferred under section 4a & 8 of the Bangladesh Economic Zones Authority (BEZA) Act 2010, has the jurisdiction to enter into the Developer Agreement, as defined in Article 1.1 below, pursuant to the Applicable Law;
2. The Authority has received all requisite approvals for entering into this Developer Agreement;
3. The Authority desires to engage the Developer to design, build, finance, own, operate and transfer the MIRSORAI Economic Zone;
4. The Authority has accordingly invited proposals by its Notice/ **Request for Proposal No. ***** dated **23 September 2015** (the "Request for Proposal" or "RFP") for short listing of bidders for design, build, finance, own, operate and transfer an Economic Zone and had shortlisted certain bidders including, inter alia, the {the selected bidder/ consortium comprising _____ (collectively the "Consortium/Joint Venture")

_____ as its Lead Member} submitted the proposal the Authority had prescribed the technical and commercial terms and conditions in the RFP document.

5. After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/ Consortium} and issued its Notification of Award No./Pre-Qualification License (PQL) **dated** (hereinafter called the “NOA/PQL”) to the {selected bidder/ Consortium}.

6. {The selected bidder/ Consortium has since promoted and incorporated the Developer as a company registered under the Companies Act 1994, and has proposed the Authority to accept the Developer as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium under the NOA/PQL,} including the obligation to enter into this Developer Agreement pursuant to the NOA/PQL for executing the Project.

7. {By its letter dated, the Developer has also joined in the said request of the selected bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Developer Agreement pursuant to the NOA/PQL. The Developer has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof.}

8. The Authority has agreed to the said proposed of the {selected bidder/Consortium and the} Developer, and has accordingly agreed to enter into this Developer Agreement with the Developer for execution of the Project on PPP basis, subject to and on the terms and conditions set forth hereinafter.

9. The Consortium has represented to the Authority that it has the skills and ability to design, build, finance, own and operate the Economic Zone in an economical and effective manner with a view to promoting the Multiproduct Economic Zone in Bangladesh and agrees to do so upon and subject to the terms and conditions of the Developer Agreement Documents; and

10. The Lead Member’s parent company has guaranteed the Developer Agreement as provided in the Developer Agreement;

NOW THIS DEED WITNESSES THAT, in consideration of the mutual covenants and Agreements hereinafter set forth, the Authority and the Developer agree to as follows:

ARTICLE 1 - DEVELOPER AGREEMENT DOCUMENTS

1.1 Entirety of the Developer Agreement

This Developer Agreement to Design, Build, Finance, Own, Operate and Transfer an Economic Zone between the Authority and the Developer (the “Developer Agreement”) consists of the following documents (collectively, the “Developer Agreement Documents”), and each of the following shall be read and construed as an integral part of the Developer Agreement:

- (a)** Form of Developer Agreement;
- (b)** Special Conditions of Developer Agreement (Appendix 1 to the General Conditions of Developer Agreement)
- (c)** General Conditions of Developer Agreement; and
- (d)** Appendices to the General Conditions of Developer Agreement in addition to clause 1.1(b).

1.2 Order of Precedence

(1) In the event of any ambiguity or conflict between any of the Developer Agreement Documents listed in Article 1.1 of this Form of Developer Agreement, the order of precedence shall be the order in which the Developer Agreement Documents are listed in Article 1.1 of this Form of Developer Agreement.

(2) Notwithstanding clause 1.2(1) of this Form of Developer Agreement and any other term or condition in the Developer Agreement Documents, if any statement or provision in Appendix 7 – Developer’s Bid of the General Conditions of Developer Agreement, is not consistent with or conflicts with any other term or condition in the remainder of the Developer Agreement Documents, the remainder of the Developer Agreement Documents shall govern.

1.3 General Interpretation

Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions of Developer Agreement and Appendices to the General Conditions of Developer Agreement.

ARTICLE 2 - PARTNERSHIP ARRANGEMENT AND TERMS OF PAYMENT

2.1 Partnership arrangement

The Parties agree that the Authority shall make available 550 acres of land at MIRSORAI, Bangladesh on lease for a period of 50 years for developing the Economic Zone on a Design, Build, Finance, Own, Operate and Transfer and in consideration, the Developer shall pay an up-front payment of _____ (non-refundable and payable one time) and share Revenue Share of ____% (_____ Percent) to the Authority. The Developer shall make an investment of *[Insert amount in words and figures]* in the establishment and operation of the Economic Zone over a period of 3 years as specified in the Bidder's Financial Schedules.

2.2 Terms of Payment

The terms and procedures of payment are as set out in the General Conditions of the Developer Agreement.

ARTICLE 3 - EFFECTIVE DATE AND STARTING DATES

3.1 Effective Date and Starting Date

The Effective Date, the Design Build Starting Date and New Operations Starting Date for the Developer Agreement are set out in the General Conditions of the Developer Agreement.

3.2 GRANT OF PERMIT

Subject to and in accordance with the terms and conditions set forth in this Agreement and appendices to the Agreement, Authority hereby grants to the Developer, and the Developer hereby accepts, the economic zone Permit for a period of 50 years commencing from the Effective Date, to Design, Build, Finance, Own, Operate and Transfer at the end of the Permit period at no cost to the Authority in a reasonably good condition. Upon satisfactory performance of the developer and if the Authority thinks that the tenure of the appointment of developer requires to be extended, it may, subject to the approval of the Governing Board extend the tenure for such a period as may be determined by the Authority.

3.3 The Developer for generating revenue shall levy, demand, and collect appropriate rentals/user based-service charges from the EZ Users:

- (a) by leasing New Facilities to EZ Users;
- (b) for providing services, Operations & Maintenance, Facilities Management, Utilities and for any other services provided

3.4 The Developer shall not place or create, nor permit any subcontractor or other person claiming through or under the Developer Agreement to place or create, any Encumbrance or security interest over all or any part of Site;

3.5 The Developer shall not assign or create any lien or Encumbrance on the Developer Agreement hereby granted or on the whole or any part of the Site nor transfer or lease therewith save and except as expressly permitted by the Authority.

3.6 The Authority hereby grants the lease-hold rights in favour of Developer in accordance with land lease agreement which are Appendix 10.

IN WITNESS WHEREOF the Authority and the Developer have caused this Form of Developer Agreement to be duly executed by their duly authorized representatives.

EXECUTED as of the day and date first hereinabove mentioned.

[AUTHORITY]

By: _____

Name: _____

Title: _____

Witness: _____

[THE DEVELOPER]

By: _____

Name: _____

Title: _____

Witness: _____

[PARENT(S) OF THE DEVELOPER]

By: _____

Name: _____

Title: _____

Witness: _____

Bangladesh Economic Zone Authority

General Conditions

GENERAL CONDITIONS
FOR A DEVELOPER AGREEMENT TO
DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER
MIRSORAI ECONOMIC ZONE IN BANGLADESH

SEPTEMBER 2015

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A. GENERAL CONDITIONS OF DEVELOPER AGREEMENT

ARTICLE 1 - DEVELOPER AGREEMENT AND INTERPRETATION

1.1 Definitions

Unless the context otherwise requires, the following terms wherever used in this Developer Agreement shall have the following meanings assigned to them:

“Act” means Bangladesh Economic Zones Act 2010 (BEZA Act);

“Accounting Year” means the period of one year, starting and ending as laid out in accounting or financial statements of the Developer.

“Actual Project Cost” means the actual capital cost incurred by the Developer on the Project and/or the Project Facilities as certified by the Statutory Auditor

“Additional Cost” means the additional capital expenditure which the Developer has or would be required to incur and which has arisen as a result of Change in Law.

“Adjudicator” means the person that is named in the SC;

“Affiliate” means, with respect to any Party and/or with respect to any member of Consortium, any other Person directly or indirectly controlling, controlled by or under common control with such Party and/or member of Consortium. For the purposes of this definition, the term “control” (including with correlative meaning, the terms “controlled by” and “under common control with”) as applied to any Party or a member of Consortium, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Party or a member of Consortium whether through ownership of 50 (fifty) % or more of the voting shares, by contract, or otherwise.

“Applicable Law” means every (i) law and legislation, including the Act, (ii) code and procedure, (iii) decree and regulation, (iv) rule, (v) government agreement, (vi) industrial policy formally adopted by the Government, or (vii) any other similar measure or instrument having the force and effect of law in Bangladesh, including any Government resolution and any international agreement, convention, charter, or treaty ratified and adopted by Bangladesh;

“Applicable Permits” means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals and exemptions under or pursuant to any of the Applicable Laws or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other Transaction Document.

“Appointing Authority” is the authority specified in the SC;

“Authority” means Bangladesh Economic Zones Authority (BEZA)

“Authorities” means the Bangladesh Economic Zone Authority and the Country as specified in the SC;

“Authority’s Representative” is as defined in GC Section 7.1.1;

“Authority Event of Default” shall have the meaning as set out under Section 9.1.2.

“BB PLR” means the prime lending rate of the Bangladesh Bank prevailing as on the date of a payment due from which the computation of interest is required to be made under the Agreement.

"Bangladesh Bank" means the Bangladesh Bank, as constituted and existing under the Bangladesh Bank Order 1972 (President’s Order 127 of 1972, also referred to as P.O.127 of 1972), including any statutory modification or replacement thereof, and its successors.

“Bangladesh Accounting Standards” means the standards issued for Bangladesh by the Institute of Chartered Accountants of Bangladesh.

"BDT", "Taka" or "Bangladesh Taka" means the lawful currency of Bangladesh.

"Bank" means a Scheduled Bank as defined in the Bangladesh Bank Order (P.O.127 of 1972).

“Bid” means the documents in their entirety comprised in the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof.

“Bidding Documents” means the documents issued by the Authority in respect of the bidding process for the selection of an Developer to design, build, finance, own, operate and transfer (DBFOOT) the New Facilities and to perform the Services;

“Bid Security” means the bank guarantee furnished by the Bidder along with the Proposal.

“Book Value” means the aggregate written down value as on the date of issue of the Termination Notice in the books of the Developer of (i) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by the Developer and comprised in Project Facilities, which in the reasonable judgement of an Expert are capable of being put to use/utilized by the Authority, and (ii) the moveable assets, which the Authority agrees to take over, in accordance with Bangladesh Accounting Standards using depreciation rates as set forth in the audited financial statements of the Developer, as applicable from time to time.

“Change in Law” means any of the following events which has a Material Adverse Effect:

- (a) adoption, promulgation, modification, reinterpretation or repeal after the date of this Agreement by Parliament or any Government Authority of any statute, rule, ordinance, regulation or order, treaty, convention, directive, guideline, policy having force of law; or
- (b) the imposition by any Government Authority of any material condition (other than a condition which has been imposed as a consequence of a violation by the Developer of any Applicable Permit) in connection with the issuance, renewal or modification of any

Applicable Permits after the date of this Agreement which renders the performance by the Developer of any of the terms of this Agreement impossible or unviable; or

(c) any Applicable Permit previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of the Developer or if granted for a limited period, being renewed on terms different from those previously stipulated.

Provided that any (i) imposition of new taxes, duties, cess and the like or the increase in taxes, duties, cess and the like effected from time to time by any Government Authority, or (ii) the imposition of standards and condition of operations, maintenance and safety arising out of a new or revised Environmental Law; or (iii) the imposition of standards and terms of employment and working conditions of labourers and workmen; or (iv) any rules or regulations stipulated by a regulatory authority having jurisdiction over the Project or (v) any law imposed by the government in general which is not discriminatory upon the Developer in respect of the standards of service, shall not constitute a Change in Law.

“Change of Scope” shall have the meaning assigned to it under Section 1.11(1).

“Change of Scope Notice” shall have the meaning assigned to it under Section 1.11(2).

“Completion” means that the New Facilities and all Design-Build Services, have been completed operationally and structurally and in accordance with the Technical Standards Appendix, and the Developer is entitled to have a Completion Certificate issued in respect of the New Facilities, in accordance with Appendix 3A DBSA Section 5.2;

“Completion Certificate” means a certificate issued by the Authority/PIU in accordance with Appendix 3A DBSA Section 5.2;

“Conditions Precedent” shall mean the conditions prescribed at Section 1.10.

“Consortium” means the Selected Bidder consisting of (i) _____ and (ii) _____

“Construction Completion” means the completion of Construction Works declared by the Developer.

“Construction Performance Guarantee” shall mean the bank guarantee(s) procured by the Developer for the benefit of the Authority guaranteeing the performance of the obligations of the Developer.

“Construction Phase” means the period from the Financial Closure Date to the Commercial Operations Date.

“Construction Works” means all works, equipment’s and goods necessary to complete the Project and provide the Project Facilities in accordance with this Agreement.

“Consultation Notice” has the meaning ascribed to it in Article 9.1.3 of the General Conditions

“Contractor” means a Person with whom the Developer has entered into/may enter into a contract relating to the execution of any works and /or operation and maintenance of the Project Facilities, including the Management Contractor.

“Country” means the country specified in the SC;

“Customers” means all persons to which the Developer provides Economic Zone services, including those customers in existence as of the New Operations Starting Date and persons who become customers after the New Operations Starting Date;

“Data Room” means the data room which may be established by the Authority in the bidding process as set out in the Bidding Documents;

“Day” means the calendar day as per the Gregorian calendar.

“DBSA Section” means the Design-Build Services Appendix Section;

“Debt Due” means the aggregate of the following sums representing the amounts advanced by the Lenders towards Actual Project Cost, expressed in Bangladesh Taka as may be outstanding and payable to the Lenders under the Financing Documents on the Transfer Date:

(a) the principal amount of the debt including any subordinated debt provided by the Lenders under the Financing Documents for financing the Project (“the Principal”) but excluding (i) working capital loans; (ii) any part of the Principal that had fallen due for repayment one year prior to the Transfer Date, if the Transfer Date is related to expiry of the Agreement Period or any part of the Principal that had fallen due after the Termination Notice, if the Transfer Date is related to termination prior to the expiry of the Agreement Period; and (iii) any debt that has been rescheduled or refinanced, unless such repayment had been rescheduled or refinancing made with the prior consent of Authority; and

(b) all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-Section (a) above up to the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, and (ii) penal interest or charges, payable under the Financing Documents to any Lender.

“Defect Liability Period” means the period of validity of the warranties given by the Developer during which the Developer is responsible for defects with respect to the New Facilities, or the relevant part thereof, as set out in GC Section 8.1;

“Design-Build Documents” means the plans, specifications, designs, models, electronic models and other documents and materials relating to the design and construction of the Site and New Facilities as may be set out or contemplated in the Design-Build Services Appendix or agreed to by the Parties

“Design-Build Period” is as defined in GC Section 2.2(a);

“Design-Build Services” means the design-build services to be performed by the Developer as contemplated by the General Conditions and the Design-Build Services Appendix;

“Design-Build Starting Date” is as defined in GC Section 2.1.3;

“Developer” has the meaning set forth in Section 2(2) of the Act and refers to the organisation that designs, finances, constructs, develops, services, operates, maintains, promotes an EZ in Bangladesh and transfer the EZ to the Authority, pursuant upon receiving final EZ Permit, Developer Agreement, a subcontracting agreement executed with an EZ Permit holder, or any other legal authority under Applicable Law.

“Developer Agreement” means the agreement executed by the Authority the Developer pursuant to the Act and the Regulations/Rules that combines the legal rights and obligations of the Parties under the Developer Agreement;

“Developer Agreement Documents” means the Form of Developer Agreement, General Conditions, and all appendices to the General Conditions as set out in GC Section 1.2;

“Developer Agreement Records” is as defined in GC Section 1.8.1;

“Developer Agreement Term” means the term of the Developer Agreement, including any renewals approved by the Authority, commencing on the Effective Date and continuing to, and including, the End Date;

“Developer Equipment (Design-Build)” means all machinery, apparatus, vehicles and other equipment required for the execution and completion of the Design-Build Services and the remedying of any defects, but does not include material, machinery, apparatus and other equipment forming part of the Plant and Equipment of the New Facilities;

“Developer Equipment (Operations)” means all things of any kind whatsoever, including the equipment, materials, supplies, vehicles and consumables required to operate, maintain and repair the Site and New Facilities;

“Developer Event of Default” shall have the meaning as set out under GC Section 9.1.

“Developer Personnel” is as defined in GC Section 7.3;

“Developer Representative” is as defined in GC Section 7.1.2;

“Economic Zone” or “EZ” has the meaning set forth in Section 2(1) of the Act and refers to any delimited, physically-secured, and restricted area comprising EZ Lands that is designated as an EZ under the Act and Rules, including any commercial or industrial activity or sector excepting the negative list found in the Rules. An Economic Zone is also characterised by on-site administrative regulation, supervision, operation, management, infrastructure, and related services that are dedicated to multi-purpose EZ activities as specified in Developer Agreement.

"Effective Date" means the date on which this Developer Agreement comes into force and effect pursuant to GC Section 2.1.1.

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Project, including Users thereof, or which poses an immediate threat of material damage to the EZ;

“Encumbrance” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss to the payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site/Project Assets/Project Facilities.

“End Date” is as defined in GC Section 2.1.2;

“Environmental Law” means any statute, rule, regulation, ordinance, code, guideline or policy having the force of law, in each case, applicable to the Project now or hereafter in effect and any applicable judicial or administrative interpretation, pronouncement, order, decree or judgment, relating to the environment, health and safety.

“EPC Contract” means the contract entered into by the Developer with one or more Contractors inter alia for the purpose of design, engineering, procurement of equipment and materials (including by import thereof) and construction of the Project in accordance with the provisions of this Agreement.

“Equity” means the paid up ordinary share capital in the Developer representing the equity component of the Actual Project Cost, as capitalized in the books of the Developer.

“Equity Documents” means collectively the documents evidencing subscription to Equity to the extent of equity component of cost of the Project.

“Escrow Account” shall have the meaning assigned to it under Section 5.4

“Escrow Agreement” means the agreement to be executed inter alia between the Developer, the Authority and the Lenders/Lenders representative substantially in the format set out in Appendix 8.

“Estimated Project Cost” means the sum as stipulated in the Special Conditions being the cost of the project as estimated by the Developer and disclosed in the Proposal which is total

“Event of Default” shall have the meaning assigned to it under GC Section 9.1.

“Existing Facility” means the Site as it exists on the Design-Build Starting Date;

“EZ Activity” means any lawful economic activity undertaken by an EZ User or an EZ Resident, including any agricultural, industrial, manufacturing, service, commercial, technological, tourism, residential, recreational, or electricity-generation, transmission, or distribution activities, as well as any warehousing/logistics, transportation, training, education, financing, insurance, healthcare and scientific-research pursuits, that does not:

- (i) contravene applicable public morality or order provisions, public safety or security regulations, or public hygiene or health norms;
- (ii) violate applicable environmental laws or regulations;
- (iii) endanger, human, animal, or plant health or life;
- (iv) violate any vested intellectual property rights; and
- (v) otherwise constitute a prohibited, restricted, or excluded activity under any Applicable Law, including Section 15 of the Act.

“EZ Resident” means a natural person who is granted an EZ Certificate of Residency.

“EZ User” is synonymous with the term “Industrial Unit” as used in Section 12(a) of the Act and means the private Organisation that is granted a Permit.

“Facility” means the New Facilities, i.e., the Economic Zone built by the Developer pursuant to this Developer Agreement;

“Financial Assistance” means all funded and non-funded credit assistance including but not limited to loans, advances, lease assistance and guarantees required for the Project.

“Financial Close” means the date on which the Financing Documents providing for Financial Assistance by the Lenders, Equity Documents and the documents in respect of debt, if any, committed by the Applicant/Consortium have become effective and the Developer has access to such Financial Assistance.

"Financial Closing Date" means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine.

“Financing Documents” means, collectively, the documents executed in favour of or entered into with the Lenders, by the Developer in respect of the Financial Assistance relating to the financing (including any re-financing) of the Actual Project Cost and includes any document providing security for the Financial Assistance.

“Financing Plan” means the financing plan as envisaged under the Financing Documents for financing the cost to be incurred for implementing the Project submitted by the Developer in accordance with Section 1.10(a)(vii).

“Force Majeure” is as defined in GC Section 8.7;

“GC Section” means General Conditions Section;

“GOB” means the Government of Bangladesh.

“Incentives” means the incentives to which the Developer and unit investor shall be entitled as laid down under section 11, 12 and 13 of the Bangladesh Economic Zones Act, 2010 and notified in the Official Gazette;

“including” means including without limitation and “includes” means includes without limitation, unless expressly stated otherwise;

“Infrastructure” refers to the basic facilities, installations, and utilities and related services that are required to promote EZ development and activity in Bangladesh at the national and local levels and includes, but is not limited to, (i) buildings or other structures, (ii) sewerage, drainage, and effluent treatment facilities, (iii) electric power generation, transmission, and distribution; (iv) energy-supply and distribution installations, including gas supply, (v) wastewater, storm water, and refuse collection, treatment, and disposal facilities, (vi) solid-waste collection, treatment, disposal, and management systems, (vii) transportation networks, including roads and bridges, (viii) telecommunications and information technology, (ix)

potable water supply-and-distribution services, (x) medical and capacity training facilities and

“Lead Member” shall have the meaning set forth in GC Section 1.3.10 (4).

“Lenders” means any Persons based in Bangladesh or abroad providing Financial Assistance under the Financing Documents and includes a trustee for the holders of debentures/ or other debt instruments issued by the Developer to finance the Project.

“Liquidated Damages – Delay” is as defined in GC Section 2.3.6;

“Manager” is as defined in GC Section 7.2;

“Material Adverse Effect” means material adverse effect on (a) the ability of either Party to exercise any of their rights or discharge any of their obligations under and in accordance with the provisions of this Agreement or (b) the legality, validity, binding nature or enforceability of this Agreement.

“Month” means the calendar month as per the Gregorian calendar.

“New Facilities” means the Economic Zone designed and built by the Developer

“New Operations Period” is as defined in GC Section 2.2(b);

“New Operations Starting Date” is as defined in GC Section 2.1.3;

“Non Political Event” means the Force Majeure Events set out in GC Section 8.7.

“O&M Contract” means the contract, if any, entered into by the Developer for the operation and maintenance of the Project in accordance with the provisions of this Agreement and shall include the Management Contract.

"O&M Contractor" means the person, if any, with whom the Developer has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Developer.

“On-Site Infrastructure” means the infrastructure provided inside the perimeters of an EZ, including electric power generation, other utilities or services, and worker residences;

“Operations Services” means the Operations Services to be performed by the Developer as contemplated by the General Conditions and the Operations Services Appendix;

“Organisation” refers to any public, private, or mixed public-private entity organised under applicable law, such as a corporation, company, partnership, sole proprietorship, branch, joint-venture entity, or other organisation.

“OSA” means Operations Services Appendix;

“Parent” means the parent company of the Developer, if any;

“Party” means the Authority or the Developer, as the case may be, and “Parties” means both of them;

[Note: If a Parent signs the Developer Agreement, the Parent will be included in the definition of “Parties”.]

“Performance Security” is as defined in GC Section 5.3.1;

“Performance Standards” means the standards of performance set out in Article 4.2 of the General Conditions with regards the Project Facilities.

“Permit” means the administrative grant of permission issued by the Authority that authorises an Organisation to establish, develop, operate, maintain, and promote an EZ in Bangladesh in accordance with the Act, Rules, and all other Applicable Law.

“PIU” means Project Implementing Unit for the MIRSORAI Economic Zone Project, established by the Authority located in the Authority’s office/site for monitoring and acting on behalf of the authority in line with the roles mentioned in clause 6.2 and 6.3;

“Plant and Equipment” means the permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and intended to permanently form or forming part of the New Facilities;

“Political Event” means the Force Majeure Events set out in GC Section 8.7.

“Pre-Qualification Permit” means Pre-qualification Permit given to the winning bidder prior to carrying out activities as required for final Permit and signing of the Developer agreement - final Permit.

“Project” means the design, finance, construction, operation, maintenance, marketing and provision of the Project Facilities in accordance with the provisions of this Agreement

“Project Area Development Plan” means an area development plan in respect of the Project containing the broad details of the development of the entire Site planned by the Developer including provision of facilities for electricity, water, sewage, roads, pathways on the Site;

“Project Director” means the officer designated as such by BEZA

“Project Assets” means those assets existing at the Project site or to be developed by the Authority for this project.

“Project Contracts” means collectively this Agreement, the EPC Contract, O&M Contract and any other material contract (other than the Financing Documents, the Escrow Agreement, the Substitution Agreement or any commercial agreement with the users) entered into or may hereafter be entered into by the Developer in connection with the Project and Project Facilities.

“Project Facilities” means the facilities to be provided by the Developer, in accordance with this Agreement.

“Quarter” means a period of 3 (three) months.

“Regulations” has the meaning set forth in Section 2(9) of the Act and refers to the regulations issued by the AUTHORITY pursuant to the Act to implement the statutory provisions thereof.

“Remedial Period” has the meaning ascribed to it in Section 9.1.4.

“Request for Proposal” or “RFP” means the Request for Proposal dated 23 September **2015** issued by the Authority to the bidders and includes any addendum / clarifications issued in respect thereof by the Authority.

“Rules” has the meaning set out in Section 2(10) of the Act and is synonymous with the term “Regulations”.

“SC” means Special Conditions of the Developer Agreement

“SFB” Standard Factory Building constructed by the Developer for the EZ Users in line with the National Building Code or the Code enacted by the Authority

“Selected Bidder” means [Enter Name of Single Bidder or Consortium Details] which has been selected upon evaluation of the Proposals received in response to the RFP.

“Services” means the Design-Build Services and the Operations Services to be performed by the Developer as set out in the General Conditions and the Appendices to the General Conditions;

“Shareholder” means any of the shareholders of the Developer;

“Site” means the physical land area as set out in the Site Appendix identified for the location of the New Facilities;

“Site Information” is as defined in GC Section 3.3;

“Social Infrastructure” means buildings for public usage and convenience like Shopping Complex, Entertainment, Cinema, Post Office, Residential buildings, Hotels and other such facilities;

“Substitution Agreement” means the agreement substantially in the form set out at Appendix 9, to be entered into between the Authority, the Developer and the Lenders.

“Support Infrastructure” means utilities, other public conveniences like cafeteria, restaurants, banks, travel agents and other such facilities as needed at the Economic Zone for the convenience of the employees working at the Economic Zone.

“Subcontract” means any contract in written form, entered into by the Developer and a Subcontractor for the performance of any part of the Services;

“Subcontractor” means any person or entity which the Developer subcontracts or subconsults any part of the Services in accordance with the provisions of GC Section 7.6, including any person or entity engaged for the supply of any Plant and Equipment, Developer's Equipment (Design-Build) or Developer's Equipment (Operations) or for any other Services;

“Submission Deadline” means the date for the submission of bids, as stated or awarded by the Bidding Documents;

“Taxes” is as defined in GC Section 5.4;

“Technical Standards” is as defined in the Technical Standards Appendix;

“Termination Notice” means the termination notice issued pursuant to Section 9.1.9.

“Termination Period” shall have the meaning as set out under Section 9.1.9.

“Third Party” means any person or entity other than the Parties;

“Time for Completion” is as defined in GC Section 2.3.2;

“Time Schedule” is as defined in GC Section 2.3.3;

“Transfer” means to transfer, sell, assign, pledge, hypothecate, create a security interest in or other encumbrance on, place in trust (voting or otherwise), transfer by operation of law or in any other way dispose of, whether or not voluntarily, the legal or beneficial interest in the Equity shares of the Developer.

“Transfer Date” means the date of expiry or termination as the case may be, of the Agreement Period in accordance with the terms of this Agreement.

“Transaction Documents” means collectively the Project Contracts and the Financing Documents.

“TSA Section” means Technical Standards Appendix Section;

“Unforeseeable” means not reasonably foreseeable on the Submission Deadline by an Developer that conducted or should have conducted the inspections and examinations or who knew or should have known the information

“War Risks” is as defined in GC Section 8.8.

“Withdrawal Notice” refers to any withdrawal notice issued by Authority in connection with the Act or Rules and includes (i) cancellation of Permit, (ii) the suspension, rescission, revocation, withdrawal of Permit, lease, or other agreement.

1.2 Developer Agreement Documents

Subject to various provisions contained in the Form of Developer Agreement, all documents forming part of the Developer Agreement, and all parts thereof, are intended to be correlative, complementary and mutually explanatory. The Developer Agreement shall be read as a whole. The following appendices which are incorporated by reference into the Developer Agreement shall be referred to as follows:

Appendix “1” – Special Conditions of Developer Agreement (the “SC”)

Appendix “2” - Terms and Procedures of Payment (the “Terms and Procedures of Payment Appendix”)

Appendix “3” - Technical Specifications consisting of,

Appendix “3A” – Design-Build Services (the “Design-Build Services Appendix”)

Appendix “3B” – Operations Services (the “Operations Services Appendix”)

Appendix “3C” – Technical Standards (the “Technical Standards Appendix”)

Appendix “4” – Description of the Site (the “Site Appendix”)

Appendix “5” –	Liquidated Damages – Operations (the “Liquidated Damages – Operations Appendix”)
Appendix “6” –	Expertise of the Developer’s Personnel (the Developer’s Expertise Appendix)
Appendix “7” –	Developer’s Bid (the “Developer’s Bid”)
Appendix “8” –	Escrow Agreement
Appendix “9” –	Substitution Agreement
Appendix “10”–	Draft Land Lease Agreement

1.3 Interpretation

1.3.1 Language

(1) All Developer Agreement Documents, all correspondence and communications to be given, and all other documentation to be prepared and supplied under the Developer Agreement shall be written in the language specified in the SC and the Developer Agreement shall be construed and interpreted in accordance with that language.

(2) If any of the Developer Agreement Documents, correspondence or communications are prepared in any language other than the governing language under GC Section 1.3.1, the translation of such documents, correspondence or communications into the governing language shall prevail in matters of interpretation.

1.3.2 Singular or Plural

The singular shall include the plural and the plural shall include the singular except where the context otherwise requires.

1.3.3 Headings

The headings in the Developer Agreement Documents are included for ease of reference and shall neither constitute a part of the Developer Agreement nor affect its interpretation.

1.3.4 Persons

Words importing persons or entities shall include firms, corporations and government entities.

1.3.5 Incoterms

Unless inconsistent with any provision of the Developer Agreement, the meaning of any trade term and the rights and obligations of the Parties thereunder shall be prescribed by Incoterms.

Explanation: Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.

1.3.6 Entire Agreement

This Developer Agreement constitutes the entire agreement between the Authority and the Developer with respect to the subject matter of the Developer Agreement and supersedes all communications, negotiations and agreements, whether written or oral, made by the Parties with respect thereto made prior to the date of the Developer Agreement.

1.3.7 Amendment

No amendment or other variation of the Developer Agreement shall be effective unless it is in writing, is dated, expressly refers to the Developer Agreement and is signed by a duly authorised representative of each Party to the Developer Agreement.

1.3.8 Number of Days

Except as expressly stated to the contrary elsewhere herein, in computing the number of days for the purposes of the Developer Agreement all days shall be counted, including Fridays, Saturdays and legal holidays in Bangladesh, provided, however, that if the final day of any period shall fall on a Friday, Saturday, or legal holiday in the Country, then the final day shall be deemed to be the next day which is not a Friday, Saturday, or legal holiday in the Country.

1.3.9 Independent Contractor

The Developer shall be an independent contractor in its performance of the Developer Agreement. The Developer Agreement does not create any agency, partnership, joint venture/consortium or other joint relationship between the Authority and the Developer or its Shareholders except as may be specified in the SC.

Subject to the provisions of the Developer Agreement, the Developer shall be solely responsible for the manner in which the Developer Agreement is performed. All employees, agents, representatives or Subcontractors engaged by the Developer in connection with the performance of the Developer Agreement shall be under the complete control of the Developer and shall not be deemed to be employees of the Authority, and nothing contained in the Developer Agreement, or in any Subcontract awarded by the Developer, shall be construed to create any contractual relationship or legal obligation between the Developer's employees, agents, representatives or Subcontractors and the Authority.

1.3.10 Joint Venture/Consortium

(1) If the Developer consists of a joint venture/consortium company of more than one person, the Shareholders would hereby need to authorise the representative named in the SC to act on their behalf in exercising all the Shareholders' and Developer's rights and obligations toward the Authority under this Developer Agreement, including the receiving of approvals, consents, orders, certificates, instructions and payments from the Authority, amendment of the Developer Agreement and in all other matters under the Developer Agreement, including the settlement of disputes.

(2) If the Developer is a joint venture/consortium company of two or more persons, each Shareholder of the joint venture/consortium company shall be jointly and severally bound to the Authority for the fulfilment of the provisions of the Developer Agreement. Claims against the parent companies or the Shareholders as the case may be shall be subject to any legal defences available to the Developer, and to any limits on the liability as set out in GC Section 8.2.

(3) The composition, shareholding, control or constitution of the Developer shall be in accordance with the Developer's Bid and shall not be altered without the prior written consent of the Authority.

(4) The Shareholders shall maintain the type and amount of equity set out in the SCC. All members of the Joint Venture/Consortium shall fulfill the following equity requirements:

- a) Throughout the Design-Build period, the Lead Member is required to have thirty five percent (35%) or higher and should hold the highest share of the consortium's total equity and the lowest shareholding member of the Joint Venture/Consortium should not have shareholding less than 11%.
- b) The Lead Member and all members of the Joint Venture/Consortium are required to hold the shareholding percentage unchanged in the Joint Venture/Consortium's total equity until the completion of the fourth and final phase of the EZ development.
- c) Beyond the abovementioned period the Members of the Joint Venture/Consortium may divest or change percentage of its shareholding of the Joint Venture/Consortium with prior approval from the Authority.

1.3.11 Non-waiver

- 1) Subject to GC Section 1.3.11(2)(a), (b), and (c), no relaxation, waiver, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of the Developer Agreement or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under the Developer Agreement, nor shall any waiver by either Party of any breach of Developer Agreement operate as waiver of any subsequent or continuing breach of Developer Agreement.
- 2) To be a valid waiver, any waiver of a Party's rights, powers or remedies under the Developer Agreement shall,
 - a) be in writing;
 - b) be dated and signed by the Authority's or Developer's Representative, whichever is granting such waiver; and
 - c) specify the right, power or remedy being waived and the extent to which it is being waived.

1.3.12 Severability

If any provision or condition of the Developer Agreement is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Developer Agreement.

1.3.13 Country of Origin

“Origin” means the place where the materials, equipment and other supplies for the New Facilities are mined, grown, produced or manufactured, and from which the services are provided.

1.3.14 Survival of Obligations

Upon the termination or expiration of the Developer Agreement pursuant to the Developer Agreement, all rights and obligations of the Parties hereunder shall cease, except those noted in the SC.

1.4 Notice

All notices to be given under the Developer Agreement shall be in writing and shall be sent by either personal delivery and/or courier and/or electronic mail and/or facsimile to the address for notice of the relevant Party as set out in the SC and the following provisions shall apply:

- (a) Any notice sent by facsimile shall be confirmed by the sender no later than two days after dispatch by a notice sent by courier;
- (b) Any notice sent by courier shall be deemed to have been delivered 10 days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, with proper payment for the courier, and conveyed to the courier service for transmission; and
- (c) Any notice delivered personally or sent by facsimile shall be deemed to have been delivered on the date of dispatch.

A Party may change its address for notice pursuant to this Developer Agreement by giving the other Party notice of change in accordance with this GC Section 1.4.

The Developer’s address for the purpose of giving notice pursuant to this GC Section 1.4 shall be in the Country named in the SC.

Notices shall be deemed to include any approvals, consents, instructions, orders, certificates and similar communications to be given under the Developer Agreement.

1.5 Governing Law

This Developer Agreement, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Laws of Bangladesh.

1.6 Settlement of Disputes

Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Developer and the Lenders’ Representative. Such arbitration shall be held in accordance with the Arbitration Act, 2001.

The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Dhaka and the language of arbitration shall be English.

1.6.1 Arbitration

Arbitrators – Failing amicable settlement and/or settlement with the assistance of Expert appointed by the Parties by mutual consent, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration Act, 2001, as amended from time to time. The arbitration shall be by a panel of three Arbitrators, one to be appointed by each Party and the third, who shall act as presiding arbitrator, to be appointed by the two arbitrators appointed by the Parties. The arbitration shall be invoked by one party issuing to the other a notice in writing invoking the arbitration and appointing an Arbitrator. Upon receipt of the notice, the other Party shall appoint the second Arbitrator. The two Arbitrators so appointed shall appoint the third Arbitrator who shall act as the ‘Presiding Arbitrator’.

Place of Arbitration – The place of arbitration shall be in Dhaka, Bangladesh.

English Language – English shall be the language of the arbitration.

Procedure – The procedure to be followed within the arbitration, including appointment of arbitrator/arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration Act, 2001, as amended from time to time.

Enforcement of Award – Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

Fees and Expenses – The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid equally by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the successful party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by the Party.

Performance during Arbitration – Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

1.7 Assignment

The Developer shall not assign to any Third Party the Developer Agreement, or any part thereof, or any right, benefit, obligation, or interest therein or thereunder without the prior consent of the Authority, which consent may not be unreasonably withheld.

The Developer may assign, absolutely or by way of charge, any monies due and payable to it or that may become due and payable to it under the Developer Agreement.

To be a valid assignment which has been approved by the Authority pursuant to this GC Section 1.7, the assignment must,

- a) be in writing;
- b) be dated and signed by the Authority’s Representative; and
- c) state the specific details of the assignment.

1.8 Developer Agreement Records, Accounting and Auditing

1.8.1 Developer Agreement Records

All data, information, documentation, account, plans, programs, reports, surveys and guidelines of any kind whatsoever (the “Developer Agreement Records”) prepared by the Developer in performing the Services shall be made available to the Authority on request.

The Developer Agreement Records shall include,

- a) information of any kind whatsoever related to the finances, revenues or expenditures of the Economic Zone operations;
- b) the accounts of the Economic Zone operations at the New Facilities;
- c) the Design-Build Documents,

whether stored in hard copy or electronically.

The Developer shall provide the Authority with unrestricted access to the Developer Agreement Records with prior intimation during the term of the Developer Agreement, including the right to make and retain copies.

The Developer acknowledges that the Authority may deal with the Developer Agreement Records in such a manner as the Authority deems proper including making the Developer Agreement Records publicly available and making them available to prospective bidders who may be involved in the process to select a Substitute Developer.

1.8.2 Accounting

The Developer shall keep accurate and systematic accounts in respect of the Services and the Developer Agreement in accordance with internationally accepted accounting principles *or relevant Bangladesh accounting standards*.

1.8.3 Auditing the Developer’s Own Accounts and the Developer Agreement Records

The Authority may, in its sole discretion, audit,

- a) the Developer’s own accounts, financial information, financial statements and technical information at any reasonable time and with not less than 24 hours’ notice to the Developer; and
- b) the Developer Agreement Records and Design-Build Documents at any reasonable time and with prior intimation to the Developer,

in respect of any matters related to the Developer Agreement.

The Authority may complete the audit or audits itself or may retain an independent auditor, at the Authority’s expense, to complete the audit or audits.

1.8.4 Developer’s Audited Accounts

The Developer shall submit to the Authority, no later than 90 days after the end of the Developer’s fiscal year, the annual audited accounts of its own finances for each of the Developer’s fiscal years that occur during the Developer Agreement Term.

1.9 Developer's Claims during the Design-Build Period

If the Developer considers itself to be entitled to any extension of the Time for Completion under any section related to the Design-Build Services of these General Conditions, the Developer shall give notice to the PIU, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and no later than 30 days, after the Developer became aware, or should have become aware, of the event or circumstance.

If the Developer fails to give notice of a claim within such period of 30 days, the Time for Completion shall not be extended, and the Authority shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this GC Section 1.9 shall apply.

The Developer shall also submit any other notices related to the Design-Build Services which are required by the Developer Agreement, and supporting particulars for the claim, that are relevant to such event or circumstance.

The Developer shall proceed in accordance with GC Section 6.2.6 to request, an extension, if any, of the Time for Completion before or after its expiry in accordance with GC Section 2.3.4.

1.10 Conditions Precedent

a) The following Conditions Precedent shall be satisfied by the Developer:

- (i) furnishing of the Construction Performance Guarantee;
- (ii) furnishing of copies (certified as true copies by the Developer) of the constituent documents of the Developer;
- (iii) furnishing of all resolutions adopted by the Board of Directors of the Developer (certified as true copies by the Developer) authorizing the execution, delivery and performance by the Developer of each of the Transaction Documents;
- (iv) opening the Escrow Account and executing the Escrow Agreement;
- (v) furnishing a copy of the Management Contract, if any proposed in the Proposal;
- (vi) furnishing a certificate from its principal officer on the shareholding pattern of the Developer;
- (vii) furnishing its Financing Plan
- (viii) procuring and furnishing the following confirmations, in original and in legally binding form such as a deed under seal, from the members of the JV:
 - A. it/they shall at all times comply with their shareholding in the company;
 - B. it/they has/have the financial standing and resources to fund/raise finances for undertaking and implementing the Project in accordance with this Agreement;
 - C. the Selected Bidder is/each of the member of the Consortium is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has

requested the Authority to enter into this Agreement with the Developer and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

(ix) Furnishing to the Authority a legal opinion from the legal counsel of the Developer with respect to the authority of the Developer to enter into this Agreement and the enforceability hereof;

(x) Obtaining Applicable Permits as may be required for commencement of Construction Works in accordance with the Developer Agreement; and

(xi) Any other Conditions Precedent provided in the Special Conditions.

b) The following Conditions Precedent shall be satisfied by the Authority:

(i) Handing over physical possession of the Project Site and/or the Project Assets, on an “as is where is” basis, for the purposes of the Project;

And

(ii) Any other Conditions Precedents provided in the Special Conditions.

1.10.1 Time-Period in which Conditions Precedent must be fulfilled

The aforesaid Conditions Precedent shall be complied within 180 (one hundred eighty) days of the date on which this Agreement is executed. Each Party shall promptly inform the other Party in writing with documentary evidence when the Conditions Precedent for which it is responsible have been satisfied.

1.10.2 Waiver

Any of the Conditions Precedent set forth above may be waived fully or partially by the Authority at any time at its sole discretion or the Authority may grant additional time for compliance with these conditions and the Developer shall be bound to ensure compliance within such additional time as may be specified by the Authority.

1.10.3 Damages for not fulfilling the Conditions Precedent by the Authority

If the Developer has fulfilled all the Conditions Precedent and has not waived or extended the time for fulfilment of the Conditions Precedent by the Authority and if the Authority has failed to fulfil the Conditions Precedent to be fulfilled by it, the Authority shall be liable to pay Liquidated Damages to the Developer in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Developer. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the Liquidated Damages are paid and if, after the extended period the Authority is still not in a position to comply with the Conditions Precedent, then the Agreement shall be liable to be terminated.

1.10.4 Damages for not fulfilling the Conditions Precedent by the Developer

If the Authority has fulfilled all the Conditions Precedent and has not waived or extended the time for fulfilment of the Conditions Precedent by the Developer and if the Developer has failed to fulfil the Conditions Precedent to be fulfilled by it (and which are within the power of the Developer), the Developer shall be liable to pay Liquidated Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Developer. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the Liquidated Damages are paid and if, after the extended period the Developer is still not in a position to comply with the Conditions Precedent, then the Agreement shall be liable to be terminated.

1.10.5 Termination

In the event that the Conditions Precedents are not complied within the time (including the extended time, if any) in terms of the aforesaid Sections, this Agreement shall be liable to be terminated. If such termination is on account of failure of the Developer to comply with the Conditions Precedent, the Bid Security and / or the Performance Guarantee, as the case may be shall stand forfeited. If such termination is on account of failure of the Authority, the Authority shall be obliged to return the Bid Security and / or the Performance Guarantee, as the case may be.

1.11 Change of Scope

The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the scope of the Project as contemplated in this Agreement ("Change of Scope").

Provided no such Change of Scope shall be made in the Construction Phase if it is in the reasonable judgment of the parties hereto likely to delay the completion of the Project beyond the Scheduled Construction Completion Date.

Provided further, the cost of implementing a single Change of Scope shall not exceed a sum corresponding to [5% (five percent)] of the Estimated Project Cost and during the Agreement Period the cumulative cost of implementing orders pertaining to Change of Scope shall not exceed a sum corresponding to [20% (twenty percent)] of the Estimated Project Cost. If the Change of Scope is beyond 20% of the Estimated Project Cost, the Authority shall carry them out separately under a separate contract.

If the Authority determines that a Change of Scope is necessary, it shall issue to the Developer a notice specifying in reasonable detail the works and services contemplated thereunder (the "Change of Scope Notice").

Upon receipt of a Change of Scope Notice, the Developer shall, provide to the Authority, the following:

- a) The adverse impact, if any, which the Change of Scope is likely to have on the Project; and
- b) The cost to be incurred by the Developer for and in respect of such Change of Scope.

Upon receipt of the foregoing information, the Authority shall, if it decides to proceed with the Change of Scope, convey its agreement or otherwise of the assessment of the Developer. If the Developer does not notify any adverse impact of a Change of Scope notified under the Change of Scope Notice within 30 (thirty) days of the date thereof and/or the Authority does not disagree with the cost assessment of the Developer, the Authority shall issue an order requiring the Developer to proceed with the implementation of such Change of Scope. If an adverse impact is notified by the Developer and/or the Authority disagrees with the cost assessment, the Parties shall in good faith modify the Change of Scope envisaged so as to remove the adverse impact/agree to the cost implication for carrying out the Change of Scope within a period of 30 (thirty) days of notification of the adverse impact/cost. In the event that the Parties are unable to mutually agree to a Change of Scope and/or the cost of implementing the same, they may seek intervention of an Expert to resolve the differences and upon the final determination of the desired Change of Scope and its cost implication, the Authority may issue an order to implement the Change of Scope. The provisions of this Agreement, in so far as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Developer in respect of a Change of Scope.

Within 7 (seven) days of an order for Change of Scope being issued, the Authority shall make an advance payment to the Developer of a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder. The Developer shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Developer such amounts as are certified by the Statutory Auditors as being expended by the Developer for and in respect of implementing Construction Works or procuring equipments following an order for a Change of Scope.

Notwithstanding anything to the contrary contained in Section 1.11(6), costs arising out of any Change of Scope Order issued during the Construction Phase shall be borne by the Developer, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Estimated Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Section 1.11(6).

For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Estimated Project Cost shall, to the extent borne by the Developer, be deemed to form part of the Actual Project Cost.

Notwithstanding anything to the contrary contained in this Section 1.11, the Authority may, after giving the Change of Scope Notice to the Developer and considering its reply thereto, decide to seek competitive bids for carrying out the works envisaged in a Change of Scope; provided that the Developer shall have the option of matching the first ranked bid, in terms of bid amount proposed by the first ranked bid as the cost of carrying out the works envisaged in the Change of Scope - subject to payment of 2% (two per cent) of the bid amount to the Authority, and thereupon securing the award

of such works or services. For the avoidance of doubt, it is agreed that the Developer shall be entitled to exercise such option only if it has participated in the bidding process and its bid amount does not exceed the first ranked bid by more than 10% (ten percent) of the bid amount of the first ranked bid. The works undertaken in accordance with this Section 1.11(8) shall conform to the specifications and standards as prescribed in the Project Requirements and shall be carried out in a manner that minimizes the disruption in operation of the Project.

If the Developer determines at any time that a Change of Scope is necessary for providing safer and improved Project Facilities, it shall by notice in writing request the Authority to consider such Change of Scope. The Developer may implement the Project and provide the Services in accordance with the Change of Scope as may be approved in writing by the Authority and all the provisions of this Section 1 for the Project Implementation shall mutatis mutandis apply. Provided, it is clarified that the provisions contained in Section 1.11(7) and (8) shall not apply to a Change of Scope required by the Developer.

B. SUBJECT MATTER OF THE DEVELOPER AGREEMENT

ARTICLE 2 - DEVELOPER AGREEMENT TERM, TIMING AND COMPLETION

2.1 General

2.1.1 Effectiveness of Developer Agreement

The Form of Developer Agreement shall be signed by the Developer, prior to its signing by the Authority. The Developer Agreement shall come into force and effect on the date the Developer Agreement is signed by the Authority and the Developer. (the “Effective Date”).

2.1.2 Expiration of Developer Agreement

This Developer Agreement shall terminate on either,

- (a) the specified period of 50 years from the Effective Date;
- (b) the date of Developer Agreement termination pursuant to GC Section 9.1.1,

The “End Date”, whichever of the above 2.1.2 (a) or (b) is applicable.

2.1.3 Commencement of Services

- (a) Unless otherwise stated in the SC, the Design-Build Starting Date shall be no later than 30 days after the Effective Date.
- (b) The “New Operations Starting Date” shall be the date specified in SC.

2.2 Design-Build Period and New Operations Period

The Developer Agreement Term shall be divided into two periods as follows:

- (a) the period commencing on the Effective Date and ending on the day immediately prior to the Time for Completion (the “Design-Build Period”); and
- (b) the period commencing on the New Operations Starting Date and ending on the End Date (the “New Operations Period”).

2.3 Design-Build Period – Commencement, Delays and Suspension

2.3.1 Commencement of the Design-Build Services

The Developer shall commence the Design-Build Services no later than the Design-Build Starting Date, and shall then proceed with the Design-Build Services with due expedition and without delay.

2.3.2 Time for Completion

The Developer shall complete the whole of the Design-Build Services in accordance with the time for completion set out in the SC (“Time for Completion”) for the Design-Build Services including, completing all of the Design-Build Services such that the completed New Facilities can be used as fully operational New Facilities in accordance with the Developer Agreement.

2.3.3 Design-Build Time Schedule

(1) The Developer shall submit a detailed time programme (the “Time Schedule”) to the PIU no later than 30 days after the Design-Build Starting Date. The Developer shall also submit a revised Time Schedule whenever the previous Time Schedule is inconsistent with actual progress or with the Developer’s obligations. Each Time Schedule shall include a description of,

- (a) the order in which the Developer intends to carry out the Design-Build Services, including the anticipated timing of each stage of design, Design-Build Documents, procurement, manufacture, inspection, delivery to the Site, construction, erection, testing and commissioning;
- (b) the periods for review and any other submissions, approvals and consents specified in the Developer Agreement;
- (c) the sequence and timing of inspections and tests specified in the Developer Agreement;
- (d) the scheduled Time for Completion, the planned Time for Completion and the planned New Operations Starting Date;
- (e) all major events and activities in the production of Design-Build Documents; and
- (f) all major phases and milestones of the Design-Build Services.

(2) The PIU shall review each Time Schedule and provide comments to the Developer as to whether the Time Schedule complies with the Developer Agreement. If the PIU fails to provide such comments prior to the expiration of 21 days after receiving a Time Schedule, the Developer shall proceed in accordance with the Time Schedule, subject to its other obligations under the Developer Agreement. The Developer shall be entitled to rely upon the Time Schedule when planning its activities.

(3) The Developer shall promptly give notice to the PIU of specific probable future events or circumstances which may adversely affect the Design-Build Services or delay the execution of the Design-Build Services. The PIU may require the Developer to submit an estimate of the anticipated effect of the future event or circumstances.

(4) If, at any time, PIU gives notice to the Developer that a Time Schedule fails, to the extent stated, to comply with the Developer Agreement or to be consistent with actual progress and the Developer’s stated intentions, the Developer shall submit a revised Time Schedule to the PIU in accordance with this GC Section 2.3.3.

2.3.4 Extension of the Time for Completion

The Time for Completion may be extended if the Developer is delayed or impeded in the performance of the Design-Build Services by reason of any of the following:

- (a) a change in time for completion can be given by the Authority provided the Parties have agreed to an adjustment to the Time for Completion;

- (b) an occurrence of Force Majeure as provided in GC Section 8.7, Unforeseeable physical conditions as provided for in GC Section 8.6. or loss or damage as a result of the occurrences set out in GC Section 8.3;
- (c) any discriminatory change in the Applicable Law in accordance with GC Section 8.9;
- (d) any default or breach of the Developer Agreement by the Authority or any activity, act or omission of any other contractors employed by the Authority; or
- (e) any other matter specifically mentioned as providing an extension of the Time for Completion in the Developer Agreement,

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the actual delay or impediment sustained by the Developer.

The Developer shall, at all times, use reasonable efforts to minimize any delay in the performance of its obligations under the Developer Agreement.

2.3.5 Rate of Progress

If, at any time, the Developer's progress in respect of the Design-Build Services,

- (a) is too slow to complete the Design-Build Services in accordance with the Time for Completion; or
- (b) has fallen, or will fall, behind the current Time Schedule

other than as a result of a cause listed in GC Section 2.3.4, then the PIU may instruct the Developer to submit a revised Time Schedule and supporting report describing the revised methods which the Developer proposes to adopt in order to expedite progress and complete the Design-Build Services.

Unless the PIU notifies otherwise, the Developer shall adopt the revised methods referred to in GC Section 2.3.5(a) and (b), which may require increases in,

- (1) the working hours or in the numbers of Developer's Personnel, or both; or
- (2) Plant and Equipment,

at the risk and cost of the Developer. If these revised methods cause the Authority to incur additional costs, the Developer shall, subject to GC Section 1.9, pay these costs to the Authority, in addition to delay damages, if any, under GC Section 2.3.6.

2.3.6 Delay of Completion – Liquidated Damages - Delay

(1) The Developer guarantees that it shall attain Completion of the New Facilities in accordance with the Time for Completion specified in the SC and GC Section 2.3.2 or in accordance with an extension of the Time for Completion granted to the Developer in accordance with GC Section 2.3.4.

(2) If the Developer fails to attain Completion of the New Facilities within the Time for Completion, or any extension thereof in accordance with GC Section 2.3.4, the Developer shall pay to the Authority liquidated damages in the amount specified in the SC ("Liquidated

Damages - Delay”). The aggregate amount of Liquidated Damages - Delay shall in no event exceed the amount specified as “Maximum” in the SC. The Authority may terminate the Developer Agreement pursuant to GC Section 9.1.1 if the Developer reaches the “Maximum” level for Liquidated Damages – Delay.

(3) The payment or payments by the Developer of Liquidated Damages – Delay shall completely satisfy the Developer’s obligation to attain Completion of the New Facilities within the Time for Completion or any extension thereof pursuant to GC Section 2.3.4.

(4) The payment or payments by the Developer of Liquidated Damages – Delay shall not in any way relieve the Developer of its obligations to complete the New Facilities or any other obligations and liabilities of the Developer under the Developer Agreement.

2.4 New Operations Period

2.4.1 Commencement of the Operations - Services

The Developer shall commence the Operations Services no later than the completion of the and shall proceed with the Operations Services with due expedition and without delay.

ARTICLE 3 - OBLIGATIONS OF THE DEVELOPER

3.1 Developer Obligations

Developer, as well as their subcontractors, shall comply with the following obligations:

- (a) to adhere to all Applicable Law, including the Act, these Rules, the governing Permit, and Developer Agreement;
- (b) to prepare, either individually or in cooperation with other Persons, the detailed master plan for the designated EZ, including the land-use designations, social mitigation measures, and zoning plans, to be approved by the Authority under Applicable Law, including the Act, Rules, and any applicable resolution issued by the Governing Board;
- (c) to construct and develop on EZ Lands, including On-Site Infrastructure, transportation connections, in accordance with all Applicable Law, including the Act, Rules, the governing Permit, and the Developer Agreement;
- (d) To develop the EZ in a reasonable commercial fashion in conformity with all Applicable Law, including the Act, Rules, the governing Permit, and Developer Agreement, consistent with Bangladesh's long-term sustainable economic development goals;
- (e) to submit to the Authority an annual report that provides the following information for the designated EZ:
 - (i) Investments undertaken during the preceding calendar year and the investments projected for the forthcoming calendar year;
 - (ii) Area of EZ Lands under development and the construction thereon;
- (f) to adhere to the performance requirements of the phased development schedule for the EZ as specified in the governing Permit, Developer Agreement, and any other Applicable Law, as well as to the financial development obligations required by the Authority, such as the amount of, and time schedule for, capital and debt financing;
- (g) to comply with the environmental and labour obligations prescribed by Section 33 and Section 34 of the Act, Rules, and all Applicable Law;
- (h) to pay all required fees, taxes, or any other dues owed to Authority;
- (i) to keep all company books, records, accounts, and financial statements in conformity with international financial reporting standards as subject to audit under Applicable Law; and
- (j) to comply with any other obligation under Applicable Law, including the Act, these Rules, the governing Permit, and Developer Agreement.
- (k) the Developer shall procure each of the Project Contracts contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Developer in the event of Termination or suspension (the "Covenant"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Contracts shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Developer expressly agrees to include the Covenant in all its Project Contracts and undertakes that it shall,

in respect of each of the Project Contracts, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party (ies) of each of the Project Contracts, where under such counter party (ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or suspension.

3.2 Developer Obligations during Operation Services

Developer, as well as the subcontractors, shall comply with the following obligations:

- (a) to adhere to all Applicable Law, including the Act, Rules, the governing Permit, and Developer Agreement;
- (b) to monitor the activities of all EZ Users and any EZ Residents in accordance with all Applicable Law, as well as with the EZ internal operating rules and procedures, including those rules and procedures related to health, safety, and environmental matters, and to notify the Authority of any EZ User or EZ Resident statutory or regulatory violations or non-compliance;
- (c) to operate the EZ in a reasonable commercial manner in conformity with all Applicable Law, including the Act, Rules, the governing Permit, and Developer Agreement, consistent with Bangladesh's long-term sustainable economic development goals;
- (d) to maintain at all times all On-Site Infrastructure, as well as all EZ utilities and other basic services described in the governing Permit and Developer Agreement in fully operational condition;
- (e) to provide reasonably equal treatment to, and avoid discriminating against, any EZ Users or EZ Residents in accordance with Applicable Law;
- (f) to set fees for any utilities or other basic services provided in the EZ in conformity with reasonable commercial considerations as regulated by Applicable Law;
- (g) to promote the EZ in coordination with the Authority both nationally and internationally;
- (h) to submit to the Authority an annual report that provides the following information for the designated EZ:
 - (i) Investments undertaken during the preceding calendar year and the investments projected for the forthcoming calendar year;
 - (ii) Number, size, employment, investment, and business activities of all EZ Users;
 - (iii) Area of EZ Lands under operation and the On-site Infrastructure constructed thereon; and
 - (iv) Other information deemed relevant by the Authority;
 - (v) Details of Developer's financial statements (P&L, Cash Flow, Balance Sheets and any other relevant documents) including all the relevant schedules
- (i) to submit to the Authority on a quarterly basis a report that provides the following information for the designated EZ for each calendar month of EZ operation:
 - (i) Employment statistics, including the number of female workers employed;
 - (ii) The volume and value of all exports from the economic zone;

- (iii) The volume and value of all other sales, including all sales made to another EZ customs-controlled area, as well as any sales made within Bangladesh; and
 - (iv) The total monetary value of investments in the designated economic zone.
- (j) to adhere to the performance requirements of the operation schedule for the EZ as prescribed by the governing Permit, Developer Agreement, and any other Applicable Law, as well as to the financial operation obligations required by the Authority, such as the amount of, time schedule for, capital and debt financing in reference to Appendix 3A, 3B & 3C of this Agreement;
 - (k) to provide the level of technical training to those Bangladeshi workers employed by the Developer as provided under the governing Permit, Developer Agreement;
 - (l) to comply with the environmental and labour obligations prescribed by Section 33 and Section 34 of the Act, Rules, and all Applicable Law;
 - (m) to keep all company books, records, accounts, and financial statements in conformity with international financial reporting standards as subject to audit under Applicable Law;
 - (n) to maintain all facilities and all On-Site Infrastructure in good working order in accordance with all Applicable Law, including the governing Permit, Developer Agreement;
 - (o) to pay all required fees, taxes, or any other dues owed to Authority;
 - (p) to carry out any administrative function in the EZ that is delegated by the Authority, in accordance with Applicable Law;
 - (q) to provide adequate security at the perimeter and common areas of the designated EZ; and
 - (r) to comply with any other obligation under Applicable Law, including the Act, Rules, the governing Permit, and Developer Agreement.

3.3 Authority's Access to the Site and New Facilities

The Developer shall, during both the Design-Build Period and the New Operations Period, provide free and open access to the Officers and Representatives of the Authority and PU to Site, the Existing Facility and the New Facilities at the Authority's request for the purpose of observing the EZ activities including adherence by the Developer to the safety and health regulations and for issuing reasonable instructions the Developer.

The Developer shall give all reasonable access to other contractors employed by the Authority on or near the Site to carry out their work.

The Developer shall also arrange to perform its work so as to minimize, to the extent possible, interference with the work of other contractors. The PIU shall determine the resolution of any difference or conflict that may arise between the Developer and other contractors and the workers of the Authority in regard to their work *in accordance with clause 6.2.6.*

ARTICLE 4 - OBLIGATIONS OF THE AUTHORITY

4.1 Authority's Assistance to the Developer

The Authority shall use reasonable efforts to,

- (a) arrange for providing the Developer, Subcontractors and Developer's Personnel with work permits and such other documents as shall be necessary to enable the Developer, Subcontractors or Developer's Personnel to perform their respective Services;
- (a) arrange for Developer's Personnel and, if appropriate, their eligible dependants to obtain promptly all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Country;
- (b) facilitate the prompt clearance through customs of any property required for the Services and of the personal effects of the Developer's Personnel and their eligible dependants; and
- (c) issue to officials, agents and representatives of the Authority all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

4.2 Access to the Site

The Authority shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto for the proper execution of the Developer Agreement including all requisite rights of way.

4.3 Reviews and Approvals of Submissions

Except as otherwise provided in the Developer Agreement, if the Developer submits a plan, report or other documentation to the Authority in writing, and the Authority, or the PIU, is required to approve that submission, the PIU shall review and either approve or provide written comment on the Developer's submission no later than 14 days (or 45 days for a master plan) after the day of submission by the Developer to the PIU.

If the PIU fails to approve or refuses to approve the Developer's submission in accordance with this GC Section 4.3, the Developer shall notify the Authority in writing that it has not received a response to its submission.

If the PIU fails to respond to the Developer's written notification pursuant to this GC Section 4.3 within 14 days (or 45 days for a master plan) after the receipt by the PIU, as applicable, of the Developer's written notification, the Developer's submission shall be deemed to be approved.

General Rights Duties and Obligations

Of the Developer

(1) Applicable Permits

The Developer shall at all times during the Agreement Period obtain, maintain and comply with the Applicable Permits.

(2) Taxes and duties

The Developer shall during the Agreement Period pay in a timely manner all taxes, duties, levies, VAT, cess and charges including but not limited to income tax, sales tax, excise duty, customs duty, service tax and octroi that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project/the Project Facilities.

(3) Engagement of Contractors

The Developer may engage a third party entity as a Contractor or a Management Contractor, entrusting it with the responsibilities of constructing or operating and managing the Project Facilities either fully or a material part of it. as per Performance Standards. Provided that:

- (a) the Developer shall notify the Authority of its intention to engage such Contractor.
- (b) the Authority shall form a committee for selection and engagement of such Contractor, representing the Developer and the Authority within 7 days of such notification. The Committee shall recommend engagement of such Contractor within 7 days of formation of the committee, except the following:

The persons/entities/contractors who are barred by any department of the Government from carrying out any government works, shall not be approved for engagement as a Contractor. Any entity/entities, in which such persons/entities/contractors have a stake or representation in any form, shall not also be approved for engagement as Contractors.

- (c) The Developer shall at all times be solely responsible for all its obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the Developer from its obligations or liability hereunder and the Developer shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in the construction and erection and/or installation of the structures/equipment or any part thereof and for the operation and maintenance of the Project/the Project Facilities in accordance with the provisions of this Agreement.
- (d) The Developer should have obtained requisite security clearance for the Contractor the Developer intends to engage.
- (e) The Developer shall ensure that the Project Contracts contain provisions that entitle the Authority to step into such contract in its sole discretion in substitution of the Developer in the event of termination or suspension of this Agreement.

(f) Any contract that it enters with an Affiliate in respect of the Project shall be on an arm's length basis.

Provided further that the Developer may engage or hire individuals and advisors on its own as employees or advisors possessing the requisite skill, expertise and capability for designing, engineering, procurement and construction of civil/mechanical/electrical engineering structures/equipment, and/or operation and maintenance of the Project Facilities.

(4) Condition Survey prior to Expiry of the Agreement

(a) The Developer agrees that at least 6 (six) months prior to the expiry by efflux of time of the Agreement Period, it shall, cause to be conducted at its cost by an Expert appointed by the Parties by mutual consent, a condition survey and an inventory of the entire Project Facilities in the books of accounts of the Developer. The Developer shall maintain and repair the Project Facilities on a regular basis, to achieve the Performance Standards, so that they are in usable state at the time of expiry of the Agreement. However, reduction of efficiency due to normal wear and tear, shall be accepted. Provided that the opinion of the Expert with respect to the usability of the Project Facilities shall be final.

The following provisions shall apply:

If, as a result of such survey, the Expert observes/notices that the Project Assets and/or the Project Facilities or any part thereof is not usable, the Developer shall, at its cost and expenses, take all necessary steps to put the same in usable condition well before the Transfer Date.

In the event the Developer fails to comply with this provision before expiry of the Agreement Period, the Authority may itself cause the condition survey and inventory of the Project Assets and Project Facilities to be conducted and remove any defect or deficiency and recover the expenses from O&M Performance Guarantee.

Of the Authority

(1) Assistance in obtaining Approvals, Permits and Licenses

The Authority shall, at the written request of the Developer, but without guarantees and/or without assuming any responsibility in that regard, issue recommendatory letters and make best efforts to assist the Developer in obtaining all the Applicable Permits including renewals thereof. Provided that, nothing contained in this Section shall relieve the Developer of its obligations under this Agreement to obtain the Applicable Permits and to keep them in force and effect throughout the Agreement Period.

(2) Taxes and Duties

Any levy or levies including increase therein of taxes, duties, cess and the hike, on account of/in respect of Project Assets payable to any Government Authority or any statutory authority shall be met and paid by the Authority.

(3) General rights of inspection and verification

The Authority may, during the duration of the Agreement, itself or by appointment of Experts verify the performance of obligations of the Developer as set out in this Agreement.

Of the Authority and the Developer

(1) Compliance with Applicable Laws

The Parties shall perform their respective obligations under this Agreement in accordance with the Applicable Laws and Applicable Permits.

(2) Rights to Documents

(a) Authority's Documents

Documents and computer programs or copies thereof, if any, provided by the Authority to the Developer, shall always remain the property of the Authority. Such documents, computer programs and/or copies shall not be used by the Developer for the purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Authority, be returned by the Developer to the Authority on the Transfer Date.

(b) Developer's Documents

Documents and computer programs provided by the Developer, or which are developed (and owned by the Developer) for operation and/or maintenance of the Project /the Project Facilities shall be handed over by the Developer to the Authority free of cost on the Transfer Date.

(c) Confidentiality

All confidential information and documents (whether financial, technical or otherwise) provided by either Party to the other shall not, unless compelled by law or the process of a Government Authority, be disclosed to any Person without the consent of the other Party with the exception of providing such information to legal advisors/auditors of the concerned party on a need-to-know basis. This covenant shall survive the Agreement Period.

(3) Obligation to Cooperate

The Parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement.

(4) Substitution Agreement

The Substitution Agreement shall or may be executed within 30 (thirty) days' of notice by the Developer to the Authority of the Lenders' readiness to execute the same.

C. PAYMENT

ARTICLE 5 -RETURNS TO THE AUTHORITY AND PAYMENT

5.1 Returns to the Authority

The Returns to the Authority are the following:

- (1) A one-time up-front payment payable upon signature of contract, per acre of gross land;
- (2) An annual land lease payment per square meter of released land from the date the land is released to the Developer;
- (3) Revenue sharing arrangement payment by the Developer to the Authority; and
- (4) An escalation formula ensuring that the annual lease payments described above are regularly adjusted according to the rate of inflation, changing land values and currency fluctuations.

The above amounts to be paid by the Developer to the Authority shall be as specified in Appendix 2 of the Form of Developer Agreement. Unless indicated otherwise in the SC, they are not subject to any alteration.

5.2 Terms of Payment

- (1) The amounts shall be paid as specified in the corresponding Terms and Procedures of Payment Appendix 2 to the Developer Agreement. The procedures to be followed for making payments shall be those outlined in the same Appendix.
- (2) In the event that the Developer fails to make any payment by its respective due date or within the period set forth in the Developer Agreement, the interest on the amount of such delayed payment shall be at the rate shown in the SC and as specified in the SC for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.
- (3) The currency or currencies in which payments are made by the Developer under this Developer Agreement shall be as specified in the SC.
- (4) All payments shall be made in the currency or currencies specified in the corresponding Terms and Procedures of Payment Appendix pursuant to this GC Section 5.2.

5.3 Securities

5.3.1 Performance Security

The Developer shall provide a security for the Developer's proper performance of the Developer Agreement to the Authority no later than the date specified in the Bidding Documents (the "Performance Security").

Performance Security shall be,

- a) In the amount specified in the SC;

- b) Denominated in the currency or currencies of the Developer Agreement, or in a freely convertible currency acceptable to the Authority; and
- c) Shall be in the form specified in the Bidding Documents or in another form approved by the Authority.

The Performance Security is a bank guarantee and shall be issued by either,

- a. A bank located in Bangladesh; or
- b. A foreign bank through a correspondent bank located in the Country.

The Performance Security shall be valid until 15 years after the Effective Date till the start of the New Operations Starting Date, or any extension thereof to the New Operations Starting Date.

The Authority shall return the Performance Security no later than 60 days after its expiration.

The cost of complying with this GC Section 5.3.1 shall be borne by the Developer.

5.4 Taxes and Duties

Except as otherwise specifically provided in the Developer Agreement, the Developer shall bear and pay all taxes, duties, levies and charges (the “Taxes”) assessed on the Developer, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Services in and outside of the Country.

If any tax exemptions, reductions, allowances or privileges may be available to the Developer in the Country, the Authority shall use reasonable efforts to enable the Developer to benefit from any such tax savings to the maximum allowable extent.

Escrow Account

(1) The Developer shall maintain an escrow account with a Bank approved by the Lenders (“Escrow Account”), during the subsistence of this Agreement and enter into an agreement substantially in the format prescribed in Appendix 8 with such Bank to ensure that all proceeds for financing the Project and all revenues and other receipts arising from the Project and under any agreements, including this Agreement received by the Developer are deposited into such Escrow Account. Provided, the Developer shall not deposit any amounts including the cesses and duties collected by it from the users on behalf of the Authority or such other authority or pursuant to any other instructions in respect thereof in the Escrow Account and shall deposit the same in a separate account dedicated for the same and maintained by it in trust for the Authority or such other authority.

(2) Withdrawals and appropriations during the Agreement Period, at any relevant time, from the Escrow Account shall be in the following order of priority:

- (a) For all taxes due and payable by the Developer;
- (b) Towards payment of License Fee, if any;
- (c) All construction/implementation expenses relating to the Project/Project Facilities, subject to limits if any set out under the Financing Documents;

(d) All expenses relating to operations and management of the Project/Project Facilities, subject to limits if any set out under the Financing Documents;

(e) Towards its debt service obligations under the Financing Documents;

(f) Towards payment of Royalty and other sums payable to the Authority and Damages, if any;

(g) Towards any reserve requirements in accordance with the Financing Documents;

and the Developer shall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due in any Quarter have been made and/or adequate reserves have been created in respect thereof for that Quarter. Provided, upon issuance of Termination Notice and/or suspension of the Developer in accordance with the provisions of this Agreement, withdrawal from the Escrow Account shall be made only in accordance with the written instructions of the Authority and the Lenders.

(3) All amounts standing to the credit of the Escrow Account at the end of the Agreement Period or on Termination of this Agreement including amounts credited to the Escrow Account towards compensation payable shall be appropriated in the following order of priority:

(a) Towards taxes and statutory dues payable by the Developer;

(b) Compensation to Lenders in terms of the Financing Documents towards discharge of the Developer's liability under such Financing Documents;

(c) All amounts due to the Authority and amounts payable towards transfer of the Project Facilities by the Developer in accordance with this Agreement;

and the Developer shall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Lenders and the Authority.

D. EXECUTION OF THE SERVICES

ARTICLE 6 - DEVELOPER AGREEMENT ADMINISTRATION AND SUPERVISION DURING THE DESIGN-BUILD AND NEW OPERATIONS PERIODS

6.1 General

The Parties acknowledge that two separate approaches to Developer Agreement administration and supervision will be in place during the Developer Agreement Term as follows:

- (a) from the Effective Date until the Time for Completion, the Design-Build Supervision approach will be put in place by the Authority; and
- (b) from the New Operations Starting Date until the End Date, the Operations Supervision approach will be put in place by the Authority.

6.2 Design-Build Supervision

6.2.1 Supervision during the Design-Build Period

GC Section 6.2 shall apply only during the Design-Build Period.

6.2.2 PIU's Duties and Authority (Design-Build Period)

- (1) The Authority shall appoint the PIU who shall be responsible for Developer Agreement management and supervision during the Design-Build Period. The PIU's staff shall include suitably qualified professionals and consultants who are competent to carry out these duties.
- (2) The PIU shall have no authority to amend or make changes to the Developer Agreement.
- (3) Except as specifically provided otherwise in the Developer Agreement, the PIU may exercise the authority attributable to the PIU as specified in or necessarily to be implied from the Developer Agreement. The Authority undertakes not to impose further constraints on the PIU's authority, except as agreed with the Developer.
- (4) If the PIU is obligated to obtain the approval of the Authority before exercising a specific authority, these restrictions shall be set out in the SC. If the PIU exercises a specified authority for which the Authority's approval is required then, for the purposes of the Developer Agreement, the Authority shall be deemed to have given approval.

Except as otherwise stated in the Developer Agreement,

- (a) If the PIU carries out duties or exercises authority, specified in or implied by the Developer Agreement, the PIU shall be deemed to act for the Authority;
- (b) The PIU has no authority to relieve any Party of any duties, obligations or responsibilities under the Developer Agreement; and
- (c) Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by the PIU, including absence of disapproval, shall not relieve the Developer from any responsibility it has under the

Developer Agreement, including responsibility for errors, omissions, discrepancies and non-compliances.

6.2.3 Delegation by the PIU

The PIU may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, or independent inspectors appointed to inspect or test items of Plant or Equipment. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. Unless otherwise agreed by both Parties, the PIU shall not delegate the authority to determine any matter in accordance with GC Section 6.2.6.

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in GC Section 1.3.1.

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorized to issue instructions to the Developer to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the PIU. However,

- (a) any failure to disapprove any work or Plant and Equipment shall not constitute approval, and shall therefore not prejudice the right of the PIU to reject the work or the Plant and Equipment; and
- (b) if the Developer questions any resolution or instruction of an assistant, the Developer may refer the matter to the PIU, who shall promptly confirm, reverse or vary the resolution or instruction.

6.2.4 Instructions of the PIU

The PIU may issue to the Developer, at any time during the Design-Build Period, instructions which may be necessary for the execution of the Design-Build Services and the remedying of any defects, all in accordance with the Developer Agreement. The Developer shall only take instructions from the PIU, or from an assistant to whom the appropriate authority has been delegated under GC Section 6.2.3.

The Developer shall comply with the instructions given by the PIU or delegated assistant, on any matter related to the Developer Agreement. These instructions shall be given in writing.

6.2.5 Replacement of the PIU

If the Authority intends to replace the PIU, the Authority shall, not less than 42 days before the intended date of replacement, give notice to the Developer of the name, address and relevant experience of the intended replacement PIU. The Authority shall not replace the PIU with a person against whom the Developer raises reasonable objection by notice to the Authority, with supporting particulars.

6.2.6 Resolutions by the PIU

Whenever the Developer Agreement provides that the PIU to proceed in accordance with this GC Section 6.2.6 to agree or resolve any matter, the PIU shall consult with each Party in an endeavour to reach an agreement. If an agreement is not achieved, the PIU shall make a fair resolution in accordance with the Developer Agreement, taking due regard of all relevant circumstances.

The PIU shall give notice to the Parties of each agreement or resolution, with supporting particulars. Each Party shall give effect to each agreement or resolution unless and until revised under GC Section 1.9.

6.3 Operations Supervision

6.3.1 Supervision during the New Operations Period

This GC Section 6.3 shall apply only during the New Operations Period solely for the purpose of resolving transition issues and any outstanding issues arising during the New Operations Period.

6.3.2 Operations - PIU's Duties and Authority

1. The Authority shall appoint Program Implementing Unit (the "PIU") which shall carry out the duties assigned to it in the Developer Agreement. The PIU's staff shall include suitably qualified professionals who are competent to carry out these duties.

2. The PIU shall have no authority to amend the Developer Agreement.

3. The PIU may exercise the authority attributable to the PIU as specified in or necessarily to be implied from the Developer Agreement. The Authority undertakes not to impose further constraints on the PIU's authority, except as agreed with the Developer.

4. If the PIU is required to obtain the approval of the Authority before exercising a specified authority, the requirements shall be stated in the SC. If the PIU exercises a specified authority for which the Authority's approval is required, then for the purposes of the Developer Agreement the Authority shall be deemed to have given approval.

5. Except as otherwise stated in these General Conditions,

(1) whenever carrying out duties or exercising authority, specified in or implied by the Developer Agreement, the PIU shall be deemed to act for the Authority;

(2) the PIU has no authority to relieve either Party of any duties, obligations or responsibilities under the Developer Agreement; and

(3) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the PIU, including absence of disapproval shall not relieve the Developer from any responsibility it has under the Developer Agreement, including responsibility for errors, omissions, discrepancies and non-compliances and non-performance.

6.3.3 Operations - Delegation by the PIU

The PIU may from time to time assign duties and delegate authority to PIU assistants, and may also revoke such assignment or delegation. Unless otherwise specified by the PIU in writing, all instructions, approvals, certificates, consents, notices, requests or similar acts of

the PIU shall be issued by the PIU. The PIU shall not delegate the authority to determine any matter in accordance with GC Section 6.3.6.

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in the SC.

Each assistant, to whom duties have been assigned or authority has been delegated shall only be authorised to issue instructions to the Developer to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the PIU. However,

- (a) any failure to disapprove any work shall not constitute approval, and shall therefore not prejudice the right of the PIU to reject the work; and
- (b) if the Developer questions any resolution or instruction of an assistant, the Developer may refer the matter to the PIU, who shall promptly confirm, reverse or vary the resolution or instruction.

6.3.4 Instructions of the PIU

The PIU may issue to the Developer, at any time, instructions which may be necessary for the execution of the Operations Services and the remedying of any defects, all in accordance with the Developer Agreement. The Developer shall only take instructions from the PIU, or from an assistant to whom the appropriate authority has been delegated under GC Section 6.3.3.

The Developer shall comply with the instructions given by the PIU, or delegated assistant, on any matter related to the Developer Agreement. These instructions shall be given in writing.

6.3.5 Change in the PIU

The Authority may, in its sole discretion, change the members of the PIU. If the Authority intends to change the PIU, it shall give the Developer 30 days prior notice in writing of the change.

6.3.6 Resolutions by the PIU

Whenever these General Conditions provide that the PIU shall proceed in accordance with this GC Section 6.3.6 to agree or resolve any matter, the PIU shall consult with each Party in an endeavour to reach an agreement. If an agreement is not achieved, the PIU shall make a fair resolution in accordance with the Developer Agreement, taking due regard of all relevant circumstances.

The PIU shall give notice to both Parties of each agreement or resolution, with supporting particulars.

E. REPRESENTATIVES, STAFF AND SUBCONTRACTING

ARTICLE 7 - REPRESENTATIVES, STAFF AND SUBCONTRACTING

7.1 Representatives

7.1.1 Authority's Representative

The Authority's representative (the "Authority's Representative") shall be the PIU

- (a) during the Design-Build Period; and
- (b) during the New Operations Period.

The Authority shall name its representative

- (a) no later than 14 days after the Effective Date for the Design-Build Phase, the Officer of PIU; and
- (b) no later than 14 days after the Completion of the New Facilities the Officer of PIU.

The Authority may change its representative from time to time and shall give notice of the change without delay. The Authority shall not change its representative at a time and in such a manner as to impede the progress of either the Design-Build Services or the Operations Services.

The Authority's Representative shall represent and act for the Authority at all times during the performance of the Developer Agreement. All notices, instructions, orders, certificates, approvals and all other communications under the Developer Agreement by the Authority shall be given by the PIU, except as herein otherwise provided.

All notices, instructions, information and other communications given by the Developer to the Authority under the Developer Agreement shall be given to the PIU, except as herein otherwise provided.

7.1.2 Developer's Representative

1. If the Developer's representative is not named in the SC, the Developer shall name its representative (the "Developer's Representative") no later than 14 days after the Effective Date and shall request the Authority to approve the proposed Developer's Representative. If the Authority makes no objection to the proposed Developer's Representative, the Developer's Representative shall be deemed approved.

2. If the Authority objects to the proposed Developer's Representative before the expiration of 14 days after the proposal, the Developer shall propose a replacement no later than 14 days after receiving the Authority's objection and reasons for the objection and this GC Section 7.1.2 shall apply to the proposed replacement.

3. The Developer's Representative shall represent and act for the Developer at all times during the performance of the Developer Agreement. All notices, instructions, orders, certificates, approvals and all other communications under the Developer Agreement by the Developer shall be given by the Developer's Representative, except as herein otherwise provided.

4. All notices, instructions, information, and other communications given by the Authority to the Developer under the Developer Agreement shall be given to the Developer's Representative as established pursuant to this GC Section 7.1.2.

5. The Developer shall not revoke the appointment of the Developer's Representative without the Authority's prior written consent, which shall not be unreasonably withheld. If the Authority consents thereto, the Developer shall appoint some other person as the Developer's Representative, pursuant to the procedure set out in this GC Section 7.1.2.

6. The Developer's Representative may, subject to the approval of the Authority, which shall not be unreasonably withheld, at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Developer's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Authority and the PIU.

7. Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GC Section 7.1.2 shall be deemed to be an act or exercise by the Developer's Representative.

7.2 Developer's Superintendence

Throughout the term of the Developer Agreement, the Developer shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Services.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications as set out in the SC and of the operations to be carried out, including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents, for the satisfactory and safe execution of the Services.

The Developer's Representative shall appoint a suitable person as construction or operations manager as applicable (the "Manager"). The Manager shall supervise all work done at the Site, Existing Facility and New Facilities by the Developer and shall be present at the Site, Existing Facility or New Facilities through normal working hours except when on leave, sick or absence connected with the proper performance of the Developer Agreement. Whenever the Manager is absent from the Site, Existing Facility or New Facilities, a suitable person shall be appointed to act as his or her deputy.

7.3 Developer's Personnel

The Developer shall provide and employ on the Site for the performance of the Services such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Developer Agreement (the "Developer's Personnel"). The Developer is encouraged to use local labour that has the necessary skills. The Developer shall provide all expertise needed to carry out the Services including the expertise listed in the Developer's Expertise Appendix.

Unless otherwise provided in the Developer Agreement, the Developer shall be responsible for the recruitment, employment, transportation, accommodation and catering of all labour, local or expatriate, required for the execution of the Developer Agreement and for all payments in connection therewith.

The Developer shall be responsible for obtaining all necessary permits and visas from the appropriate authorities for the entry of all labour and personnel to be employed on the Site into the Country.

The Developer shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Developer Agreement at the Site to their various home countries. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Developer Agreement to the date programmed for their departure. In the event that the Developer defaults in providing such means of transportation and temporary maintenance, the Authority may provide the same to such personnel and recover the cost of doing so from the Developer.

The Developer shall at all times during the progress of the Developer Agreement use its best endeavours to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst its employees and the labour of its Subcontractors.

The Developer shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Developer Agreement, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labour.

7.4 Replacement of Developer's Personnel

The PIU may require the Developer to remove and replace any member of the Developer's Personnel who,

- (1) Persists in any misconduct or lack of care;
- (2) Carries out duties incompetently or negligently;
- (3) Fails to comply with any provision of the Developer Agreement; or
- (4) Persists in any conduct which gives the Authority reasonable cause to be dissatisfied with him or her.

7.5 Existing Staff

If the Developer is obliged to retain staff employed by the Authority as stated in the SC, it shall do so in accordance with the Developer's Expertise Appendix.

7.6 Subcontractors

The Developer may enter into any contract or contracts of subcontracting permitted by the Authority in respect of the Design-Build Services and the Operations Services, as set out in the Bidding Documents.

The Developer shall be responsible for the observance by Subcontractors of the terms and conditions of the Developer Agreement and shall ensure that all relevant terms of the Developer Agreement are included in the Developer's contracts with Subcontractors.

Subcontracting by the Developer shall not relieve the Developer of any of its obligations under the Developer Agreement and the Developer shall be responsible for the acts, omissions and defaults of all Subcontractors, and the Subcontractors, employees, agents and sub-subcontractors, as fully as if they were acts, omissions or defaults of the Developer or the Developer's Personnel.

F. LIABILITY AND RISK DISTRIBUTION

ARTICLE 8 - LIABILITY AND RISK DISTRIBUTION

8.1 Defect Liability

1. The Developer warrants that the Site and New Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the work executed.
2. The Defect Liability Period shall be 12 months after the date of Completion of the New Facilities, unless specified otherwise in the SC.
3. If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Site, New Facilities or Plant and Equipment supplied or of the work executed by the Developer, the Developer shall promptly, in consultation and agreement with the Authority regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good, as the Developer shall, at its discretion, determine, such defect as well as any damage to the New Facilities caused by such defect. The Developer shall not be responsible for the repair, replacement or making good of any defect or of any damage to the New Facilities arising out of or resulting from normal wear and tear.
4. The Authority shall give the Developer a written notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Authority shall give all reasonable opportunity for the Developer to inspect any such defect.
5. The Authority shall give the Developer all necessary access to the Site to enable the Developer to perform its obligations under this GC Section 8.1.
6. The Developer may, with the consent of the Authority, remove from the Site any Plant and Equipment, Developer's Equipment (Design-Build) and Developer's Equipment (Operations) or any part of the New Facilities that are defective if the nature of the defect, or any damage to the New Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.
7. If the repair, replacement or making good is of such a character that it may affect the efficiency of the New Facilities or any part thereof, the Authority may give to the Developer a notice requiring that tests of the defective part of the New Facilities shall be made by the Developer immediately upon completion of such remedial work, whereupon the Developer shall carry out such tests.
8. If such part fails the tests, the Developer shall carry out further repair, replacement or making good, as the case may be, until that part of the New Facilities passes such tests. The tests shall be agreed upon by the Authority and the Developer.
9. If the Developer fails to commence the work necessary to remedy such defect or any damage to the New Facilities caused by such defect within a reasonable time, which shall in no event be considered to be less than 15 days, the Authority may, following notice to the Developer, proceed to do such work, and the reasonable costs incurred by the Authority in connection therewith shall be paid to the Authority by the Developer or may be deducted by

the Authority from any monies due to the Developer or claimed under the Performance Security.

10.If the New Facilities or any part thereof cannot be used by reason of such defect or making good of such defect, the Defect Liability Period of the New Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the New Facilities or such part cannot be used by the Authority because of any of the aforesaid reasons.

11.The Developer shall also provide an extended warranty for any such component of the New Facilities and during the period of time as may be specified in the SC. Such obligation shall be in addition to the Defect Liability Period specified under this GC Section 8.1.

8.2 Limitation of Liability

Except in cases of criminal negligence or wilful misconduct of the Developer, no rights, liabilities or obligations under this Developer Agreement shall be assigned without the prior written consent of the parties.

8.3 Care of the Site and New Facilities

The Developer shall be responsible for the care and custody of the Site, Existing Facility and New Facilities or any part thereof until the End Date and shall make good at its own cost any loss or damage that may occur to the Site, Existing Facility or New Facilities from any cause whatsoever during such period. The Developer shall also be responsible for any loss or damage to the Site, Existing Facility or New Facilities caused by the Developer or its Subcontractors in the course of any work carried out. The Developer should get all insurance covers/policies as in normal and shall, at its own expense, take out and maintain in effect or cause to be taken out and maintained in effect, during the performance of the Developer Agreement. The Developer is obliged to reinstate all damaged works and losses with such insurance proceeds received.

If the Developer does not make good any loss or damage to the New Facilities thereby occasioned, the Authority shall either request a change, excluding the performance of that part of the New Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the New Facilities, the Authority shall terminate the Developer Agreement pursuant to GC Section 9.1.

The Developer shall be liable for any loss of or damage to any Developer's Equipment (Design-Build), Developer's Equipment (Operations) or any other property of the Developer used or intended to be used for purposes of the Site, Existing Facility or the New Facilities.

With respect to any loss or damage caused to the New Facilities or any part thereof, the Developer's Equipment (Design-Build) or the Developer's Equipment (Operations) by reason of any of the matters and provisions specified in GC Section 8.8 shall apply.

8.4 Indemnification

Subject to this GC Section 8.4, the Developer shall indemnify and hold harmless the Authority and its employees and officers and PIU from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature including any third party claim and any consequential damages,

whatsoever, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property, arising in connection with the Developer's performance of the Services and by reason of the negligence of the Developer or its Subcontractors, or their employees, officers or agents, for all Customer acts, deeds, for any claims linked to Customer negligence, except any injury, death or property damage caused by the negligence of the Authority, its contractors, employees, officers or agents.

If any proceedings are brought or any claim is made against the Authority that might subject the Developer to liability under this GC Section 8.4, the Authority shall promptly give the Developer a notice thereof and the Developer may at its own expense and in the Authority's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Developer fails to notify the Authority prior to the expiration of 30 days after receipt of a notice given pursuant to this GC Section 8.4 that it intends to conduct any such proceedings or claim, then the Authority shall be free to conduct the same on its own behalf. Unless the Developer has so failed to notify the Authority within the 30-day period, the Authority shall make no admission that may be prejudicial to the defence of any such proceedings or claim.

The Authority shall, at the Developer's request, provide all available assistance to the Developer in conducting such proceedings or claim, and shall be reimbursed by the Developer for all reasonable expenses incurred in so doing.

The Authority shall indemnify and hold harmless the Developer and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Authority that is caused by fire, explosion, floods or any other perils, in excess of the amount recoverable from insurances procured under GC Section 8.5, provided that such fire, explosion, floods or other perils were not caused by any act or omission of the Developer.

The Party entitled to the benefit of an indemnity under this GC Section 8.4 shall take all reasonable measures to mitigate any loss or damage, which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.

8.5 Insurance

(a) To the extent specified in the SC, the Developer shall, at its own expense, take out and maintain in effect or cause to be taken out and maintained in effect, during the performance of the Developer Agreement, the insurances set forth below in the sums and with the deductibles and other conditions specified in the SC. The identity of the insurers and the form of the policies shall be subject to the prior approval of the Authority who shall not unreasonably withhold such approval. The Developer shall submit appropriate certificates of insurance demonstrating that the Developer has met its obligations pursuant to this GC Section 8.5 to the Authority no later than the Effective Date.

- (a) (1) **Contractors All Risk Insurance (CAR):** This policy covers all risk like, Fire including firefighting operation, lightning, explosion, Accidental damage during storage; Riot, strike and malicious damage; Flood, inundation and subsidence; Storm, tempest, cyclone, hurricane; Earthquake, landslide and rockslide; Theft and burglary; and Accidental damage during the course of construction, wherein Third Party Liability and Earthquake Insurance must be specifically included which will incur additional premium. Amount of CAR coverage must be based on the total Developer Agreement value while Third Party Insurance coverage is a minimum of BDT 10,000,000 (10 million).

- (b) Worker's Compensation policy
- (c) Other Insurance

Such other insurances as may be required in the normal viz., Insurance during transportation, Insurance of project on site infrastructure, Operational damage Insurance, Consequential loss Insurance, Mechanical or electrical failure Insurance, Automobile liability insurance, Political risk Insurance, Directors' and officers' liability insurance, Third Party Liability and such others as required.

The Authority shall be named as co-insured under all insurance policies taken out by the Developer pursuant to this GC Section 8.5, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Developer's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Developer pursuant to this GC Section 8.5, except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Developer Agreement shall be waived under such policies.

The Developer shall deliver to the Authority certificates of insurance, or copies of the insurance policies, as evidence that the required policies are in full force and effect. The certificates shall provide that no less than 21 days' notice shall be given to the Authority by insurers prior to cancellation or material modification of a policy.

The Developer shall, where applicable, ensure that the Subcontractors take out and maintain in effect adequate insurance policies for their employees, vehicles and for work executed by them under the Developer Agreement, unless such Subcontractors are covered by the policies taken out by the Developer.

Unless otherwise provided in the Developer Agreement, the Developer shall prepare and conduct all and any claims made under the policies affected by it pursuant to this GC Section 8.5, and all monies payable by any insurers shall be paid to the Developer. The Authority shall give to the Developer all such reasonable assistance as may be required by the Developer. With respect to insurance claims in which the Authority's interest is involved, the Developer shall not give any release or make any compromise with the insurer without the prior consent of the Authority.

The Developer shall comply with the conditions stipulated in each of the insurance policies. The Developer shall make no material alteration to the terms of any insurance without the prior approval of the Authority. If an insurer makes, or purports to make, any such alteration, the Developer shall notify the Authority immediately.

Nothing in this GC Section 8.5 limits the obligations, liabilities or responsibilities of the Developer, under the other terms of the Developer Agreement or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Developer.

8.6 Unforeseeable Physical Conditions

In this GC Section 8.6, "physical conditions" means natural pre-existing physical conditions and man-made and other physical obstructions and pollutants, which the Developer

encounters at the Site when performing the Design-Build Services, including sub-surface conditions but excluding climatic conditions.

If the Developer encounters adverse physical conditions which it considers to have been unforeseeable, the Developer shall give notice to the PIU as soon as practicable.

The Developer's Notice pursuant to this GC Section 8.6 shall describe the physical conditions, so that they can be inspected by the PIU, and shall set out the reasons why the Developer considers them to be unforeseeable. The Developer shall continue performing the Design-Build Services, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the PIU may give.

If, and to the extent that, the Developer encounters physical conditions which are unforeseeable, gives the notice required by this GC Section 8.6, and suffers delay due to these conditions, then the Developer shall be entitled subject to GC Section 1.9 to,

- (1) an extension of time for any such delay, if completion is or will be delayed, under GC Section 2.3.4; and

After receiving such notice and inspecting or investigating these physical conditions, the PIU shall proceed in accordance with GC Section 6.2.6 to agree or determine,

- (2) whether and to what extent these physical conditions were Unforeseeable; and
- (3) the amount of delay, if any, pursuant to this GC Section 8.6.

The PIU may take account of any evidence of the physical conditions foreseen by the Developer when submitting the Bid, which may be made available by the Developer, but shall not be bound by any such evidence.

8.7 Force Majeure

"Force Majeure" shall mean any event,

- (1) beyond the reasonable control of the Authority or of the Developer, as the case may be; and
- (2) which is unforeseeable and unavoidable notwithstanding the reasonable care of the Party affected.

Force Majeure shall include the events listed below in this GC Section 8.7 if the conditions set out in GC Section 8.7 (a) and (b) are satisfied:

- (1) war, hostilities or warlike operations, whether a state of war be declared or not, invasion, act of foreign enemy and civil war;
- (2) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts;
- (3) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;
- (4) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster; and

If the Parties are prevented, hindered or delayed from or in performing any of their obligations under the Developer Agreement by an event of Force Majeure, then the relevant

Party shall notify the other in writing of the occurrence of such event and the circumstances thereof within 14 days after the occurrence of such event.

The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Developer Agreement for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GC Section 2.3.4 for events of Force Majeure during the Design-Build Period. If the Time for Completion is extended in accordance with GC Section 2.3.4, the End Date shall be extended for a period of time equal to the period of time during which the relevant event of Force Majeure continued.

The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Developer Agreement and to fulfil its or their obligations under the Developer Agreement, but without prejudice to either Party's right to terminate the Developer Agreement under GC Sections 8.7 and 8.8.

No delay or non-performance by either Party hereto caused by the occurrence of any event of Force Majeure shall,

- (1) constitute a default or breach of the Developer Agreement; or
- (2) subject to GC Sections 8.3, and 8.8, give rise to any claim for damages or additional Cost occasioned thereby,

if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.

If the performance of the Developer Agreement is substantially prevented, hindered or delayed for a single period of more than 60 days or an aggregate period of more than 120 days on account of one or more events of Force Majeure during the term of the Developer Agreement, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Developer Agreement by giving a notice to the other, but without prejudice to either Party's right to terminate the Developer Agreement under GC Section 8.8.

Termination of this Developer Agreement may be applied in compliance with Article 9 of this Agreement.

8.8 War Risks

"War Risks" shall mean any event specified in GC Section 8.7 (a) and (b) and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the Country.

Notwithstanding anything contained in the Developer Agreement, the Developer shall have no liability whatsoever for or with respect to,

- (1) destruction of or damage to the Site and Plant and Equipment or any part thereof;
- (2) destruction of or damage to property of the Authority or any Third Party; or
- (3) injury or loss of life,

if such destruction, damage, injury or loss of life is caused by any War Risks, and the Authority shall indemnify and hold the Developer harmless from and against any and all

claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.

If, during the term of the Developer Agreement, any War Risks occur that financially or otherwise materially affect the execution of the Developer Agreement by the Developer, the Developer shall use its reasonable efforts to execute the Developer Agreement with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Services. If the execution of the Services becomes impossible or is substantially prevented for a single period of more than 60 days or an aggregate period of more than 120 days on account of any War Risks, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Developer Agreement by giving a notice to the other.

8.9 Change in Laws and Regulations

If, after a date which is 30 days prior to the Submission Deadline in the Bidding Documents, in the Country, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed, which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Developer or the Time for Completion, the Time for Completion shall be reasonably adjusted to the extent that the Developer has thereby been affected in the performance of any of its obligations under the Developer Agreement.

8.10 Functional Guarantees

The Developer guarantees that during the Tests and Inspection set out in DBSA Article 4, the New Facilities and all parts thereof shall attain the Functional Guarantees specified in the Technical Standards Appendix (the "Functional Guarantees"), subject to and upon the conditions therein specified.

If the minimum level of the Functional Guarantees is not met either in whole or in part, the Developer shall at its cost and expense make any such changes, modifications or additions to the New Facilities or any part thereof as may be necessary to meet at least the minimum level of the Functional Guarantees. The Developer shall notify the Authority upon completion of the necessary changes, modifications or additions, and shall request the Authority to repeat the applicable Tests and Inspection until the minimum level of the Functional Guarantees has been met. If the Developer fails to meet the minimum level of Functional Guarantees, the Authority may consider termination of the Developer Agreement, pursuant to GC Section 9.1.1.

If the Functional Guarantees are not attained either in whole or in part, but the minimum level of the Functional Guarantees is met, the Developer shall, at the Developer's option, either

- (1) make such changes, modifications or additions to the New Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Authority to repeat the Tests and Inspection; or
- (2) pay liquidated damages to be determined by the Authority in respect of the failure to meet the Functional Guarantees.

The payment of liquidated damages under this GC Section 8.10 up to the limitation of liability specified in the SC, shall completely satisfy the Developer's guarantees under this GC Section 8.10, and the Developer shall have no further liability whatsoever to the Authority in respect thereof.

G. CHANGE IN DEVELOPER AGREEMENT ELEMENTS

ARTICLE 9 - TERMINATION

9.1 Termination

9.1.1 Withdrawal of Permit

(1) In the event of repeated violations by the Developer of any Applicable Law, including the Act, Rules, or the governing Permit, the Authority, upon the approval of the Governing Board, may withdraw in whole or in part the Permit in accordance with the terms thereof and publish in the official Gazette after having provided Developer with 180 calendar days' prior written notice including a 90 days cure period and affording the latter an opportunity for a hearing in accordance with its due process rights and the Applicable Law.

(2) Notwithstanding GC Sec 9.1(1) and in accordance with Section 28 of the Act, the Authority, upon the approval of the Governing Board, may withdraw in its entirety the Permit in conformity with the terms thereof and publish in the official Gazette in the following specific cases after having provided Developer with 180 calendar days' prior written notice including a 90 days cure period and affording the latter an opportunity for a hearing pursuant to the requirements set forth by Applicable Law:

- (i) the Developer's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;
- (ii) construction at the Project Site is abandoned for more than 90 (ninety) days during the Construction Phase;
- (iii) delay of more than 90 days in achieving a Project Milestone from what is specified in the Project Schedule;
- (iv) delay in payment of Land lease for more than 90 (ninety) days from the last date when it becomes due or delay in payment of Land lease for of more than 30 (thirty) days more than 4 (four) times in the aggregate during the Agreement Period;
- (v) the Developer's failure to perform or discharge any of its obligations under any other Project Contract, which has or is likely to affect the Project/the Project Facilities, materially and which has not been rectified within 30 days;
- (vi) any representation made or warranties given by the Developer under this Agreement is found to be false or misleading;
- (vii) the Developer passing a resolution for voluntary winding up;
- (viii) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Developer by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
- (ix) occurrence of default under the Financing Documents pursuant to which the Lenders exercise their rights to substitute the Developer in accordance with the provisions of the Substitution Agreement;

- (x) levy of an execution or distraint on the Developer's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities, materially and such execution or distraint remaining in force for a period exceeding 90 (ninety) days;
- (xi) the Performance Guarantee is not maintained in terms of the provisions hereof;
- (xii) the Developer abandons or expresses its intention to revoke/terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;
- (xiii) a change in shareholding such that the beneficial interest of the Applicant/Consortium in the Developer reduces below the limits and/or Management Control of the Developer has occurred
- (xiv) amalgamation of the Developer with any other company or reconstruction or transfer of the whole or part of the Developer's undertaking [other than transfer of assets in the ordinary course of business]
- (xv) the Developer engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Agreement and/or under Applicable Law or which constitutes a breach of the Agreement or breach of or an offence under Applicable Law, in the course of any activity undertaken pursuant to this Agreement;
- (xvi) Commercial Operations Date is delayed without any reasonable cause for more than 90 (ninety) days from the Scheduled Construction Completion Date;
- (xvii) the Developer is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be for a period of 30 days;
- (xviii) the Developer has failed to make any payment to the Authority within the period specified in this Agreement;
- (xix) an Escrow Default as defined under the Escrow Agreement has occurred and the Developer fails to cure the default within a Cure Period, of 15 (fifteen) days;
- (xx) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Developer fails to cure the default within the Cure Period, as defined in Appendix 5,;
- (xxi) a breach of any of the Project Agreements by the Developer has caused a Material Adverse Effect;
- (xxii) the Developer creates any Encumbrance in breach of this Agreement;
- (xxiii) the Developer repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement; and
- (xxiv) any other event as may be provided in the Special Conditions.
- (xxv) Not fulfilling any of the Condition Precedent within the time specified. Newly inserted

9.1.2 The Authority Events of Default

An Authority Event of Default means any of the following events unless such an event has occurred as a consequence of the Developer Event of Default or a Force Majeure Event:

- (i) the Authority's failure to perform or discharge its obligations in accordance with the provisions of this Agreement;
- (ii) any representation made or warranties given by the Authority under this Agreement is found to be false or misleading;
- (iii) appointment of a provisional liquidator, administrator or receiver of the whole or part of the Project Assets in any legal proceedings initiated against the Authority (unless such proceedings are initiated as a consequence of any Developer Event of Default);
- (iv) levy of an execution or restraint on the Project Assets in any proceedings against the Authority (unless such proceedings are initiated as a consequence of any Developer Event of Default) which has or is likely to have Material Adverse Effect and such execution or restraint remaining in force for a period exceeding 90 (ninety) days; and
- (v) any other event as may be provided in the Special Conditions.

9.1.2B Parties' Rights

- (1) Upon the occurrence of the Developer Event of Default, the Authority shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.
- (2) Upon the occurrence of the Authority Event of Default, the Developer shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.
- (3) Before proceeding to terminate this Agreement, the Party entitled to do so shall give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Agreement and the circumstances in which the same has occurred.

9.1.3 Consultation Notice

Either Party exercising its right towards Event of Default, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties and the Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default ("Consultation Notice").

9.1.4 Remedial Process

Following the issue of Consultation Notice by either Party, within a period not exceeding 90 (ninety) days or such period as specified in the relevant sections of the Agreement (“Remedial Period”) the Parties shall, in consultation with the Lenders, endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default. Without prejudice to this, if the underlying event is a Developer Event of Default, the Authority shall in consultation with the Lenders endeavour to arrive at an agreement as to one or more of the following measures and/or such other measures as may be considered appropriate by them in the attendant circumstances:

- (i) the change of management or control/ownership of the Developer;
- (ii) the replacement of the Developer by a new Developer (“Nominated Company”) proposed by the Lenders (in terms of the Substitution Agreement), and the specific terms and conditions of such replacement which shall include :
- (iii) the criteria for selection of the Nominated Company;
- (ii) the transfer of rights and obligations of the Developer surviving under this Agreement to the Nominated Company;
- (iv) handing over/ transfer of the Project Site, the Project Assets and the Project Facilities to the Nominated Company;
- (v) acceptance by the Nominated Company of the outstanding obligations of the Developer under the Financing Documents and preserving Lenders’ charge on the Developer’s assets;
- (vi) acceptance by the Nominated Company of any amounts due to the Authority from the Developer under this Agreement; and
- (vii) payment of consideration for the Developer’s assets comprised in the Project Facilities and the manner of appropriation thereof.

9.1.5 Obligations during Remedial Period

During the Remedial Period, the Parties shall continue to perform their respective obligations under this Agreement which can be performed, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

9.1.6 Revocation of Consultation Notice

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties and the Lenders agree upon any of the measures, the Consultation Notice shall be withdrawn in writing by the Party who has issued the same.

9.1.7 Termination due to Events of Default

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties and the Lenders have agreed upon any of the measures, the Party

who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of the above Section shall, to the extent expressly made applicable, apply.

9.1.8 Authority's Rights of Step-in

Upon a Termination Notice, as per the provisions above, being issued due to a Developer Event of Default, the Authority may, at its discretion:

- (a) re-enter and take possession and control of Project Site/Project Facilities forthwith;
- (b) prohibit the Developer and any Person claiming through or under the Developer from entering /dealing with the Project Facilities;
- (c) step in and succeed upon election by Authority without the necessity of any further action by the Developer, to the interests of the Developer under such of the Project Contracts as the Authority may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Contracts.

Provided, that in such circumstances, the Authority shall assume the obligations of the Developer with respect to the Lenders during such Remedial Period / Termination Period. Provided further, the Developer acknowledges that any payments made by the Authority during the Remedial Period / Termination Period shall be adjusted against compensation payable by the Authority to the Developer in terms of the provisions of this Agreement.

TERMINATION

9.1.9 Termination Procedure

The Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing ("Termination Notice") to the other Party including allowing a cure period and simultaneously deliver a copy thereof to the Lenders. The Termination Notice shall be of not less than 90 (ninety) days and not ordinarily be more than 180 (one hundred and eighty) days, ("Termination Period") and at the expiry of the Termination Period, this Agreement shall stand terminated without any further notice.

9.1.10 Obligations during Termination Period

During Termination Period, the Parties shall, subject where applicable to the provisions of this section, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project Facilities to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

9.1.11 Requisition

(1) Except where the Termination Notice is issued prior to Financial Close being achieved by the Developer, when the Agreement has not come into effect, the Developer has no right hereunder and no compensation is payable by the Authority, upon issue or receipt as the case may be of Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, or otherwise 6 (six) months prior to the expiry of the Agreement Period, the Authority shall by a notice in writing (“Requisition”) call upon the Developer to furnish the following information to enable the Authority to estimate the likely compensation payable by the Authority to the Developer and/or to finalise the items of Developer’s assets comprised in the Project Facilities to be handed over to/taken over by the Authority:

- (a) except in cases where Financial Close has not been achieved, the particulars of Debt Due supported by Lenders’ certificate;
- (b) data or records [to be specified by Authority] regarding the operation and maintenance of the Project Facilities;
- (c) specifications regarding the Developer’s assets comprised in the Project Facilities; and
- (d) any other information or records [to be specified by Authority at its discretion] regarding Developer, its business, the Project/Project Facilities, assets and liabilities.

(2) The Developer shall within a period of 30 (thirty) days of receipt of Requisition furnish the particulars called for by the Authority.

9.1.12 Condition Survey upon Termination

(1) The Developer agrees that on the service of a Termination Notice, it shall conduct or cause to be conducted under the Authority’s supervision, a condition survey of the Project Facilities including the Project Site and/or the Project Assets to ascertain the condition thereof, verifying compliance with the Developer’s obligations under this Agreement and to prepare an inventory of the assets comprised in the Project Facilities. During this period, the designated key personnel of the Authority shall be associated with the operations of the Project Facilities (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth take over of the same by the Authority on the Transfer Date.

(2) If, as a result of the condition survey, the Authority shall observe/notice that the Project Site and/or the Project Assets and/or the Project Facilities or any part thereof have/has not been operated and maintained in accordance with the requirements therefore under this Agreement (normal wear and tear excepted) the Developer shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.

(3) In the event the Developer fails to comply with the provisions of this Agreement, the Authority may itself cause the condition survey and inventory of Project Assets and the Project Facilities to be conducted. The Authority shall be compensated by the Developer for

any costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities in good working condition.

9.1.13 Consequences of Termination

(1) Without prejudice to any other consequences or requirements under this Agreement or under any law:

(a) the Developer shall transfer all the assets and rights upon expiry of the Agreement Period by efflux of time or termination of the Agreement due to a Force Majeure Event or on account of an Event of Default;

(b) the Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Developer against any amounts owed to the Authority by the Developer.

(2) Notwithstanding anything contained in this Agreement, except for ensuring the deposit of the compensation payable to the Developer in accordance with this Section in the Escrow Account, the Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever to any third party including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or reemployment on any ground, in relation to any person in the employment of or engaged by the Developer in connection with the Project, and the handback of the Project Site/Project Assets/Project Facilities & Services by the Developer to the Authority shall be free from any such obligation.

9.1.14 Settlement upon Termination

(1) Termination due to Force Majeure Event –

(a) If the Termination is due to any Non Political Event, compensation payable to the Developer shall be the lower of the Book Value or the Debt Due, less any amount due to the Authority by the Developer under this Agreement less all insurance claims received or admitted.

(b) If the Termination is due to any Other Event compensation payable to the Developer shall be the higher of the Book Value or the Debt Due, less any amount due to the Authority by the Developer under this Agreement less all insurance claims received or admitted. Provided, the Book Value or the Debt Due, as the case may be shall not exceed the Actual Project Cost.

(c) If Termination is due to any Political Event, compensation payable to the Developer shall be the same as that stipulated for Termination due to any Authority Event of Default

(d) No compensation shall be payable to the Developer under this sub-Section if the Developer fails to maintain Insurance Cover.

(2) Termination due to Developer Event of Default –

If the Developer Agreement is terminated pursuant to GC Section 9.1.1 and, subject to this GC Section 9.1.2, the revoked developer shall be entitled to be paid, reasonable cost incurred by it, the Authority shall facilitate through an alternate Developer.

any sums due to the Authority from the Developer accruing prior to the date of termination shall be deducted from the amount to be paid to the Developer under this Agreement.

The parties shall agree in writing on the computation described in this GC Section 9.1.2 and the manner in which any sums shall be paid ”

(3) Termination due to Authority Event of Default –

If the Termination is due to any Authority Event of Default pursuant to GC Article 9.1.2, the compensation payable by the authority shall be equal to the prevailing value of investment and development cost incurred by the Developer as assessed and certified by an Independent Auditor, except for loss of profit, or damage sustained by the Developer arising out of, in connection with or in consequence of such termination.

9.1.15 Settlement on Expiry of Agreement Period

In the event of expiry of Agreement by efflux of time (the Agreement having run its full course), the Developer shall hand over / transfer to the Authority peaceful possession of the Project Site, Project Assets and the Project Facilities and settle the transaction in this regard with Authority

9.1.16 Transfer Fee and Charges

Transfer costs, stamp duties, notary fees and taxes, if applicable, for the transfer of the Project Facilities consequent to the expiry or Termination of this Agreement shall be borne by:

- (a) the Developer in the event of expiry of Agreement Period or Termination due to a Developer Event of Default;
- (b) the Authority in the event of Termination due to an Authority Event of Default or Political Event; and
- (c) by both parties equally in case of termination due to Change in Law or Non Political Event or Other Event.

9.1.17 Payment of Compensation to Lenders

The Developer hereby irrevocably authorises the Authority to pay to the Lenders or at their instruction to any designated bank account in Bangladesh the compensation payable to the Developer. The Developer confirms that upon such payment being made, the Authority shall stand duly discharged of its obligations regarding payment of compensation under this Agreement and the charge created by the Developer in favour of the Lenders on any of its assets taken over by the Authority shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge. The Developer further confirms that payment of compensation by Authority in accordance with this Section shall be a valid discharge to the Authority in respect of Authority's obligation regarding payment of compensation to the Developer under this Agreement.

Provided notwithstanding anything inconsistent contained in this Agreement, the Developer/the Lenders as the case may be shall be entitled to remove at its/their cost all such movables which are not taken over by the Authority and to deal with the same in accordance with their respective rights under law.

Provided further, if there are no amounts outstanding under the Financing Documents and a certificate to that effect issued by the Lenders is furnished by the Developer to the Authority, the compensation shall be paid by the Authority to the Developer directly.

9.1.18 Delayed Payment of Compensation

If for any reasons, other than those attributable to the Developer, the Authority fails to pay the compensation on the Transfer Date, the Authority shall be liable to pay interest at BB PLR plus 2% (two percent) per annum thereon from the Transfer Date till payment thereof. Provided, nothing contained in this Section shall be deemed to authorise any delay in payment of compensation in accordance with this Agreement.

9.1.19 Delayed Transfer of Assets

If for any reasons other than those attributable to the Authority the Developer fails to transfer assets, rights and contracts on the Transfer Date in accordance with Section 16.5 read with Section 18, there shall be no suspension of the operation and maintenance of the Project Facilities and the Developer shall, as a trustee of the Authority, (a) continue to operate and maintain the Project Facilities or such of them, as directed by Authority until completion of the relative transfer formalities and (b) account for and pay to the Authority the Gross Revenue minus operating costs and statutory dues, from such operations. In the event of failure to do so, the Developer shall be liable to pay to the Authority, for every day of delay, damages computed at the rate of the average daily profits earned during the 3 (three) years immediately preceding the Transfer Date. Parties confirm that this is a true and correct estimate of damages and not in the nature of a penalty. Provided nothing contained in this Section shall be deemed or construed to authorise delay in completion of formalities of transfer of assets, rights and contracts by the Developer to the Authority in accordance with the requirements thereof under this Agreement.

In case the transfer of assets by the Developer to the Authority is delayed for reasons attributable to the Authority, the Developer shall nonetheless continue to operate the Project Facilities but as agent of the Authority. Provided however, the Developer shall be liable to pay Land Lease.

9.1.20 Remedies Cumulative

The exercise of right by either Party to terminate this Agreement, as provided herein, shall not preclude, such Party from availing any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

Appendix 1

Special Conditions of Developer Agreement

SPECIAL CONDITIONS
OF DEVELOPER AGREEMENT
BETWEEN BANGLADESH ECONOMIC ZONES AUTHORITY
AND

TO
DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER
MIRSORAI ECONOMIC ZONE IN BANGLADESH
SEPTEMBER 2015

Appendix 1: SPECIAL CONDITIONS OF DEVELOPER AGREEMENT

The following Special Conditions of Developer Agreement shall supplement the General Conditions. Whenever there is a conflict, the provisions herein contained shall prevail over those in the General Conditions. The corresponding article and section numbers of the General Conditions are indicated in parentheses.

1. Definitions (GC Section 1.1)
Country: The country is Peoples' Republic of Bangladesh
2. Language (GC Section 1.3.1(1))
The language is English.
3. Shareholder's Representative (GC Section 1.3.10(1))
The Shareholder's Representative is:
[Name, address, telephone and facsimile numbers]
4. Shareholder's Equity (GC Section 1.3.10(4))
The shareholders' equity should as defined under Section 1.3.10 (4) of the General Conditions.
5. Survival of Obligations (GC Section 1.3.14)
Upon termination or expiration of the Developer Agreement, the following rights and obligations of the Parties survive:
 - (a) Such rights and obligations as may have accrued or to which the Parties may be entitled on the date of termination, and any rights, which a Party may have under Applicable Law;
 - (b) The Developer's obligations with respect to Developer Agreement Records, accounting and auditing set out in GC Section 1.8;
 - (c) The Parties' rights and obligations with respect to defect liability set out in GC Section 8.1; and
 - (d) The Parties' rights and obligations with respect to indemnification set out in GC Section 8.4.
6. Notice (GC Section 1.4)
The Authority's address for notice is:
Project Director, Bangladesh Economic Zones Authority, (Additional Secretary)
Support to Capacity Building of Bangladesh Economic Zones Authority
Bangladesh Economic Zones Authority,
BBBL Bhaban (Level 15), 12 Karwan Bazar, Dhaka 1215, Bangladesh
Telephone: +880-8180-170 Facsimile: +880-8180-172
E-mail: bezaprojectgov@gmail.com
The Developer's address for notice is:
[Name, address, telephone and facsimile numbers]
7. Rules of Procedure for Arbitration Proceedings (GC Section 1.6.2(3))
All disputes arising in connection with the Developer Agreement shall be settled as follows:

Developer Agreement with a foreign Developer: Any dispute, controversy or claim arising out of or relating to this Developer Agreement, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

The procedure to be followed within the arbitration, including appointment of arbitrator/arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration Act, 2001, as amended from time to time.

- (a) Any dispute between the Authority and Developer who is a national of the Authority's country arising in connection with the present Developer Agreement shall be referred to adjudication or arbitration in accordance with the laws of Bangladesh.
 - (b) Arbitration award shall be filed for registration with the court of competent jurisdiction for enforcement in Bangladesh within 30 days after the making of final award. The jurisdiction for enforcement of arbitration award shall be a competent court in Dhaka. Developer Agreement shall be governed and interpreted by, and construed in accordance with the substantive laws of Bangladesh. The venue of the arbitration shall be Dhaka, Bangladesh.
8. End Date (GC Section 2.1.2(a))
For the purposes of GC Section 2.1.2(a), the applicable date shall be the date when the Developer period ends.
9. Design-Build Starting Date (GC Section 2.1.3(a))
The Design-Build Starting Date shall be no later than 30 days after the Effective Date.
10. New Operations Starting Date (GC Section 2.1.3(b))
The New Operations Starting Date shall be the date of a fully developed and completed EZ operational readiness, which shall occur upon completion of the Phase IV of the New Facilities section 14 of SCC.
11. Time for Completion (GC Section 2.3.2)
The completion of the development activities to build the facilities 'New Facilities' shall be completed in Phases from the Effective Date

(a) Design-Build Starting Date Approximately	Date to be filled in on signing of contract
(b) Completion of Phase - I (10%)	6 months from the Effective date
Completion of Phase - II (40%)	12 months from the Effective date
Completion of Phase - III (70%)	24 months from the Effective date
Completion of Phase - IV (100%)	36 months from the Effective date
12. Delay of Completion - Liquidated Damages (GC Section 2.3.6(2))
In the event that the Developer fails to complete the performance of the Design-Build Services by the Time for Completion, the Developer shall pay Liquidated Damages – Delay of US \$2500 for each day or part thereof that the Design-Build Services are not completed after the Time of Completion.

13. Maximum Liquidated Damages (GC Section 2.3.6(2) & 8.10)
The Maximum Liquidated Damages shall be 1% of the total investment that is equivalent to performance security.
14. Terms of Payment – (GC Section 5.1 and 5.2)
The amounts to be paid by the Developer to the Authority are as specified in Appendix 2 of the Form of Developer Agreement.
15. Terms of Payment – Interest (GC Section 5.2(3))
For the purposes of GC Section 5.2(3) and the Terms and Procedures of Payment Appendix, the interest rate that will apply to amounts owed in local currency, is 11 percent per year for the period of delay until payment has been made in full and, for amounts owed in foreign currency, the interest rate that will apply is the London Interbank Offered Rate (LIBOR) plus 2 percent per year for the period of delay until payment has been made in full.
16. Currency (GC Section 5.2(4))
Payments shall be made in BDT by the Developer, unless otherwise agreed between the Parties.
17. Performance Security (GC Section 5.3.1(a))
The Developer shall provide to the Authority a Performance Security of 1% percent of the total proposed Investment mentioned in the bid.
18. Restriction on PIU's Authority (GC Section 6.2.2(4) & 6.3.2(4))
The PIU shall obtain the approval of the Authority before exercising its authority in the following circumstances:
 - (a) approving assignment of the Developer Agreement, or any part thereof, under GC Section 1.7;
 - (b) determining an extension of the Time for Completion under GC Section 2.3.4;
19. Developer's Representative (GC Section 7.1.2(1))
The Developer's Representative is: _____
20. Existing Staff (GC Section 7.5)
The Developer "is not obliged to" retain staff employed by the Authority.
21. Extended Warranty (GC Section 8.1(11))
The Developer shall provide extended warranties for a period 12 months after the date of Completion of the New Facilities.
22. Insurance (GC Section 8.5)
The Developer shall take appropriate coverage and maintain insurance policies that the developer as normally should get, in specified sums, with specified deductibles but not limited to the below:
 - (a) Contractors All Risk Insurance (CAR): To the extent of the proposed investment value.
 - (b) Worker's Compensation: Developer to provide and confirm to the Authority on such provision.

(c) Other Insurance

Such other insurances as may be required in the normal viz., Insurance during transportation, Insurance of project on site infrastructure, Operational damage Insurance, Consequential loss Insurance, Mechanical or electrical failure Insurance, Automobile liability insurance, Political risk Insurance, Directors' and officers' liability insurance, Third Party Liability and such others as required.

Appendix 2

Terms and Procedures of Payment

BETWEEN

BANGLADESH ECONOMIC ZONES AUTHORITY

AND

TERMS AND PROCEDURES OF PAYMENT
APPENDIX 2 TO THE GENERAL CONDITIONS
FOR A DEVELOPER AGREEMENT TO
DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER
MIRSORAI ECONOMIC ZONE IN BANGLADESH

SEPTEMBER 2015

APPENDIX 2: TERMS AND PROCEDURES OF PAYMENT

1. Terms of Payment

1.1 General

In accordance with the provisions of GC Section 5.2, the Developer shall pay the Authority in the manner and at the times set out in this Terms and Procedures of Payment Appendix.

1.1 (a) One-time Upfront Payment – The Developer shall make a One time Upfront Payment (Non-refundable and Non-adjustable) equivalent to BDT _____ (Bangladeshi Taka _____ only) upon signature of contract towards the 550 acres of land parcel.

1.2 Payment of amount by the Developer to the Authority towards Revenue Sharing-

In respect of the amount towards Revenue Sharing by the Developer to the Authority, as listed in Schedule 3 of the Financial Offer Schedules of the Developer's Bid, the Developer shall offer revenue sharing to the extent of ____% (_____ Percent).

1.3 Payment of the Annual Land Lease Amount by the Developer for leasing of 550 acres -In respect of the amount for land lease rental as listed in Schedule 3 of the Financial Offer Schedules of the Developer's Bid the payment towards lease of 550 acres of land, pursuant to section 1.3 and subject to Section 1.4(a) of this Appendix the amount is _____ per square meter.

1.4 An escalation formula ensuring that the annual lease payments described above are regularly adjusted according to the rate of inflation, changing land values and currency fluctuations.
(Formula of selected bidder to be included here)

1.5 Time for effecting Payment

- (a) The Developer shall make payment to the Authority pursuant to Section 1.3, 1.4 of this Appendix and first such amount shall be paid upon signing of the Developer Agreement and thereafter annually in the first week of the month;
- (b) The Developer shall make payments towards revenue sharing and profit sharing pursuant to section 1.2 of Appendix 2 to the Authority annually in the first week of the month or as mutually agreed.

1.6 Currencies

Payments shall be made to the Authority in BDT, unless otherwise agreed between the Parties.

2. PAYMENT PROCEDURES

The procedures to be followed making payments shall be in consultations with the Authority.

Appendix 3A

Design-Build Services

BETWEEN

BANGLADESH ECONOMIC ZONES AUTHORITY

AND

DESIGN-BUILD SERVICES
APPENDIX 3A TO THE GENERAL CONDITIONS
FOR A DEVELOPER AGREEMENT TO
DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER
MIRSORAI ECONOMIC ZONE IN BANGLADESH

SEPTEMBER 2015

Appendix 3A: DESIGN-BUILD SERVICES

ARTICLE 1 - GENERAL

1.1 Description of Design-Build Services

The Developer shall carry out and be responsible for the design and construction of the Site and New Facilities. The Developer's work and services as part of the "Design-Build Services" shall include,

- (a) the design services in respect of the Site and New Facilities as set out in DBSA Article 2;
- (b) the SFB, buildings and construction work and services in respect of the Site and New Facilities as set out in DBSA Article 3;
- (c) the operation of the Existing Facility as set out in DBSA Article 4; and
- (d) all work and services relating to the services set out in DBSA Sections 1.1(a), (b) and (c) that may be,
 - (i) necessary or desirable for the design and construction of the New Facilities in accordance with and as contemplated by the Design-Build Documents and the Technical Standards for both design and operation; or
 - (ii) that may be necessary or desirable for the operation of the Existing Facility.

1.2 Supplementing the General Conditions

The provisions contained in this Design-Build Services Appendix are intended to supplement the General Conditions for the purpose of providing greater specificity of the Design-Build Services that the Developer shall perform.

ARTICLE 2 - DESIGN SERVICES

2.1 General

2.1.1 Design and Engineering

(1) The Developer shall execute the basic and detailed design of the Site and the New Facilities and the engineering work in respect of that design in compliance with the provisions of the Developer Agreement, or where not so specified, in accordance with good engineering practice and in compliance with local architectural requirements.

(2) The Developer shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the PIU or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Developer by or on behalf of the Authority.

2.1.2 Codes and Standards

Wherever references are made in the Developer Agreement to codes and standards, including those codes and standards referred to in the Technical Standards Appendix, in accordance with which the Developer Agreement shall be executed, the edition or the revised version of such codes and standards current 30 days prior to the Submission Deadline shall apply unless otherwise specified. During Developer Agreement execution, any changes in such codes and standards shall be applied after approval by the Authority.

2.1.3 Design Responsibilities

- (1)** The Developer's design and design-related services shall include:
 - (a) the preparation of a design that meets the criteria set forth in the Design-Build Documents and that provides for a New Facilities that meets or exceeds the Technical Standards;
 - (b) the acquisition of all data and information necessary to prepare the design and that are required to demonstrate that the New Facilities meets or exceeds the Technical Standards;
 - (c) the preparation of schematic design documents to illustrate the scale and character of the Design-Build Services and how the parts of the Design-Build Services functionally relate to each other;
 - (d) the preparation of design development documents, consisting of drawings and other documents appropriate to the size of the Site and New Facilities to describe the size and character of the entire Site and the New Facilities including architectural, mechanical, civil works, and electrical systems, materials, operational processes, landscaping, and such other elements as may be appropriate;
 - (e) the preparation of Design-Build Documents setting forth in detail the requirements for construction based on the design development documents accepted by the Authority;
 - (f) obtaining all approvals, permits, including building permits, and licences for the Design-Build Services, except for those approvals, permits or licences that the Authority is explicitly required to obtain itself under the Applicable Law in which case the Developer shall prepare all documentation and provide assistance to the Authority in obtaining such approval, permits or licences;
 - (g) the preparation of assurances required to regulatory authorities respecting conformance of the design with the applicable building regulations, environmental standards and occupational health and safety requirements, including construction safety issues;
 - (h) the coordination required to integrate all parts of the Design-Build Services;

- (i) such other Design-Build Services that may be required from time to time that are agreed to by the Developer and the Authority in writing; and
- (j) the conducting of general reviews of the progress of the design process, to the extent necessary, in order to determine to the Developer's satisfaction that the design services are performed in compliance with the requirements of the Developer Agreement and Applicable Laws.

2.1.4 Design-Build Documents

(1) The Developer shall prepare all of the Design-Build Documents. The Design-Build Documents shall include the plans, designs, drawings, as-built documents, operations manuals, specifications, schematic design documents, design development documents and models, and all modifications thereto required in order to properly and fully test for, analyse for, plan, design and build the Site and New Facilities as contemplated in the Technical Standards and the remaining provisions of the Developer Agreement.

(2) The Developer shall prepare any other document, as may be requested by the PIU, that the PIU considers necessary to monitor the progress of the Design-Build Services and assess the Developer's compliance with the Developer Agreement.

(3) The Developer shall also prepare any other documents necessary to instruct the Developer's Personnel.

(4) The Developer shall provide each of the documents to PIU and the Authority with two sets of all of the Design-Build Documents in reproducible form and shall modify them to keep them up-to-date as requested by the PIU acting in a professionally reasonable manner. The Design-Build Documents, with the exception of the as-built documents, shall be subject to the review and approval of the PIU prior to performing any of the services set out in DBSA Article 3 in respect of any Design-Build Document.

(5) When the Developer notifies the Authority in accordance with DBSA Section 5.2, the Developer shall provide to the PIU one copy of the as built Design-Build Documents in reproducible form showing the exact as built locations, sizes and details of the Site and New Facilities and the Design-Build Services as executed. The Site and the New Facilities shall not be considered to have reached Completion for the purposes of DBSA Section 5.2 until such Design-Build Documents have been provided. The Developer shall update the as-built Design-Build Documents as necessary for the correction of defects or deficiencies contemplated by DBSA Section 5.2.

2.1.5 Design Considerations

In preparing the design for the Site and the New Facilities and the Design-Build Documents, the Developer shall,

- (a) protect public health and safety, including by the means set out in DBSA Section 3.3.9;
- (b) maximize the protection of the environment and minimise any adverse environmental impacts caused by the Site and the New Facilities throughout the Service Area and Country, including as may be required, recommended or advisable pursuant to any technical standard or

environmental assessments conducted on, at or near the Site and the New Facilities and by the means set out in DBSA Section 3.3.11;

- (c) ensure that the New Facilities is designed in order to maximize its duration as a fully functional Economic Zone that meets or exceeds the Technical Standards; and
- (d) ensure that the Site and the New Facilities are designed to meet the requirements of the Technical Standards Appendix.

2.2 Design Responsibilities – Off-Site Issues

In preparing the design for the Site and the New Facilities and the Design-Build Documents, the Developer shall include as part of the design,

- (a) improvements to existing haul route roads that lead to or will be used to access the Facility;
- (b) improvements to or design all access routes from existing local roads to the Site and Facility and intersections with local roads; and
- (c) plans and designs for the extension to the Site and Facility of all utility services required for all of the Services.

ARTICLE 3 - BUILDING AND CONSTRUCTION SERVICES

3.1 General

(1) The Developer shall carry out all building and construction of all items designed pursuant to DBSA Articles 1 and 2.

(2) The Developer shall provide all of the demolition, excavation, building, co-ordination, repair, warranty, review, inspection, testing, quality assurance and control, monitoring, scheduling, clean-up and other construction work and services required for the modification of the Site and the building of the New Facilities as contemplated by Design-Build Documents.

(3) The Developer shall have total control of the building and construction services and shall effectively direct and supervise the building and construction services so as to ensure conformity with the Design-Build Documents.

(4) The Developer shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the Design-Build Services under the Developer Agreement.

3.2 Procurement and Transportation

(1) Subject to GC Section 3.3, the Developer shall manufacture or procure and transport all the Plant and Equipment in an expeditious and orderly manner to the Site.

(2) The Developer shall at its own risk and expense transport all the Plant and Equipment, the Developer's Equipment (Design-Build) and the Developer's Equipment

(Operations) to the Site by the mode of transport that the Developer judges most suitable under all the circumstances.

(3) Unless otherwise provided in the Developer Agreement, the Developer may select any safe mode of transport operated by any person to carry the Plant and Equipment, the Developer's Equipment (Design-Build) and the Developer's Equipment (Operations).

(4) The Developer shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Plant and Equipment, the Developer's Equipment (Design-Build) and the Developer's Equipment (Operations) to the Site. The Authority shall use its reasonable endeavors in a timely and expeditious manner to assist the Developer in obtaining such approvals, if requested by the Developer. The Developer shall indemnify and hold harmless the Authority from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the Plant and Equipment, the Developer's Equipment (Design-Build) and the Developer's Equipment (Operations) to the Site.

(5) The Developer shall, at its own expense, handle all imported Plant and Equipment, Developer's Equipment (Design-Build) and Developer's Equipment (Operations) at the point(s) of import and shall handle any formalities for customs clearance. If the Applicable Law requires any application or act to be made by or in the name of the Authority, the Authority shall take all necessary steps to comply with such Applicable Law. In the event of delays in customs clearance that are not the fault of the Developer, the Developer shall be entitled to an extension in the Time for Completion, pursuant to GC Section 2.3.4.

3.3 Building Responsibilities

3.3.1 Temporary Supports, Structures and Utility Services

(1) The Developer shall have the sole responsibility for the design, erection, operation, maintenance, and removal of temporary supports, structures and utility services and the design and execution of construction methods required in their use.

(2) The Developer shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in DBSA Section 3.3.1(1) where required by law or by the Design-Build Documents and in all cases where such temporary supports, structures and utility services and their designs and method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.

3.3.2 Document Review

The Developer shall review the Design-Build Documents and shall report promptly to the PIU and the Authority any error, inconsistency or omission the Developer may discover. If the Developer does discover any error, inconsistency or omission in the Design-Build Documents, the Developer shall not proceed with the work affected until the Developer has corrected any such errors or inconsistency or supplied any missing information and these corrections have been approved in writing by the PIU or the Authority.

3.3.3 Plant and Equipment

The Developer shall provide and pay for labour, Plant and Equipment, tools, construction machinery and equipment, materials and supplies, water, heat, light, power,

transportation, and all other facilities and services necessary for the performance of the Design-Build Services in accordance with the Design-Build Documents.

3.3.4 Documents at the Site

The Developer shall keep one copy of the Design-Build Documents as up-dated, submittals, reports and records of meetings at the Site, in good order and shall make them available to the Authority and the PIU upon request and at any reasonable time.

3.3.5 Use of the Site and New Facilities

The Developer shall confine construction machinery and equipment, storage of Plant and Equipment, Developer's Equipment (Design-Build) and Developer's Equipment (Operations), and operations of Developer's Personnel to limits indicated by laws, ordinances, permits or the Design-Build Documents and shall not unreasonably encumber the Site with Plant and Equipment, Developer's Equipment (Design-Build) or Developer's Equipment (Operations). The Developer shall not load or permit to be loaded any part of the Site or the New Facilities with a weight or force that will endanger the safety of the Site or the New Facilities.

3.3.6 Quality Assurance

The Developer shall institute a quality assurance system to ensure compliance with the requirements of the Design-Build Documents. Compliance with the quality assurance system shall not relieve the Developer of its duties, obligations or responsibilities.

3.3.7 Developer's Access Routes and Rights of Way during the Design-Build Period

(1) The Developer shall satisfy itself as to the suitability and availability of the access routes it chooses to use during the Design-Build Period for access to and from the Site. The Developer shall, as between the Parties, be responsible for the maintenance of access routes during the Design-Build Period. The Authority will not be responsible for any claims which may arise from the use or otherwise of any access route. The Authority does not guarantee the suitability or availability of any particular access route, and will not entertain any claim for any non-suitability or non-availability for continuous use, during the Design-Build Period, of any such route.

(2) The Developer shall bear all costs and charges for special or temporary rights-of-way required by it for access to the Site. The Developer shall also provide, at its own cost, any additional facilities outside the Site or New Facilities required by it for the purposes of the Design-Build Services.

3.3.8 Site Regulations and Safety

(1) The Developer shall comply with all applicable safety regulations in providing the Design-Build Services and in occupying any part of the Site, Existing Facility or New Facilities. Unless otherwise stated in the Design-Build Documents, the Developer shall, during the Design-Build Period,

- (a) provide secure fencing, lighting, guarding and watching of the Design-Build Services;
- (b) provide temporary roadways, footways, guards and fences which may be necessary for the accommodation and protection of its employees, Site visitors, Authority's and occupiers of adjacent land, the public and others;

- (c) prepare a manual of safety policies and procedures applicable to each stage of the Design-Build Services and to the Site or New Facilities as a whole and distribute such manual to all of its Subcontractors, agents, representatives and employees working at the Site or New Facilities; and
- (d) carry out safety briefings of applicable site regulations to all employees, Subcontractors, agents, representatives and visitors to the Site, Existing Facility and the New Facilities prior to permitting first access of the applicable person to the Site or the New Facilities, and at regular intervals thereafter.

(2) During the Design-Build Period, the Developer shall develop and implement a comprehensive occupational health and safety program for the protection of the Developer's Personnel and all other persons who may attend at the Site or the New Facilities. The program shall include a description of how the Developer will,

- (a) carry out all occupational health and safety responsibilities in respect of the Site or New Facilities as required under the Applicable Law;
- (b) develop and manage all required occupational health and safety reporting procedures; and
- (c) manage all occupational health and safety claims.

3.3.9 Protection of the Environment

(1) The Developer 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, dust and other results of its Services, including,

- (a) adopting working practices that prevent or minimize the transfer of any pollutant off-site;
- (b) maintaining the access roads in good repair;
- (c) using appropriate dust suppressant methods;
- (d) restricting trucking and loud machinery and equipment use to daylight hours;
- (e) using mufflers, silencers and other appropriate methods to minimize the noise of the construction;
- (f) using "silt fencing", hay bales, silt traps or other methods to minimize soil erosion and prevent the contamination of surface water and the transportation of soil and sediment off-site onto adjacent properties;

(2) The Developer shall, at all times during building and construction, ensure that the Environmental Management Plan (Attached as Annex-1) is followed.

3.3.10 Physical Cultural Property

(1) The Developer shall take reasonable precautions to prevent its employees, agents, representatives, Subcontractors, or other persons from removing or damaging any fossils, coins, articles of antiquity, and structures and other remains or things of geological or archaeological interest at the Site. The Developer shall, immediately upon discovery of such article or thing, advise the PIU, who may issue instructions for dealing with it. All fossils, coins, articles of value or antiquity, and structures and other remains or things of geological or archaeological interest discovered on the Site shall be the property of the Authority.

(2) If the Developer suffers delay or incurs any damages or costs in following any instructions of the PIU pursuant to DBSA Section 3.3.11(1), and if such delay or damages or

costs were Unforeseeable, the Developer shall give notice to the PIU, with a copy to the Authority. After receipt of such notice, the PIU shall determine in accordance with GC Section 7.2.6 if the Developer is entitled to any extension of time and shall notify the Developer accordingly.

3.3.11 Emergency Work

(1) If, by reason of an emergency arising in connection with and during the execution of the Design-Build Services, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Site, Existing Facility or New Facilities, the Developer shall immediately carry out such work.

(2) If the Developer is unable or unwilling to do such work immediately, the Authority may do or cause such work to be done as the Authority may determine is necessary in order to prevent damage to the Site, Existing Facility or the New Facilities. In such event the Authority shall, as soon as practicable after the occurrence of any such emergency, notify the Developer in writing of such emergency, the work done and the reasons thereof. If the work done or caused to be done by the Authority is work that the Developer was liable to do at its own expense under the Developer Agreement, the reasonable costs incurred by the Authority in connection therewith shall be paid by the Developer to the Authority.

ARTICLE 4 - TEST AND INSPECTION

4.1 Tests and Inspection

(1) The Developer shall at its own expense carry out at the place of manufacture or on the Site all such tests and inspections of the Plant and Equipment and any part of the New Facilities as are specified in the Developer Agreement and in the Technical Standards Appendix. The Developer shall, in addition to those tests and inspections set out in the Developer Agreement, develop a plan for all testing and inspection of the New Facilities that is required in order to complete the New Facilities in accordance with the Technical Standards Appendix.

(2) The Authority and the PIU or their designated representatives shall be entitled to attend any test or inspection, provided that the Authority shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and boarding and lodging expenses.

ARTICLE 5 - COMPLETION OF THE NEW FACILITIES

5.1 Monthly Progress Notice

(1) The Developer shall submit to the PIU after the end of each month six copies, each signed by the Developer's Representative named in accordance with GC Section 7.1.2, a notice (the "Monthly Progress Notice") in such form as the PIU from time to time prescribe, showing the percentage of completion that the Developer considers it has effected in the preceding month, in respect of the Design-Build Services.

(2) The PIU shall, no later than 30 days after receipt of the Monthly Progress Notice, deliver to the Authority a statement (the "PIU's Statement") indicating, separately, the percentage of completion of the Design-Build Services that the PIU considers the Developer has effected in the applicable month.

5.2 Completion

(1) As soon as the Design-Build Services have, in the opinion of the Developer, been completed in accordance with the Technical Standards Appendix, excluding minor items not materially affecting the operation or safety of the New Facilities, and the New Facilities has satisfactorily passed all Tests on Completion as set out in the Technical Standards Appendix, the Developer shall so notify the Authority in writing (the “Notice of Completion”) and provide the as-built Design-Build Documents referred to in DBSA Section 2.1.4(4).

(2) The PIU shall, no later than 30 days after receipt of the Developer’s notice under DBSA Section 5.2(1), either issue a Completion Certificate stating that the New Facilities has reached Completion as of the date of the Developer’s notice under DBSA Section 5.2(1), or notify the Developer in writing of any defects or deficiencies or both.

(3) If the PIU is not satisfied that the Design-Build Services are complete, the PIU shall notify the Developer in writing of any defects or deficiencies no later than 7 days after receipt of the Notice of Completion.

(4) If the PIU notifies the Developer of any defects or deficiencies or both, the Developer shall then correct such defects or deficiencies, and shall repeat the procedure described in DBSA Section 5.2(1).

(5) If PIU is satisfied that the Design-Build Services have reached Completion, the PIU shall, no later than 7 days after receipt of the Developer’s repeated Notice of Completion, issue a Completion Certificate stating that the Design-Build Services have reached Completion as of the date of the Developer’s repeated Notice of Completion.

(6) If the PIU fails to issue the Completion Certificate and fails to inform the Developer of any defects or deficiencies 14 days after receipt of the Notice of Completion or 7 days after receipt of the Developer’s repeated Notice of Completion, then the Design-Build Services shall be deemed to have reached Completion as of the date of the Notice of Completion or repeated Notice of Completion as the case may be.

(7) As soon as possible after Completion, the Developer shall complete all outstanding minor items so that the Site and New Facilities are fully in accordance with the requirements of the Developer Agreement, failing which the Authority will undertake such completion and deduct the costs thereof from any monies owing to the Developer.

Environmental Management Plan (EMP)
Mirsorai Economic Zone, Bangladesh

Special Environmental Clauses (SECs) for Tender Document

Apart from the provisions under “General Specification” and “Particular Specification” for different sub-project components, the following special environmental clauses (SECs) shall be included in the Tender Document under General/Particular Specification. These clauses are aimed at ensuring that the Contractor carries out his responsibility of implementing the EMP and other environmental and safety measures.

Environmental Management Plan (EMP):

The Contractor shall carry out all mitigation and enhancement measures (including those related to mitigation of air/noise/water pollution; drainage/traffic congestion) as specified in the Environmental Management Plan (EMP) as below,

ENVIRONMENT MANAGEMENT PLAN

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
Pre-Construction					
Removal of Vegetation	<ul style="list-style-type: none"> • Removal of as little vegetation as possible during the development and re-vegetation of bare areas after the project. • Tree cutting should be minimized (if any). Twice the nos, of tree cut should be planted 	RoW	Pre-Construction	Contractor	BEZA/PMC
Procurement & Setting up of Crushers, Hot-mix plants, other Vehicles, Equipment and Machinery	<ul style="list-style-type: none"> • Specifications of crushers, hot mix plants and batching plants, other Construction Vehicles, Equipment and Machinery to be procured should comply to the relevant Standards/ norms and with the requirements of the relevant current emission control legislations • Hot mix plants, crushers and batching plants shall be located at distance of app. 1 km from nearest habitation, archaeological site, sensitive areas, forests etc. • Residential facility or sensitive facilities like hospitals, schools etc shall not be located in downwind direction of the identified plant site • Adequate stack height and emission control devices such as bag house filters, cyclone separators, water scrubbers etc., should be attached with HMP • Impervious platform for storage of bituminous and other liquid hazardous chemical • Pollution control measures for Diesel Generator (DG) set i.e. stack height, acoustic enclosure etc. • Proper lighting arrangement shall be made around plant site 	Areas in vicinity of construction site	Pre-Construction	Contractor	BEZA/PMC

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
	<p>if the plants are operated during dark hours.</p> <ul style="list-style-type: none"> • Provision of readily available first aid kit, fire fighting equipments at the plant site at appropriate location to respond in case of accident. • Periodical monitoring of air quality and noise levels as per conditions stipulated under the statutory clearance from DoE. Whenever the emission exceeds the permissible level the plants should be stopped and necessary repairing works of faults should be done to bring down the emission levels. 				
Setting up of construction/ labour camps	<ul style="list-style-type: none"> • The construction camps should be at least 500 m distance from habitations from the nearest settlements to avoid conflicts and stress over the infrastructure facilities with the local community. • Location for stockyards for construction materials will be identified at least 1 km from water sources • Store house for haz material like diesel should be at distance from construction labour camps. • The living accommodation and ancillary facilities for labour shall be erected and maintained to standards and scales approved by the resident engineer • All sites used for camps will be adequately drained. They will not be subject to periodic flooding, nor located within 300 feet of pools, sink holes or other surface collections of water unless such water 	Areas in vicinity of construction site	Pre-construction phase.	Contractor	BEZA/PMC

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
	<p>surface can be subjected to mosquito control measures</p> <ul style="list-style-type: none"> • The camps will be located such that the drainage from and through the camps will not endanger any domestic or public water supply • All sites will be graded, ditched and rendered free from depressions such that water may get stagnant and become a nuisance • Construction camps shall be provided with sanitary latrines (1 per 25 pax), bathing facility and urinals. • Construction camps should be electrified and well ventilated • No electrical wire should be left on the floor of camp or site. Proper system should be developed and entry to the site of electricity meter should be restricted and should be allowed for authorized personnel only • Sanitary latrines shall be under cover and so partitioned off as to secure privacy, and shall have a proper door and fastenings • Adequate and suitable facilities for washing clothes and utensils shall be provided and maintained for the use of contract labour employed therein. • Sewerage drains will be provided for the flow of used water outside the camp. • Drains and ditches will be treated with bleaching powder on a regular basis. • The sewage system for the camp will be properly designed, built and operated so 				

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
	<p>that no health hazard occurs and no pollution to the air, ground or adjacent watercourses takes place.</p> <ul style="list-style-type: none"> • Clean potable drinking water facility should be provided at the site and the water quality should be monitored regularly • Crèche facility should be provided for children if female workers are employed • First aid facilities should be made available at construction camp. First aid box should contain small, medium and large sized sterilized dressings, sterilized burns dressings, 2 % alcoholic solution of iodine, bottle containing salvolatile, snakebite lancet, , bottle of potassium permanganate crystals, scissors, Ointment for burns & surgical antiseptic solution • 1 first aid box should be available per 50 labour • A person trained in first-aid treatment shall be made in charge who shall always be readily available during the working hours at the work place • A suitable motor four wheeler transport shall be kept readily available to carry injured or ill person to the nearest hospital. 				
Identification of debris dumping sites	<ul style="list-style-type: none"> • The dumping sites shall not be located within designated Forest/protected areas • Residential facility or sensitive facilities like hospitals, schools etc. shall not be located in downwind direction of the identified dumping sites • Dumping shall not impact natural drainage courses 	Waste lands in nearby area	Pre-Construction	Contractor	BEZA/PMC

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
	<ul style="list-style-type: none"> • Dumping sites should be located at least 1 km from sensitive locations • Permission from concerned local body should be taken before finalizing the location • Agriculture lands should be avoided & waste lands should be preferred • Selected site should not support significant vegetation • The area should be sprinkled with water to suppress the dust emissions • Plant species suitable to grow in that conditions should be planted at the time of closure 				
CONSTRUCTION STAGE					
Land					
Soil Erosion and Sedimentation control	<ul style="list-style-type: none"> • Contractor should plan the activities so that no naked / loose earth surface is left out before the onset of monsoon. • Top soil from debris disposal sites & along the road side should be stripped and kept under covered shed for plantation • After the construction activity is over, top soil will be utilized for landscaping activity. • To avoid soil compaction along the transportation routes, only identified haul roads would be used for transportation. • Along sections abutting Isakhali canal, no development should be carried out and a retaining wall should be constructed • Retaining wall should be constructed all along the Isakhali canal section running through EZ site • Bund embankments should be 	Throughout Project Corridor, Service roads and equipment storage sites, etc.	During Construction	Contractor	BEZA/PMC

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
	<p>provided with turfing & longitudinal drains to minimize erosion</p> <ul style="list-style-type: none"> • Turfing of low embankments and plantation of grasses and shrubs should be done in slope stabilization. • Soil erosion checking measures as the formation of sediment basins, slope drains, etc, should be carried out. • Construction of Side Slope of Filled Land of 1:2 by suitable soils with proper compaction as per design. Slope surface should be covered by top soils/ cladding materials and grass turfings with suitable grass. 				
Contamination of soil	<ul style="list-style-type: none"> • Impervious platform and oil and grease trap for collection of spillage from construction equipment vehicle maintenance platform will be appropriately provided at construction camp, servicing area and liquid fuel and lubes at storage areas. • Proper management of waste from labour camps and construction site • Proper disposal of wastewater generated from labour camp and construction site 	At fuel storage areas – usually at construction camps, temporarily acquired site.	During Construction.	Contractor	BEZA/PMC
Material sources	<ul style="list-style-type: none"> • Adequate safety precautions shall be ensured during transportation of quarry material from quarries to the construction site. • Vehicles transporting the material shall be covered to prevent spillage. • No excavation of earth should be carried out prior obtaining permission from DoEB 	Nearest Quarry Site	During construction	Contractor	BEZA/PMC
Disposal of Debris	<ul style="list-style-type: none"> • Waste from construction camp should be segregated at site. 	Identified debris	During Construction	Contractor	BEZA/PMC

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
	<p>Food/wet waste should be composted in pit at the site, recyclable should be send to authorized recyclers and rejected waste should be disposed regularly through responsible agency in the area</p> <ul style="list-style-type: none"> • Dustbins should be provided at the site and construction camps to prevent littering of waste • Storage area of minimum 2 days should be provided at construction camp for storage of the waste generated from labour camps • Construction debris should also be segregated at the site. This debris should be used for filling to the extent possible. Recyclable waste should be sold through authorized dealers and reject waste should be sent to the identified debris disposal site • All arrangement for transportation during construction including provision, maintenance, dismantling and clearing debris, where necessary will be considered incidental. • Construction debris should be stored under covered sheds on paved surfaces to prevent leaching • Any hazardous waste generated during construction activity shall be stored at suitable place and then disposed off in consultation with the guidelines. • Rubbish, debris and bitumen wastes remaining after blacktop works shall be cleaned and disposed off in a safe place. 	disposal location during preconstruction phase			

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
	<ul style="list-style-type: none"> Contaminated runoff from storage areas shall be captured in ditches with an oil trap at the outlet. Utmost care shall be taken to ensure that the Municipal Corporation norms are met for the safe collection, transport and disposal of construction waste and debris. 				
Air					
Dust Generation	<ul style="list-style-type: none"> Routes for transportation of material within the site should be covered with brick bed so as to minimize the dust generation Inventory of the material entering and going outside the site should be maintained at site. This will help in knowing the raw material available and prevent piling up of raw material and thus dust generation Raw material stored should be covered. Debris and excavated soil should also be kept covered. Cement and sand should be stored under covered sheds only Vehicles delivering materials should be covered to reduce spills and dust blowing off the load. Compaction of prepared site to re-strain the fugitive emissions. Water should be sprayed in the cement and earth mixing sites as well as after compaction. In laying sub-base, water spraying is needed to aid compaction of the material. After the compaction, water spraying should be carried out 	Throughout Project Corridor, all access roads, temporarily acquired sites.	During Construction Phase	Contractor	BEZA/PMC

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
	<p>at regular intervals to limit the dust to below</p> <ul style="list-style-type: none"> • Every equipments and machinery will be fitted with dust suppression devices such as water sprinklers, dust bags, cyclone etc. as appropriate. • Road surface should be cleaned with air compressor and vacuum cleaners prior to the construction works. Manual labour using brooms should be avoided, if used labour to be provided masks. • The Contractor shall take every precaution to reduce the level of dust emission from the hot mix plants and the batching plants. • Contractor will ensure that all vehicles, equipment and machinery used for construction are regularly maintained and confirm that pollution emission levels comply with the relevant requirements of DoEB • The Contractor will submit PUC certificates for all vehicles/ equipment/ machinery used for the project. Monitoring results will also be submitted to 'PIU' through the 'Engineer'. • Air quality monitoring to be carried out during construction phase to check the pollutants level in the air 				
Water					
Loss of water bodies/ surface / ground	<ul style="list-style-type: none"> • No waste to be disposed off in Isakhali canal, Feni River and aquaculture ponds along the CDSP bund and BWDB bund • No excavation from the bund of the water bodies. • No earth will be excavated for 	Near all water bodies	During construction	Contractor	BEZA/PMC

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
	<p>development of any off-site facility</p> <ul style="list-style-type: none"> • No debris disposal near any water body. • Prior written permission from authorities is required for use of water for construction activity. • Construction labours to be restricted from polluting the source or misusing the source. • Labour camps will be located away from water bodies. • Open defecation should not be allowed. Sanitary toilets should be provided at the site & in labour camps. • Bathing & Washing should not be done near waterbody, whereas proper facility should be provided for this purpose • Provision of the septic tank with soak pit to dispose off the water from construction labour camp • Surface run-off due to construction activities should be collected & re-used for wheel washing & sprinkling for dust suppression • All raw material, excavated soil & debris to be kept covered so as they do not mix with rain water during rains and does not contaminate the rainfall run-off which may enter the nearby water bodies • No excavation work to be undertaken during monsoon season 				
Drainage and runoff	<ul style="list-style-type: none"> • The Contractor will always clear all the cross drainage structures and natural drainage before onset of monsoon in order to keep all drainage unblocked Earth, stones, 	Throughout the stretch	During Construction	Contractor	BEZA/PMC

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
	<p>wastes and spoils will be properly disposed off, to avoid blockage of any drainage channel.</p> <ul style="list-style-type: none"> • All necessary precautions will be taken to construct temporary or permanent devices to prevent inundation or ponding. 				
Silting / sedimentation	<ul style="list-style-type: none"> • Silt fencing shall be provided around aquaculture ponds & Isakhali canal along the access road to prevent runoff of sediment from construction site • Sedimentation tanks should be provided in line with the storm water drains to prevent soil loss/erosion 	Throughout Project Corridor and at all locations of water bodies	Construction Phase	Contractor	BEZA/PMC
Contamination of water	<ul style="list-style-type: none"> • Construction activities & material storage close to water bodies (Isakhali canal, Bamon Sundar canal & Feni River) shall be avoided • Car washing / workshops near water bodies will be avoided. • Wastewater generated from labour camp and construction sites should not be discharge in water bodies and should be channelized to septic tanks/soak pits • Construction wastewater can be re-used for sprinkling and curing 	Throughout Project Corridor and at all locations of water bodies	Construction Phase	Contractor	BEZA/PMC
Noise					
Noise from Vehicles, Plants and Equipment	<ul style="list-style-type: none"> • All vehicles and equipment used in construction will be fitted with exhaust silencers. • Noise standard at processing sites, eg. hot mix plant , machinery will be strictly monitored to prevent exceeding of noise standards. • Workers in vicinity of loud noise, shall wear earplugs and 	Throughout Project Corridor and at all construction sites, hot mix plant etc.	During Construction	Contractor	BEZA/PMC

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
	<p>working time should be limited as a safety measure. Job rotations should also be carried out to prevent continuous exposure</p> <ul style="list-style-type: none"> • Construction activities to be taken up during day time only • Servicing of all construction vehicles and machinery should be done for exhaust silences and should be checked and if found defective should be replaced. • No noisy construction activities should be permitted around educational institutions/health centers (silence zones) up to a distance of 100 m from the sensitive receptors. • Monitoring shall be carried out at the construction sites • Environmental Expert will be required to inspect regularly to ensure the compliance of EMP. 				
Flora and Fauna					
Loss or damage to vegetation	<ul style="list-style-type: none"> • No tree cutting should be carried out for construction of access road without permission from BEZA & PMC • Compensatory plantation should be carried out in the ratio of 1:2 minimum • Plantation should be carried out all along the access road 	Throughout Project Corridor	During Construction Phase	Contractor	BEZA/PMC
Compaction of vegetation	<ul style="list-style-type: none"> • Construction vehicles, machinery and equipment will move or be stationed in the designated area only (RoW or CoI, as applicable), to prevent compaction of vegetation outside the RoW. • While operating on temporarily acquired land for traffic detours, storage, material handling or any other 	Throughout Project Corridor	During Construction Phase	Contractor	BEZA/PMC

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
	construction related or incidental activities, it will be ensured that the trampling of soil and damage to naturally occurring herbs and grasses will be avoided.				
Loss, damage or disruption to fauna	<ul style="list-style-type: none"> • Construction workers will be directed not to disrupt or damage the fauna. • Construction vehicles will run along specified access to avoid accidents to cattle. 	Throughout Project Corridor	During Construction Phase	Contractor	BEZA/PMC
Socio-Economic Environment					
Accidents	<ul style="list-style-type: none"> • Safety officer should be appointed at site to ensure all the safety guidelines are being followed at site • Cautionary guidance should be provided at site to aware people about the associated risk with the area. Entry to the fuel storage room or machinery operation room should be restricted only to authorized trainer personnel • All Accidents shall be reported immediately and incident analysis, preventive measures shall be implemented. • A gate should be provided at site and record for entry & exit of vehicles should be maintained at the site • Fuel should be stores at site away from construction camps • Adequate lightning should be provided at site especially during night time 		During Construction	Contractor	BEZA/PMC
Occupational Health & Safety					
Construction Safety	<ul style="list-style-type: none"> • All construction worker should wear a safety jacket and other protective equipment like helmet, gloves, gum boots, ear plugs, mask while working at the site • All workers employed on 	Entire Project site.	During Construction	Contractor	BEZA/PMC

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
	<p>mixing asphaltic material, cement, lime mortars, concrete etc., will be provided with protective footwear and protective goggles.</p> <ul style="list-style-type: none"> Workers, who are engaged in welding works, would be provided with welder's protective eye-shields. Stonebreakers will be provided with protective goggles and clothing and will be seated at sufficiently safe intervals Workers should be made aware about the health issues related with open defecation Training to workers should be provided for handling the construction equipment and machinery Training to the workers should be provided to handle the emergency situations like fire, floods etc. First aid facility and sufficient nos. of trained personnel should be available at all the time at construction camp Cautionary signage and notice should be displayed in local language and English at the required places like fuel storage area so that hazards can be avoided. A security guard should be deputed in these areas and entry should be restricted A register of all toxic chemicals delivered to the site shall be kept and maintained up to date. The register shall include the trade name, physical properties and characteristics, chemical ingredients, health and safety hazard information, safe 				

Impact	Mitigation Measures	Location	Time Frame	Implementation of Mitigation Measures	Monitoring & Supervision
	handling and storage procedures, and emergency and first aid procedures for the product.				
Disaster Management	<ul style="list-style-type: none"> • All reasonable precaution should be taken to prevent danger of the workers and the public from fire, flood, drowning, etc. • Fire-fighting facility, i.e. sand filled buckets and portable fire extinguishers should be available at site • Workers should be trained how to use fire extinguisher • Workers should be made aware of nearest located cyclone shelter and measures to be taken by them in case of cyclone or flood. • No construction activity should be taken during rainy season 	Entire Project site	During Construction	Contractor	BEZA/PMC
Clearing of Construction of Camps & Restoration	<ul style="list-style-type: none"> • Contractors shall prepare site restoration plans. The plans shall be implemented prior to demobilization. • On completion of works, all temporary structures shall be cleared, all rubbish burnt, excreta or other disposal pits or trenches filled in and sealed and the site left clean and tidy. 	All Workers' Camps		Contractor	BEZA/PMC

Appendix 3B

Operations Services BETWEEN BANGLADESH ECONOMIC ZONES AUTHORITY AND

**OPERATIONS SERVICES
APPENDIX 3B TO THE GENERAL CONDITIONS
FOR A DEVELOPER AGREEMENT TO
DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER
MIRSORAI ECONOMIC ZONE IN BANGLADESH
SEPTEMBER 2015**

Appendix 3B: Operations Services

ARTICLE 1 Overall Description of Services to be provided by the Developer during the operations and maintenance of the Economic Zone

1.1 The Developer shall operate and manage the New Facilities to:

- (a) maintain the New Facilities and develop a comprehensive maintenance management program for the New Facilities;
- (b) develop and manage programs to train and advance the skills of the Developer's Personnel; and
- (c) except as otherwise provided, carry out all management, financial and administrative responsibilities.

1.2 General Requirements

- (d) The Developer shall submit plans and programs to the PIU in the language set out in the SC for its review and approval.
- (e) The Developer at its expense shall implement the plans and programs.

1.3 New Technologies, Regulatory Matters and Corporate Communications

The Developer shall advise, assist and provide technical expertise to the Authority in all matters relating to,

- (f) new technologies available in the marketplace in respect of the Developer and the Authority's activities and responsibilities;
- (g) new legal requirements that would further promote the multi product Economic Zones in Bangladesh;
- (h) proposals for changes to existing regulatory requirements; and
- (i) media relations and issues.

ARTICLE 2 Rights of Developer during Operation Services

(1) Developer, as well as their subcontractors, shall be entitled, under the Act and Rules in conformity with Applicable Law:

- (a) To acquire and maintain on a freehold or leasehold basis EZ Lands or other On site infrastructure situated on such lands in accordance with all Applicable Law, including the Act and Rules;
- (b) To transfer on a freehold or leasehold basis EZ Lands and other On site infrastructure located on such lands in conformity with the Act and Rules, including through sub-lease arrangements, and to receive payment or collect rental fees for such transactions;

(c) To issue the internal operating rules and procedures in accordance with all Applicable Law to govern the day-to-day activities of the EZ, provided that the governing EZ Permit, Developer Agreement confers such right upon the relevant Developer;

(d) To operate, maintain, and promote the EZ in conformity with all Applicable Law, including the Act, Rules, the governing Permit, Developer Agreement, as well as with the EZ internal operating rules and procedures;

(e) To provide utilities and other basic services inside or outside the designated EZ consistent with EZ User and any EZ Resident requirements in accordance with all Applicable Law, including the Act, Rules, the governing Permit and Developer Agreement, and to charge at its sole discretion fees for such services subject to the requirements imposed by the Rules;

(f) To enter into contracts with private third-party Organisations for the operation, maintenance, and promotion of the EZ;

(g) To employ, without any restrictions or impediments, both Bangladeshi and foreign nationals in accordance with Applicable Law;

(h) To be entitled to the incentives arising under the Act, Rules, and the applicable Gazette notification;

(i) To transfer all funds freely into and outside Bangladesh by virtue of the Act, Rules, and the applicable Gazette notification; and

(j) To exercise any other rights under all Applicable Law, including the Act, Rules, the governing Permit, Developer Agreement.

(2) The duration of the rights to which any Developer, as well as any authorised subcontractor, shall be entitled under the Act and Rules shall be guaranteed for the period during which the conditions of the Permit, Developer Agreement and Rules are satisfied.

ARTICLE 3 Obligations of Developer during operation services

3.1 Developer, as well as their subcontractors, shall comply with the following obligations:

(1) To adhere to all Applicable Law, including the Act, Rules, the governing Permit and Developer Agreement;

(2) To monitor the activities of all EZ Users and any EZ Residents in accordance with all Applicable Law, as well as with the EZ internal operating rules and procedures, including those rules and procedures related to health, safety, and environmental matters, and to notify the Authority of any EZ User or EZ Resident statutory or regulatory violations or non-compliance;

(3) To operate the EZ in a reasonable commercial manner in conformity with all Applicable Law, including the Act, Rules, the governing Permit and Developer Agreement, consistent with Bangladesh's long-term sustainable economic development goals;

(4) To maintain at all times all On-Site Infrastructure, as well as all EZ utilities and other basic services described in the governing Permit and Developer Agreement in fully operational condition;

(5) To provide reasonably equal treatment to, and avoid discriminating against, any EZ Users or EZ Residents in accordance with Applicable Law;

(6) To set fees for any utilities or other basic services provided in the EZ in conformity with reasonable commercial considerations as regulated by Applicable Law;

(7) To promote the EZ in coordination with the Authority both nationally and internationally;

(8) To submit to the Authority an annual report that provides the following information

for the designated EZ:

- (a) EZ Investments undertaken during the preceding calendar year and the investments projected for the forthcoming calendar year;
 - (b) Number, size, employment, investment, and business activities of all EZ Users;
 - (c) Area of EZ Lands under operation and the on site infrastructure constructed thereon; and
 - (d) Other information deemed relevant by the Authority;
- (9) To submit to the Authority on a quarterly basis a report that provides the following information for the designated EZ for each calendar month of EZ operation:
- (a) Employment statistics, including the number of female workers employed;
 - (b) The volume and value of all EZ Exports;
 - (c) The volume and value of all other EZ sales, including all sales made to another EZ customs-controlled area, as well as any sales made within Bangladesh; and
 - (d) The total monetary value of investments in the designated economic zone.
- (10) To adhere to the performance requirements of the operation schedule for the EZ as prescribed by the governing Permit, Developer Agreement, and any other Applicable Law, as well as to the financial operation obligations required by the Authority, such as the amount of, and time schedule for, capital and debt financing;
- (11) To provide the level of technical training to those Bangladeshi workers employed by the Developer as provided under the governing Permit and Developer Agreement;
- (12) To comply with the environmental and labour obligations prescribed by Section 33 and Section 34 of the Act, Rules, and all Applicable Law;
- (13) To keep all company books, records, accounts, and financial statements in conformity with international financial reporting standards as subject to audit under Applicable Law;
- (14) To maintain all facilities and On-Site Infrastructure in good working order in accordance with all Applicable Law, including the governing Permit, Developer Agreement;
- (15) To pay all required fees, taxes, or any other dues owed to any Competent Agency;
- (16) To carry out any administrative function in the EZ that is delegated by the Authority, in accordance with Applicable Law;
- (17) To provide adequate security at the perimeter and common areas of the designated EZ; and
- (18) To comply with any other obligation under Applicable Law, including the Act, Rules, the governing Permit and Developer Agreement.

ARTICLE 4 OPERATIONS AND MAINTENANCE

4.1 Operation, Maintenance and Safety of the Economic Zone Facilities and Services

(1) During the Operation Phase, the Developer shall operate and maintain the Economic Zone in accordance with Developer Agreement either by itself, or through outsourced Operations & Maintenance contractor and if required, modify, repair or otherwise make improvements to the Economic Zone to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Good Industry Practice.

(2) The operations and maintenance hereunder shall include but not be limited to:

- (a) ensuring optimal operation and maintenance of the Economic Zone, in accordance with the Specifications and Standards prescribed herein, throughout the

Developer Period, either by performing the operation and maintenance itself or by making durable, effective and permanent arrangements for due performance of the operation and maintenance obligations by third party(s);

- (b) collecting and appropriating the fees from the Economic Zone in accordance with the provisions contained herein;
- (c) complying with the Safety Standards;
- (d) carrying out periodic preventive maintenance of the Economic Zone ;
- (e) carrying out periodic renovation as required from time to time so that the Economic Zone is always in conformity with the scope of the Developer Agreement;
- (f) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, structures, buildings, pavement lighting, road signs, electricity lines, telephone lines, water facilities, sewage system and other public amenities on the Site;
- (g) undertaking major maintenance such as resurfacing of roads, pavements, repairs to structures and buildings including repairs and refurbishment of other infrastructure and Economic Zone Facilities;
- (h) preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Site;
- (i) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Site;
- (j) protection of the environment and provision of equipment and materials therefor so that the Economic Zone is in compliance with Applicable Permits;
- (k) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Economic Zone; and
- (l) maintaining a public relations unit to interface with and attend to suggestions from the EZ Users, government agencies, media and other agencies;

(3) The Developer shall promptly remove from the Economic Zone all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Economic Zone in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

(4) The Developer shall maintain, in conformity with Good Industry Practice, and Standards and Specifications applicable, the Economic Zone Facilities located on the Site and forming part of the Economic Zone.

4.2 Operation and Maintenance Standards

The Developer shall ensure that at all times during the Operation Phase; the Economic Zone conforms to the Operational and Maintenance of highest standards set forth:

(1) Maintenance Standards

The Developer shall, at all times, operate and maintain the Economic Zone in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Developer shall, at all times during the Operation Phase, ensure compliance with the general and specific maintenance requirements.

(2) Repair/rectification of defects and deficiencies

The Developer in respect of Operation and Maintenance Standards shall include repair and rectification of the defects and deficiencies.

(3) Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Annexure, if any defect, deficiency or deterioration in the Economic Zone poses danger to the life or property of the EZ Users thereof, the Developer shall promptly take all reasonable measures for eliminating or minimizing such danger.

(4) Divestment Requirements

All defects and deficiencies specified in this Annexure shall be repaired and rectified by the Developer so that the Economic Zone conforms to the Operation and Maintenance Standards on the Transfer Date.

(5) Environmental Compliance

The development and all operations of Economic Zone shall conform with applicable law and guidelines.

(6) Safety Standards

The Developer shall ensure compliance with the safety standards set out in this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the EZ Users, including those standards set out below:

(a) Safety Standards aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Site, irrespective of the person(s) at fault.

(b) EZ Users of the Economic Zone include staff of the Developer and its contractors working on the Economic Zone.

(c) Safety Standards apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

(d) The Developer shall abide by:

(i) Applicable Laws and Applicable Permits;

(ii) fire safety norms as per Good Industry Practice;

(iii) provisions of this Agreement;

(iv) usage of earthquake resistant materials and designs in accordance with Good Industry Practice, in the event the Site is prone to seismic activity

(v) relevant standards/guidelines contained in internationally accepted codes; and

(vi) provisions of the Environmental Law

(e) The Developer shall make adequate arrangements during the Construction Phase for the safety of workers and road users for safety in construction zones, and notify the Authority about such arrangements.

(f) Safety measures during Operation Phase

(i) The Developer shall develop, implement and administer a surveillance and safety programme for EZ Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.

(ii) The Developer shall establish a Safety Management Unit (SMU) to be functional and designate one of its officers to be in-charge.

(7) Safety Guidelines

(a) Safe movement: In the design, construction and operation of the Economic Zone, particular care shall be taken to ensure safety of EZ Users. This shall include facilities for safe and efficient evacuation in case of Emergency.

(b) System integrity: In the design of power supply, circuits and equipments particular care shall be taken to minimise the likely incidence of failure.

(c) Restoration of service: The Economic Zone shall be designed such that in the event a fault occurs, a limited service can be provided within a few minutes by isolation of the affected area or equipment, to the extent possible.

(d) Safety management: Developer shall prepare a safety statement once in every quarter, stating clearly the system of management of checks and maintenance tolerances for various on site infrastructures. The statement shall also bring out the nature and extent of, staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Authority within 15 (fifteen) days of the close of every quarter.

(e) Safety equipment: The following equipment shall be provided in adequate numbers:

- (i) fire extinguishers and fire alarms at the appropriate locations;
- (ii) stretchers and standard first aid boxes; and
- (iii) such other equipment as may be required

(f) Emergency: A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during Emergency through periodic simulated exercises as laid down in a disaster management manual to be prepared and published by the Developer.

(g) Fire safety

(i) To prevent fire in the EZ User areas, the Developer shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit harmful gases when burning.

(ii) Emergency exits should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to open from inside the building in case of emergency.

(iii) Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. In complying with the provisions of this Section, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signage shall be uniform and standardised.

(8) EZ User safety and information system

(a) The Developer shall provide the SMU with the facilities required for supervising EZ User areas, and shall provide visual information to EZ Users. The Developer shall also provide one-way communication to EZ Users through a Public Announcement (PA) system. The EZ User call points should be located at convenient locations to allow EZ Users to contact the SMU in emergencies.

(b) The EZ User information system shall comprise dynamic visual displays and loudspeakers.

(c) In particular, the Developer shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Economic Zone.

4.3 Maintenance Manual

(1) At least 120 (one hundred and twenty) days prior to the commencement of the phase I operations, the Developer shall, in consultation with the Authority, prepare a repairs and maintenance manual (the “Maintenance Manual”) for the regular and preventive maintenance of the Economic Zone in conformity with the Operational and Maintenance Standards, Safety Standards and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Section shall apply, mutatis mutandis, to such revision.

(2) Without prejudice to the provision of the forgoing Section the Maintenance Manual shall, in particular, include provisions for maintenance of Economic Zone On site infrastructure and Facilities and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Economic Zone On site infrastructure, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

4.4 Maintenance Programme

(1) Not later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Phase, the Developer shall provide to the Authority, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “Maintenance Programme”) to comply with the Operations and Maintenance Standards, Maintenance Manual and Safety Standards. Such Maintenance Programme shall include:

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Economic Zone;
- (e) intervals at which the Developer shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures; and
- (g) intervals for major maintenance works and the scope thereof.

(2) Within 15 (fifteen) days of receipt of the Maintenance Programme, the Authority shall review the same and convey its comments to the Developer with particular reference to its conformity with the Operations and Maintenance Standards, Maintenance Manual and Safety Standards.

(3) The Developer may modify the Maintenance Programme as may be reasonable in the circumstances.

4.5 Safety, breakdowns and accidents

(1) The Developer shall ensure safe conditions for the EZ Users and in the event of unsafe conditions and accidents; it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

(2) The Developer’s responsibility for rescue operations on the Economic Zone shall include safe evacuation of all EZ Users and staff from the affected area as an initial response to

any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the smooth functioning of the Economic Zone.

4.6 De-commissioning due to Emergency

(1) If, in the reasonable opinion of the Developer, there exists an emergency which warrants de-commissioning and closure of the whole or any part of the Economic Zone, the Developer shall be entitled to de-commission and close the whole or any part of the Economic Zone to EZ Users for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Developer to the Authority without any delay, and the Developer shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

(2) The Developer shall re-commission the Economic Zone or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Developer to re-commission the Economic Zone.

4.7 Maintenance Reports

During Operation Phase, the Developer shall, no later than 7 (seven) days after the close of a quarter, furnish to the Authority a quarterly report stating in reasonable detail the condition of the Economic Zone including its compliance or otherwise with the Operation and Maintenance Standards, Maintenance Manual, Maintenance Programme and Safety Standards, and shall promptly give such other relevant information as may be required by the Authority.

4.8 Register of Maintenance Works and Inspection

The Developer must maintain a true, up to date and complete register of all maintenance work undertaken by the Developer in respect of the Economic Zone Facilities and all inspections carried out on the Economic Zone Facilities. The Developer must, following reasonable notice from the Authority, make available to the Authority the aforesaid register for inspection and if, requested to do so by the Authority, provide it with a full copy of the aforesaid register or extracts thereof.

4.9 Maintenance Inspections by the Authority

(1) Inspection: The Authority shall inspect the Economic Zone at least once in a quarter. It shall make a report of such inspection (the "O&M Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Operation and Maintenance Standards, Maintenance Manual, Maintenance Programme and Safety Standards, and send a copy thereof to the Authority and the Developer within 7 (seven) days of such inspection.

(2) Test: For determining that the Economic Zone conforms to the Operation and Maintenance Standards, the Authority shall require the Developer to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Developer shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Authority and furnish the results of such tests forthwith to the Authority.

4.10 Remedial measures

(1) The Developer shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results and furnish a report in respect thereof to the

Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Developer shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

(2) The Authority shall require the Developer to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Economic Zone into compliance with the Operation and Maintenance Standards.

(3) In the event the Developer has failed to operate and maintain the Economic Zone in accordance with the Operation and Maintenance Standards, and such failure has not been remedied within 60 days following a notice to that effect issued by the Authority ("Notice to Remedy"), or such longer period as may in the opinion of the Authority be reasonable and necessary to remedy the failure, the Authority may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to operate and maintain the Economic Zone or cause to repair and maintain the Economic Zone infrastructure, and Economic Zone Facilities at the risk and cost of the Developer until such failure is rectified. The Developer shall reimburse all reasonable costs incurred by the Authority on account of such operation and maintenance or repair and maintenance within 7 days of receipt of the Authority claim thereof.

(4) The Developer shall be deemed to be in material breach of Operation and Maintenance Standards if the Authority determines that, even after following written notice giving the particulars, and a reasonable opportunity to cure as per above provisions;

(a) there has been failure / undue delay in carrying out scheduled / planned maintenance or the scheduled / planned maintenance has not been carried out in accordance with the Operation and Maintenance Standards and such act has a Material Adverse Effect;

(b) the maintenance of the Economic Zone, Economic Zone On site infrastructure or Economic Zone Facilities or any material part thereof has deteriorated to a level which is below the acceptance level prescribed by the Operations and Maintenance Standards and such deterioration has a Material Adverse Effect;

(c) there has been a serious or persistent let up in adhering to the Operation and Maintenance Standards and thereby the Economic Zone, Economic Zone On site infrastructure or Economic Zone Facilities or any part thereof is not safe for operations;

(d) there has been persistent breach of Operation and Maintenance Standards. For avoidance of doubt, persistent breach shall mean:

(i) any recurring breach of Operation and Maintenance Standards by the Developer which has not been remedied by the Developer despite a Notice to Remedy in respect thereof issued by the Authority;

(ii) recurrence of a breach by the Developer, during the pendency of Notice to Remedy by the Authority requiring the Developer to remedy a breach, and

(iii) repeated occurrence of a breach notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.

(e) upon occurrence of a material breach of Operation and Maintenance Standards, the Authority shall, without prejudice to and notwithstanding any other consequences provided therefor under this Agreement, be entitled to terminate this Agreement.

4.11 Damages for breach of operation and maintenance obligations

(1) In the event that the Developer fails to repair or rectify any defect or deficiency set forth in the Operation and Maintenance Standards within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of 0.5% (zero point five per cent) of the cost of such repair or rectification as estimated by the Authority. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of termination thereof.

(2) The Damages set forth above may be assessed and specified forthwith by the Authority provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Developer is otherwise in compliance with its obligations hereunder. The Developer shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution procedure shall apply.

4.12 Updating the Operations and Maintenance Standards and the Safety Standards

(1) The Developer acknowledges and agrees that the Operations and Maintenance Standards and the Safety Standards, will require ongoing development, amendment and updating throughout the Term to take into account:

- (a) changes in Applicable Laws;
- (b) changes to the manner in which the Economic Zone Facilities is being used and operated;
- (c) the development/change in the units of the Economic Zone Facilities; and
- (d) deficiencies in or omissions from the Operations and Maintenance Standards and the Safety Standards of which the Developer becomes aware.

(2) The Developer must:

- (a) continue to develop and promptly amend or update the Operations and Maintenance Standards and the Safety Standards; and
- (b) promptly submit each revised Operations and Maintenance Standards and the Safety Standards to the Authority as it is further developed, amended or replaced.
- (c) without limiting any other rights the Authority may have, if the Authority reasonably considers that:

- (i) any part of the Operations and Maintenance Standards and the Safety Standards has ceased to comply with the requirements of this Agreement; or

- (ii) the Developer has not further developed, updated or amended the Operations and Maintenance Standards and the Safety Standards in accordance with the requirements above, the Authority may by written notice direct the Developer to further develop, update or amend the Operations and Maintenance Standards and the Safety Standards specifying:

- aa. the reasons why such development, updating or amending is required; and

- bb. such reasonable time within which such development, updating or amending must occur, and the Developer must:

- (iii) further develop, update or amend the Operations and Maintenance Standards and the Safety Standards as directed by the Authority; and

- (iv) submit the further developed, updated or amended Operations and Maintenance Standards and the Safety Standards to the Authority within the time specified in the Authority's notice.
- (3) The Developer:
 - (a) must comply with the Operations and Maintenance Standards and the Safety Standards submitted to the Authority;
 - (b) agrees that compliance by it with the Operations and Maintenance Standards and the Safety Standards will not in any way lessen or affect:
 - (i) its liabilities or responsibilities under this Agreement or otherwise according to Applicable Laws; or
 - (ii) the Authority's rights against it, whether under this Agreement or otherwise according to Applicable Laws.
- (4) The Authority will have the right at any time to audit at the Authority's cost the Developer's compliance with the Operations and Maintenance Standards and the Safety Standards. The Authority must give the Developer at least 28 days' notice of its intention to exercise this right.

Appendix 3C

Technical Standards

**OPERATIONS SERVICES
APPENDIX 3B TO THE GENERAL CONDITIONS
FOR A DEVELOPER AGREEMENT TO
DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER
MIRSORAI ECONOMIC ZONE IN BANGLADESH**

SEPTEMBER 2015

Appendix 3C: Technical Standards

ARTICLE 1 GENERAL

1.1 Documents Comprising the Technical Standards Appendix

- (1) The Technical Standards Appendix consists of,
- (a) the General Provisions;
 - (b) the Functional and Technical Requirements; and
 - (c) the Technical Standards.

(2) The Technical Standards Appendix Chart sets out the technical standards with reference to the Design-Build Services and Operations Services Appendices 3A & 3B Sections respectively.

1.2 Supplementing the General Conditions and Design-Build or Operating Services Appendix

The Technical Standards Appendix supplements the General Conditions and the Design-Build Services and Operations Services Appendices for the purpose of providing greater specificity of the technical standards, which the Developer is required to meet.

ARTICLE 2 THE TECHNICAL STANDARDS CHART

2.1 Design-Build or Operations Services Appendix Description

The descriptions contained in the column of the Technical Standards Appendix Chart entitled, “Description of Service” are for the convenience of the Developer and do not supersede the actual wording of the Design-Build Services and Operations Services Appendices 3A & 3B respectively.

2.2 General Quality Standards

- (3) The term “General Quality Standard” means a standard of performance which,
- (a) is competent, efficient, economical and in accordance with internationally accepted techniques used in civil works construction;
 - (b) is in accordance with professional engineering, accounting and consulting standards, as applicable, recognized by national or international professional bodies;
 - (c) is in accordance with sound management, commercial, technical, design and engineering practices;
 - (d) employs appropriate technology and safe and effective equipment, machinery and methods;
 - (e) is in accordance with national and local standards and codes in the Authority’s Country;

- (f) protects the interests of the Authority, EZ Users, EZ Residents & Employees of the EZ;
- (g) is in accordance with the Applicable Law;
- (h) is in accordance with the technical specifications and design standards of the Authority as provided to the Developer;
- (i) is in accordance with the applicable Social Safeguards/Environmental Assessment and Social Safeguards/Environmental Management and Mitigation Plan; and
- (j) is in accordance with the Design-Build Services Appendix 3A as approved by the Authority.
- (k) would overall ensure all elements of the design & construction are ‘Fit for its intended purpose’.

(4) In the event of any conflict or inconsistency between any standards that comprise the General Quality Standard, local and national standards in the Authority’s Country shall prevail over international standards.

(5) The Developer shall, at all times, carry out the Services in accordance with the Technical Standards as specified and, where a specific technical standard of quality of performance has not been specified, the Developer shall perform the Services to the standard of “General Quality Standards” set out in Section 2.2(1) of the Technical Standards Appendix.

(6) If the Authority is subjected to fines or penalties as a result of the Developer’s breach of these Technical Standards, such fines or penalties shall be paid by the Developer.

2.3 Design-Build Services

(7) In respect of the Design-Build Services, the Developer shall ensure that the design of the New Facilities is prepared by qualified designers/architects who are professionally recognized to design the New Facilities.

(8) The Developer warrants that the Developer and its designers/architects and design Subcontractors have the experience and capability necessary for the design.

ARTICLE 3 - FUNCTIONAL & TECHNICAL REQUIREMENTS OF ECONOMIC ZONE

The Economic Zone shall promote multi- product EZ in MIRSORAI, Bangladesh. The Economic Zone will be developed on a Design, Build, Finance, Own, Operate and Transfer (DBFOOT) model. Under this approach, the responsibilities for designing, building, financing, owning and operating the Economic Zone are with the private sector. While what follows provides a broad description of the functional and technical requirements for the Economic Zone, the bidders are free to propose alternatives that will help in meeting the Authority’s overall objective of promoting the multi-product EZ in Bangladesh.

3.1 Scope of Work

The Developer responsibility shall include all activities that are required to be undertaken, in order to comply with the service levels and performance criteria indicated in this Section. The facilities would need to be designed in accordance with the Technical specifications and Good Industry Practices.

- a. The Economic Zone would be designed as a world-class facility, shall preferably conceived as intelligent green buildings with probable certifications such as LEED or equivalent, in keeping with the emphasis that the Authority lays on preserving and enhancing the environment, capturing Bangladesh's aspirations for the future.
- b. Infrastructure to have basic facilities, installations, and utilities and related services that are required to promote EZ development and activity in Bangladesh includes, but not limited to,
 - i. SFBs (Standard Factory Building), buildings or other structures,
 - ii. sewerage, drainage, and effluent treatment facilities,
 - iii. electric power generation, transmission, distribution and back up Power supply;
 - iv. energy-supply and distribution installations, including gas supply,
 - v. wastewater, storm water, and refuse collection, treatment, and disposal facilities,
 - vi. solid-waste collection, treatment, disposal, and management systems,
 - vii. transportation networks, including roads and bridges,
 - viii. telecommunications and information technology,
 - ix. potable water supply-and-distribution services, and
 - x. medical and capacity training facilities.
 - xi. Bio Composting facilities, Rain Water Harvesting,
 - xii. internal street Lighting, Storage,
 - xiii. Open Green Spaces
- c. Common Facilities to include, Fire Station and Fire Sump, Entrance Plaza/ Security Office, Custom House, Business centre, Canteen/Restaurant, Training Centre, Administrative Building, Conference Room, Medical Center, Auditorium/Convention Centre, Logistics Hub, Recreational facilities etc.
- d. In general the layout development shall be in compliance with the applicable development control regulation/building bylaws of the competent authority local and/or global.
- e. Road width shall not be less than 12 m. Carriage way width of 5.5 m for intermediate lane or 7m two lanes are usually recommended for internal roads. Paved shoulders of 1.5m to 2m width are recommended. Carriage way may be constructed in asphalt or concrete.
- f. Road furniture
 - i. For traffic safety and convenience, appropriate signs, markings, lighting and guideposts are to be provided on curves, intersections, public utility places etc.
 - ii. Proposals for road furniture are made considering the importance of the road, safety and aesthetics. The design of road furniture and quality

proposed are of high standard. Accordingly, the following road furniture for the roadway are recommended:

1. Pavement marking using reflector thermoplastic road painting
2. Cautionary, regulatory and informatory sign boards
3. Single pole street lighting @ 30m interval along the edges of the road
4. Identification signs

- g. Rain/Storm water drains: appropriate rain and storm water drainage system shall be provided.

3.2 Building Design and Construction Considerations

(a) The Developer shall conform to the Building Code and Applicable Law, as applicable.

(b) The Developer shall conform to appropriate International Standards (standards followed in United States of America and United Kingdom) as per best industry practice for specialized components where Bangladesh standards are not available.

(c) Special construction should be given to the choice of fireproof construction for the buildings

(d) Large sections of the glass shall be shatter resistant

3.3 Building Management System (BMS)

The building management system shall be implemented for effective management, monitoring and integration of various equipment like HVAC systems, Access Control systems, fire detection system, Plumbing pumps, Fire Pumps etc. The Building Management System should also ensure that lifts, fire protection system, water level status and common area lighting are monitored and centrally controlled. The BMS shall perform the following general functions

- (i) Building Management & Control
- (ii) Data Collection & archival
- (iii) Alarm Event & Management
- (iv) Trending
- (v) Reports & MIS Generation
- (vi) Maintenance & Complaint Management
- (vii) Network Integration

3.4 Sewage Treatment Plant

A sewage treatment plant that meets pollution control regulations for recycled water for landscaping uses, maintaining the Park's concept of a "green culture".

3.5 Safety and Security

Security should be one of the top priorities at the Economic Zone. The Economic Zone should have a 24-hour security system, backed by state-of-the-art surveillance systems and a reliable and committed security force and protocols.

3.6 Project Management

For hassle free facilities, dedicated on- call project management & maintenance team is required to provide round-the-clock services, upholding the quality of the Economic Zone and

ensuring reliable support to the EZ Users at all times. These include the maintenance of but not limited to:

- a. Air-conditioning
- b. Mechanical Ventilation systems
- c. Building management system
- d. Building security system
- e. Car parking systems
- f. Electrical installation
- g. Fire protection system
- h. Gardening and landscaping services
- i. Pest control
- j. Sanitary and plumbing systems
- k. Telecommunication facilities
- l. Transport shuttle services

3.7 Environmental Considerations

The successful bidder will undertake an Environmental Assessment (EA) of the Economic Zone, including proposed buildings and associated access and service facilities (access roads, electricity and water supply, landscaping, etc) before the construction of the buildings to identify and mitigate any site preparation, construction and operational environmental related impacts. The EA would be done in concurrence with the layout and design of the Economic Zone infrastructure and service facilities. The design of the New Facilities will incorporate adequate measures to mitigate construction related impacts and provision of adequate facilities for solid and liquid waste disposal facilities, soil and water conservation measures, drainage and erosion control, as well as other measures identified in the Environmental Assessment.

As part of the environmental assessment, a basic social assessment will need to be conducted by the successful bidder, to ensure access for those households and businesses above and below the Economic Zone and surrounding the access roads. An environmental management plan (EMP) would be developed to manage and mitigate any potential negative environmental impacts posed by the development and operation of the New Facilities. The developer will be responsible to ensure full compliance with the EMP and any other conditions imposed by the Government of Bangladesh.

3.8 Engineering Codes and Standards

The engineering codes and standards to be used for set-up of the Economic Zone should be in accordance with international and national/local standards, codes in the Authority's Country. It should encompass the following:

- a) Standard on earthquake engineering
- b) Standard on civil, Mechanical & Electrical engineering structures,
- c) Standard on construction practices
- d) Standard on safety in building

Appendix 4

Site Appendix

DESCRIPTION OF THE SITE
APPENDIX 4 TO THE DEVELOPER AGREEMENT TO
DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER
MIRSORAI ECONOMIC ZONE IN BANGLADESH
SEPTEMBER 2015

Appendix 4: Site Appendix

ARTICLE 1 GENERAL

The purpose of this Appendix is to locate the Site on which the MIRSORAI Economic Zone is to be developed. This appendix the Site map as reference material.

1.1 Site

(1) For the purposes of the Developer Agreement, the “Site” shall mean the areas outlined in the map set out in Attachment 1 to this Site Appendix (the “Site Map”).

(2) MIRSORAI Site is the portion of land and measuring 550 acres.

Attachment 1
Site Map



Appendix 5

Liquidated Damages – Operations

LIQUIDATED DAMAGES-OPERATIONS
APPENDIX 5 TO THE GENERAL CONDITIONS
FOR A DEVELOPER AGREEMENT TO
DESIGN, BUILD, FINANCE, OWN, OPERATE AND
TRANSFER
MIERESORAIECONOMIC ZONE IN BANGLADESH

SEPTEMBER 2015

Appendix 5: Liquidated Damages – Operations

SECTION 1 - GENERAL

1.1 Developer’s Acknowledgements

The Developer acknowledges and agrees that,

- (a) a failure of the Developer to meet the Completion Date set out in SC is a breach of the Developer Agreement;
- (b) the Developer shall pay to the Authority liquidated damages (the “Liquidated Damages”) upon an Occurrence (as defined in LDA Section 1.2); and
- (c) Liquidated Damages payable under this Liquidated Damages Appendix do not constitute the only or the full quantum of damage incurred by the Authority as a result of an Occurrence, and represent only a genuine pre-estimate of the damages that will be suffered by the Authority upon an Occurrence.

1.2 Definition of Damages

For the purposes of this Liquidated Damages Appendix, the Developer shall be obliged to pay Liquidated Damages in accordance with LDA Article 2 if it is unable to meet the Completion Date set out in the SC as identified in this Liquidated Damages Appendix.

1.3 No Waiver

The right of the Authority to receive such Liquidated Damages shall not limit any of its other rights pursuant to the Developer Agreement including, without limitation, the Authority’s rights pursuant to GC Section 1.6 and 8.2.

SECTION 2 - CALCULATION OF LIQUIDATED DAMAGES AND PAYMENT

2.1 Calculation for Failure to meet Completion Date

- (1) Liquidated Damages of \$2500 (US dollars two thousand five hundred) shall be paid by the Developer for each day’s delay in completion of the New Facility.
- (2) Liquidated Damages shall not be calculated for an Occurrence listed in LDA Section 2.1 if the cause of the Occurrence was beyond the Developer’s control.
- (3) The total amount of Liquidated Damages payable by the Developer shall not exceed 1% of the total Investment, which is equivalent to the performance security.

2.2 Payment of Liquidated Damages

- (1) The Developer shall provide the Authority with an account for its review and approval of any Liquidated Damages payable to the Authority for a month within 15 days after the end of the

applicable month. If the Developer does not provide the Authority with such an account within such 15 day period, the Authority may request that the PIU, provide the account.

(2) Upon approval of the account by the Authority, the Developer shall pay the Liquidated Damages to the Authority in BDT/USD as agreed by both the parties to a bank account as directed by the Authority.

Appendix 6

Developer Expertise

DEVELOPER EXPERTISE
APPENDIX 6 TO THE
DEVELOPER AGREEMENT TO
DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER
MIRSORAI ECONOMIC ZONE IN BANGLADESH

SEPTEMBER 2015

Appendix 6: Developer Expertise

ARTICLE 1-GENERAL

1.1 Expertise of the Developer

The Developer shall provide the expertise set out in Attachment 1 to the Developer Expertise Appendix with its own forces.

1.2 Key Personnel

In addition to meeting the requirement to provide expertise in accordance with Section 1.1 of this Developer Expertise Appendix, the Developer shall provide all Key Staff listed in Attachment 2 to this Developer Expertise Appendix. The Developer shall staff each “Key Staff” position with a separate individual.

Attachment 1 to the Developer Expertise Appendix

The Developer Personnel Expertise

Attachment 1 to the Developer Expertise Appendix

The Developer Personnel Expertise

[Note: The fields of expertise and examples of task coverage are samples only, and will be revised by the Bidder.]

Field of Expertise	Examples of Task Coverage (examples only, not an exhaustive list)
<i>[Project Management and Construction and Plant Management]</i>	<i>[Overall management of the Project and of all construction activities. Reporting and coordination with the Authority]</i>
<i>[Marketing & Outreach]</i>	<i>[Marketing and Positioning, attracting Clients, Grounding Investments, client relations, customer service etc.]</i>
<i>[Operations Management]</i>	<i>[Operation & Maintenance and administration of Economic Zone]</i>

Attachment 2 to the Developer Expertise Appendix

List of Key Staff

Attachment 2 to the Developer Expertise Appendix

List of Key Staff

[Note: The list of Key Staff is a sample only, and will be revised by the Bidder.]

1. Project Director
2. Operations Manager
3. Marketing Manager
- 4.
- 5.

Appendix 7

Developer's Bid

DEVELOPER'S BID
APPENDIX 7 TO THE DEVELOPER AGREEMENT TO
DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER
MIRSORAI ECONOMIC ZONE IN BANGLADESH

SEPTEMBER 2015

Appendix 7: & Developer' s Bid

Developer' s Bid

[Note to Bidders: The Developer's Bid is separately bound. It is entitled _____ and consists of _____ volumes.]

Appendix 8

ESCROW AGREEMENT

APPENDIX 8 TO THE DEVELOPER AGREEMENT TO
DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER
MIRSORAI ECONOMIC ZONE IN BANGLADESH
SEPTEMBER 2015

Appendix 8: ESCROW AGREEMENT

THIS ESCROW AGREEMENT is made at _____ on this the _____ day of _____, _____

BETWEEN:

_____ LIMITED, a company registered under the Companies Act, 1994, and having its registered office at _____, hereinafter referred to as “the Developer” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

[Name and particulars of Lenders' Representative], having its registered office at _____ acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes.

Bangladesh Economic Zones Authority (BEZ), hereinafter referred to as “the Authority” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND:

[Name and particulars of the Escrow Bank], having its registered office at _____ (hereinafter referred to as the "Escrow Bank" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

WHEREAS:

- (A) The Authority has entered into a Developer Agreement dated _____ with the Developer (the "Developer Agreement") for [description of the project] on a build, operate and transfer (BOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.
- (C) The Developer Agreement requires the Developer to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows;

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"Agreement" means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

"Developer Agreement" means the Developer Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this regard therein;

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Developer, and shall commence from the date on which a notice is delivered by the Authority or the Lenders' Representative, as the case may be, to the Developer asking the latter to cure the breach or default specified in such notice;

"Escrow Account" means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

"Escrow Bank" means the bank in which the Escrow Account is opened.

"Escrow Default" shall have the meaning ascribed thereto in Section 6.1;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

"Parties" means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually;

"Payment Date" means, in relation to any payment specified in Section 4.1, the date(s) specified for such payment; and

"Sub-Accounts" means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Section 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Developer Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Developer Agreement.

1.2.3 References to Sections are, unless stated otherwise, references to Sections of this Agreement.

1.2.4 The rules of interpretation stated in Sections 1.2, 1.3 and 1.4 of the Developer Agreement shall apply, mutatis mutandis, to this Agreement.

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Developer hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Developer in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Developer hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Developer, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Developer shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Developer. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Developer or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the Financial Closing Date, the Developer shall open and establish the Escrow Account with the [name of Branch] Branch of the Escrow Bank. The Escrow Account shall be denominated in Bangladesh Taka.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Developer shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Developer. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Section 4.1.

2.5 Rights of the parties

The rights of the Authority, the Lenders' Representative and the Developer in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Developer shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Developer

The Parties hereto acknowledge and agree that upon substitution of the Developer with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Developer under this Agreement on and with effect from the date of substitution of the Developer with the Nominated Company.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Developer

3.1.1 The Developer agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;**
- (b) all funds received by the Developer from its share-holders, in any manner or form;**
- (c) all fees levied and collected by the Developer;**
- (d) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and**
- (e) all proceeds received pursuant to any insurance claims.**

3.1.2 The Developer may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable as per the Agreement, it shall deposit into and/or credit the Escrow Account, as may be applicable time to time:

- (a) Grant and any other monies disbursed by the Authority to the Developer;**
- (b) revenue shortfall loan, if agreed by the Authority;**
- (c) all fee collected by the Authority for the Developer, if any, in exercise of its rights under the Developer Agreement;**
- (c) Liquidated Damages that becomes due on the Authority as per the provisions of the Developer Agreement; and**
- (d) Termination Payments.**

Provided that, notwithstanding the provisions of Section 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any payment due and payable to it by the Developer and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this regard in the Financing Documents.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Developer in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Agreement Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Developer may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Developer for and in respect of the Project;**
- (b) payment of License Fee, if any;**
- (c) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Documents;**
- (d) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Documents;**
- (e) Payment of Fixed Royalty and Variable Royalty and other sums as and when due and payable to the Authority;**
- (f) monthly proportionate provision of Debt Service due in an accounting year;**
- (g) Premium due and payable to the Authority;**
- (h) all payments and Liquidated Damages certified by the Authority as due and payable to it by the Developer pursuant to the Developer Agreement, including repayment of revenue shortfall loan;**

- (i) monthly proportionate provision of debt service payments due in an accounting year in respect of subordinated debt;
- (j) any reserve requirements set forth in the Financing Documents; and ,
- (k) balance, if any, in accordance with the instructions of the Developer.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Developer shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Section 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders¹ Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Developer Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Developer for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding payment;
- (d) all payments and Liquidated Damages certified by the Authority as due and payable to it by the Developer pursuant to the Developer Agreement, including {Premium,} repayment of Revenue Shortfall Loan and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Section 39 of the Developer Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Developer Agreement; and
- (j) balance, if any, in accordance with the instructions of the Developer: Provided that the disbursements specified in Sub-clause (j) of this Section 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Sections 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilized for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this regard in the Financing Documents.

4.5 Withdrawals during suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Developer during the period of suspension under Section 36 of the Developer Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Developer under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Developer.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Developer and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Developer upon a certificate signed by or on behalf of the Developer;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Developer or any other person hereunder or in connection herewith; and

(d) shall, within 5 (five) business days after receipt, deliver a copy to the Developer of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Developer (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

(a) the Developer commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;

(b) the Developer causes the Escrow Bank to transfer funds to any account of the Developer in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

(c) the Developer commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Developer Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Developer in respect of the debt, guarantee or Financial Assistance received by it from the Senior Lenders, or any of its obligations to the

Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Developer may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Developer and the Lenders' Representative made on or after the payment by the Developer of all outstanding amounts under the Developer Agreement and the Financing Documents including the payments specified in Section 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Developer. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Developer shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Section 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Developer in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITY

9.1 General indemnity

9.1.1 The Developer will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Developer of any of its obligations under this Agreement or on account of failure of the Developer to comply with Applicable Laws and Applicable Permits.

9.1.2 The Authority will indemnify, defend and hold the Developer harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Developer's obligations under the Developer Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

9.1.3 The Escrow Bank will indemnify, defend and hold the Developer harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Developer's obligations under the Developer Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Section 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Arbitration Act, 2001.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Dhaka and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of Bangladesh.

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;**
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;**
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and**
- (d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).**

11.3 Priority of agreements

In the event of any conflict between the Developer Agreement and this Agreement, the provisions contained in the Developer Agreement shall prevail over this Agreement.

11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;**
 - (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and**
 - (c) shall not affect the validity or enforceability of this Agreement in any manner,**
- 11.5.2 Neither (be failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor lime or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishing of any such right hereunder.**

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and**
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.**

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Section 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number or e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorized representatives

Each of the Parties shall, by notice in writing, designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

11.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

[Signatures.]

Appendix 9

SUBSTITUTION AGREEMENT

APPENDIX 9 TO THE DEVELOPER AGREEMENT TO
DESIGN, BUILD, FINANCE, OWN, OPERATE AND TRANSFER
MIRSORAI ECONOMIC ZONE IN BANGLADESH
SEPTEMBER 2015

Appendix 9: SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is made at _____ on this the _____ day of _____, _____

BETWEEN:

Bangladesh Economic Zones Authority (BEZA), established under the Bangladesh Economic Zones Act, 2010 hereinafter referred to as “the Authority” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

_____ LIMITED, a company registered under the Companies Act, 1994, and having its registered office at _____, hereinafter referred to as “the Developer” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns).

AND:

[Name and particulars of Lenders' Representative], having its registered office at _____ acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes.

WHEREAS:

(A) The Authority has entered into a Developer Agreement dated _____ with the Developer (the "Developer Agreement") for [description of the Project] (the “Project”) on a design, build, finance, own, operate and transfer basis and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.

(C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Agreement to a Nominated Company in accordance with the provisions of this Agreement and the Developer Agreement.

(D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Agreement to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Developer Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follow:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Substitution Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"Agreement" means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

"Financial Default" means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in Debt Service by the Developer for a minimum period of [_____];

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

"Notice of Financial Default" shall have the meaning ascribed thereto in Section 3.2.1; and

"Parties" means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually.

"Nominated Company" means a company, incorporated under the provisions of the Companies Act, 1994, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Agreement as provided in this Agreement;

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Sections are unless stated otherwise, references to Sections of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Developer Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Developer Agreement.

1.2.4 The rules of interpretation stated in Section 1.2 of the Developer Agreement shall apply, mutatis mutandis, to this Agreement.

2. ASSIGNMENT OF RIGHTS AND TITLE

The Developer hereby agrees to assign the rights, title and interest in the Agreement to, and in favour of, the Lenders' Representative pursuant to and in accordance with the

provisions of this Agreement and the Developer Agreement by way of security in respect of financing by the Senior Lenders under the Financing Documents.

3. SUBSTITUTION OF THE DEVELOPER

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Section 2.1, the Lenders' Representative shall be entitled to substitute the Developer by a Nominated Company under and in accordance with the provisions of this Agreement and the Developer Agreement.

3.1.2 The Authority hereby agrees to substitute the Developer by endorsement on the Developer Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Developer either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Developer (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Section 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Developer for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default and continuation of the Default following the Cure period hereunder the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Documents, substitute the Developer by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default and following the Cure period, it may by notice require the Authority to suspend all the rights of the Developer and undertake the operation and maintenance of the Project in accordance with the provisions of Section 15 of General Conditions, and upon receipt of such notice, the Authority shall undertake suspension under and in accordance with the provisions of the Developer Agreement. The aforesaid suspension shall be revoked upon substitution of the Developer by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such suspension, the Authority may terminate the Developer Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Developer Agreement; provided that upon written request from the Lenders' Representative and the Developer, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Developer Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of suspension hereunder.

3.3 Substitution upon occurrence of Developer Default

3.3.1 Upon occurrence of a Developer Default and continuing it after the Cure period, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to

make a representation, stating the intention to substitute the Developer by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Section 3.3.1, stating that it intends to substitute the Developer by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Developer by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Developer, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

3.4.1 The Authority and the Developer hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Section 3.3.2 and subsequent Cure Period, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Agreement to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Developer towards the Authority under the Developer Agreement and towards the Senior Lenders under the Financing Documents.

3.4.2 To be eligible for substitution in place of the Developer, the Nominated Company shall be required to fulfil the eligibility criteria that were laid by the Authority for short listing the bidders for award of the Agreement; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any Material Adverse Effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:

- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Developer Agreement;**
- (b) endorse and transfer the Agreement to the Nominated Company, on the same terms and conditions, for the residual Agreement Period; and**
- (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.**

3.4.4 If the Authority has any objection to the transfer of Agreement in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (Fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon

shall transfer and endorse the Agreement within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Section 3.4 shall be followed for substitution of such Nominated Company in place of the Developer.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Developer. The Developer irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Agreement in favour of the Nominated Company. The Developer agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Developer's shares. It is hereby acknowledged by the Parties that the right of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Developer shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lender's Representative from effecting or causing the transfer by substitution and endorsement of the Agreement as requested by the Lenders' Representative.

4. TRANSACTION DOCUMENTS

The Developer shall ensure and procure that each Transaction Document contains provisions that entitle the Nominated Company to step into such Transaction Document, in its discretion, in place and substitution of the Developer in the event of such Nominated Company's assumption of the liabilities and obligations of the Developer under the Developer Agreement.

5. TERMINATION OF DEVELOPER AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Developer Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Section 37 of the Developer Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Section 3.3.2, the Authority may terminate the Developer Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Developer hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders is entitled to receive from the Developer, without any further consent of the Developer, the Debt Due upon Termination of the Agreement. For realization of the Debt Due, the Lenders' Representative will be entitled to

make its claim from the Escrow Account in accordance provisions of the Developer Agreement and the Escrow Agreement.

6. DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or**
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Documents.**

7. INDEMNITY

7.1 General indemnity

7.1.1 The Developer will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Developer of any of its obligations under this Agreement or on account of failure of the Developer to comply with Applicable Laws and Applicable Permits.

7.1.2 The Authority will indemnify, defend and hold the Developer harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Developer's obligations under the Developer Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Developer harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Developer's obligations under the Developer Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Section 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Developer and the Lenders' Representative. Such arbitration shall be held in accordance with the Arbitration Act, 2001.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Dhaka and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of Bangladesh.

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Developer Agreement and this Agreement, the provisions contained in the Developer Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;**
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and**
- (c) shall not affect the validity or enforceability of this Agreement in any manner.**

9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and**
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.**

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Section 8 of this Agreement or otherwise.

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are out under its name on the signing pages hereto. A notice shall be effective actual receipt thereof, save that where it is received after 5.30 (five thirty) PM on any day or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication, that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorized representatives

Each of the Parties shall by notice in writing designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

[Signatures]

Appendix 10: Draft Land Lease Agreement
