**SPECIAL ECONOMIC ZONE**

**FORM OCCUPANT SUB-CONCESSION AGREEMENT**

**BETWEEN**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**(“The Developer”)**

**AND**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**(“The Occupant”)**

#### SPECIAL ECONOMIC ZONE OCCUPANT SUB-CONCESSION AGREEMENT

This SUB-CONCESSION AGREEMENT (hereinafter referred to as "this Agreement or this “Sub-Concession") is made this day of (“the Effective Date”).

BETWEEN **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** [insert address](hereinafter called “the Developer”) as defined under the Special Economic Zones Act, 2016 (“The Act”).

**AND**

AND **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** [insert address] (hereinafter called “the Occupant”) as defined under the Act OF THE OTHER PART.

(being together, the “Parties” and each being a “Party”).

##### RECITALS

1. The Developer has been granted a Licence dated the day of by the Special Economic Zone Authority (“the Authority”) and issued an Operating Certificate to operate as a developer in respect of [***insert name of SEZ***] in accordance with the Act.
2. The Developer is the [***Proprietor or Lessee***] of certain lands at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and has the power to grant a lease/sub-lease for the purpose contemplated under this Agreement.
3. Pursuant to the Act and in accordance with due authorisation by virtue of Licence, the Developer shall grant certain rights relating to operations within the SEZ.
4. The Act provides that, the Developer may enter into a sub-concession with an Occupant, subject to the authorisation of the Authority, for the use of sites located in the Zone and not perform activities included in the excluded list.
5. The purpose of this Agreement is to grant to the Occupant the right to maintain and operate the Business within the SEZ, for a certain duration of years under the terms and conditions described in both this Agreement and the Occupant Lease Agreement. Such duration of years being in accordance with the Special Economic Zones Act and Regulations.

IT IS AGREED AS FOLLOWS:

## DEFINITIONS AND INTERPRETATION

* 1. **Definitions**

In this Agreement, unless the subject or context otherwise requires, the following definitions shall apply:

“Act” means the Special Economic Zones Act, 2016, as amended from time to time.

“Adverse Rights” means any interests, rights, covenants, restrictions, stipulations, easements, customary or public rights, local land charges, mining or mineral rights and any other rights or interests in or over land, in each case whether or not registered, that would, if exercised, prevent or disrupt the carrying out of the Business and/or the exercise of the Licence Rights of the Developer hereto.

“Anti-Corruption Laws” shall mean any and all applicable local and international fraud, anti-bribery or corruption laws or regulations, including but not limited to the prohibitions under the Jamaica, Proceeds of Crime Act, 2001; Corruption (Prevention of) Act, 2001 and Terrorism Prevention Act, 2005, as amended and/or replaced from time to time.

“Application Fee” is the administrative and processing fee paid to the Authority by an Occupant which is seeking to enter into a sub-concession agreement with a Developer, and to be issued with an Operating Certificate pursuant to Section 36 (1) of the Act, and Regulation 36 and the First Schedule of the Prescribed Regulations;

"Applicable Regulations" means all laws, ministerial orders, administrative orders or circulars and regulations applicable to the Special Economic Zone, whether applicable at the time of execution of this Agreement or at any time during the term of this Agreement, whether of the Authority or of municipal, national, or by application of any international treaty or convention to which the Government is a party.

“Associated Person” shall mean any agent, officer, employee, consultant, Sub-Concessionaire or Occupant, intermediary or other person performing business with or on behalf of a Party from time to time.”

“Business” means the commercial activity being the basis of the commercialisation plan as submitted by the Occupant under its application for authorization/s and approved by the Developer as a condition precedent to the entry into this Agreement.

“Change of Ownership” means (a) any sale, transfer, assignment or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Occupant and/or its holding company; and/or (b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above.

“Customs Territory” means Jamaica including the archipelagic waters of Jamaica as defined in section 5 of the Maritime Areas Act and the territorial waters thereof as defined in section 12 of that Act but excluding the Special Economic Zones.

“Event of Default” means the events set out under clause 15.3.

“Government” means the Government of Jamaica.

"Licence Agreement" means a concession agreement between the Authority and the developer of a Zone established on land or intended to be established on land that is not vested in the Authority as the registered proprietor or head lessee of the land.

“Milestone Dates” shall mean those construction and/or commercialisation milestone dates as set out under Schedule 3 hereto.

"Notice of Intention to Terminate" means a notice from one party of an intention to terminate this Agreement and as authorised to be issued by the Occupant or the Developer in accordance with Clauses 14.8, 14.10 and by the Developer in accordance with clause 15.2 hereof.

"Notice of Termination" means a notice issued in accordance with Clause 14.4 hereof.

“Occupant Lease Agreement” means the lease agreement, between the Developer and the Occupant as set out at Annex 2 hereto.

“Occupant Zone Area” means that portion of the Zone Area which is the subject of the Occupant Lease Agreement;

"Occupant Operating Certificate" refers to the certificate to be issued by the Authority, evidencing that the developer has entered into a sub-concession agreement, and that said sub-concession is in accordance with the Licence Agreement held by the developer.;

" Operating Certificate" means the document issued by the Authority to a developer under Section 23 of the Act evidencing that the Authority has entered into a licence agreement with the developer;

“Permitted Business Activity” means all activities not listed under Section 41(1) of the Act and which shall be subject to the applicable regulations;

“Persistent Breach” means a breach for which a final warning notice has been issued, by the Authority, being a breach, which has continued for more than thirty (30) days or recurred in two or more months within the six (6) month period after the date on which such final warning notice is served on the Developer in accordance with the Act or the Prescribed Regulations.

“Prescribed Regulations” means those regulations prescribed under the Act.

“Application Fee” means the sum payable by the Occupant and particularized under Schedule 4, being the sum paid for the grant of an authorization;

“Zone” means the special economic zone as defined, geographically, by the Zone, and set out at Annex 1 and which has been designated as a Special Economic Zone under the Act. Annex 1 also outlines the specific area in the Zone which is occupied by the Occupant in the Zone.

“Zone Head Lease Agreement” means the lease agreement, if any, between the Developer and its landlord as stated in Recital B.

## Interpretation

* 1. The Schedules and Appendices to this Agreement shall form an integral part hereof and references to the said Schedules and Appendices shall be to Schedules and Appendices to this agreement unless otherwise stated.
	2. The headings of Clauses to this Agreement and the Table of Contents are inserted for convenience of reference only and shall not in any way affect or be relied upon in the interpretation of this Agreement.
	3. References to any party or person referred to in this Agreement include references to its respective successors and permitted assignees.
	4. The words "include", "includes", and "including" shall at all times be construed as if followed by the words "without limitation".
	5. All words or capitalised terms not specifically defined herein shall take the meanings as set out in the Act and the Prescribed Regulations as the case may be.

# GRANT OF SUB-CONCESSION RIGHTS and APPLICATION fee

* 1. Subject to the terms of this Agreement and the payment of the Application Fee, the Developer grants to the Occupant the right to operate and maintain the Business within the Zone Area.

2. 2 The Application Fee shall be paid promptly and without deduction. The parties agree that no advances shall be made on the Application Fee.

1. **OBLIGATIONS OF THE DEVELOPER**

The Developer shall:

**General Obligations**

* 1. operate the Zone in accordance with the terms and conditions of its Licence Agreement and the Applicable Regulations;
	2. maintain garbage disposal, electricity and communication services;
	3. procure that all activities in the Zone are not directly or indirectly categorised as excluded activities under section 41 of the Act;
	4. procure and maintain a convenient and safe access to the Zone by Customs and the Authority for inspection, excise related activities and otherwise;
	5. promptly and completely fulfil all regulatory reporting obligations under the Prescribed Regulations;
	6. generally comply with all Applicable Regulations;

## Technical/Infrastructure Obligations

3.7 construct or cause to be constructed, with the prior approval of the Developer, the infrastructure required to make the Zone fit for purpose in accordance with the Development Plan and/or the Master Plan approved by the Authority;

3.8 keep and/or to procure that the Infrastructure of the Zone is maintained in good working order and condition for the benefit of the Occupant’s business;

3.9 If applicable given the type of Zone approved by the Authority, to procure and provide adequate accommodation facilities, satisfactory to the Authority for the use of the Authority and its Associated Persons so as to allow for the efficient and timely execution of their duties, obligations and responsibilities as may be set out herein, under the Applicable Regulations or guidelines provided by the Authority from time to time;

## Technology Transfer Obligations

3.10 ensure that the technology used by the Occupant at the Zone, is appropriate having regard to the type/purpose of the Zone;

## Training Obligations

3.11 facilitate introductory training on the purpose of the Zone, as approved by the Authority and, during the Licence Period, to procure periodic re-training of all existing Zone Users, Occupants and suppliers on the use of the Zone and safety and technology transferred, where the latter is applicable;

## Common Area Obligations

3.12 ensure that all Zone Users/Occupants have equal access to common areas in the Zone and ensure that the perimeter of the Zone is operated and maintained safely in accordance with the Applicable Regulations;

3.13 prepare and keep updated, in accordance with instructions from the Authority, a code of conduct governing entry of persons to and use of the Business at the Zone;

## Security Obligations

3.14 provide and procure that full access to the Zone is provided for all security personnel as may be deployed by the Authority or such other arm of the Government;

# 4. TERM OF SUB-CONCESSION

* 1. Subject to the extension and termination provisions in this Agreement and the Occupant Lease Agreement and under the Prescribed Regulations, this Sub-concession shall be for a period beginning on the Effective Date and ending on \_\_\_\_\_\_\_\_.
	2. This Agreement shall come to an end upon expiration of the Occupant’s Lease Agreement, on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

## Extension of Sub-concession Period

## Subject to the approval of the Special Economic Zone Authority, at the end of this term referenced in Clause 4.2, the sub-concession period may be extended PROVIDED THAT any attempt to extend the term of this Agreement must be taken prior to the expiration of the term hereof; and is supported by *inter* alia documents establishing that the Occupant has, or is in the process of obtaining occupancy rights to the lands which are the subject of the Occupant Lease Agreement.

## Where the Parties intend to renew the term of the Sub-concession, the written approval must be obtained from the Authority at least three (3) months prior to the expiration of the term of this Sub-Concession; provided any such extension does not conflict with the Licence Period.

# 5. occupant’s Obligations and Rights

The Occupant covenants that it shall:

* 1. punctually pay the Application Fee and any other applicable fees herein.

5.2 procure and maintain a convenient and safe access to the Occupant Zone Area by Customs and the Authority for inspection excise related activities and otherwise;

* 1. proceed forthwith with all investments required to carry out its obligations under this Agreement and as set out in its application for sub-concession rights;
	2. comply with all statutory obligations of the Occupant under the Prescribed Regulations including but not limited to the reporting obligations to the Authority;
	3. comply with the requirement that its activities in the Zone are not directly or indirectly categorised as excluded activities under Section 41 of the Act and
	4. comply with the Applicable Regulations, including the submission of reports pursuant to Regulation 39 of the Prescribed Regulations, 2017.

# Commencement

6.1 This Sub-Concession shall commence on the Effective Date.

## Conditions Precedent

 6.2 The following shall be conditions precedent to the entering of this Agreement by the Parties:

6.2.1 ***[The parties are free to prescribe the conditions which will precede the entry into the Sub-concession Agreement. The execution of a valid and separate lease agreement should be a pre-condition or be contemporaneous with the date of this Agreement].***

* 1. Without prejudice to clause 6.2 herein, this Agreement shall not become binding on the parties or otherwise recognised under the Act until the Developer has procured the necessary authorisation from the Authority with respect to this Sub-concession as required under the Act.

**Conditions Subsequent**

**[The Authority will indicate any documents which are to be treated as conditions subsequent to the Sub-Concession Agreement. In addition, the parties are free to prescribe conditions which will be subsequent to the Sub-Concession Agreement.]**

# ENVIRONMENTAL HAZARDS

In the performance of its obligations under this Agreement, the Occupant shall ensure that appropriate measures are taken to protect the environment, including but not limited to the Zone Area, from pollution, chemicals, noise, hazardous material, effluent or other by-products emanating from the Occupant Zone Area and other consequences of its operations in accordance with any Applicable Law and Regulations.

# Inspection

8.1 After the Effective Date and until the end of the Term, the Developer and/or the Authority may inspect the Occupant Zone Area from time to time to ensure that the Occupant’s obligations in respect of such operation and maintenance are being discharged in accordance with the terms of this Agreement.

8.2 If any inspection by the Authority reveals that the area is not being maintained in accordance with this Agreement, the Developer may, whether of its own accord or on the request of the Authority, give notice to the Occupant of the default specifying:

1. the works required to rectify the default; and
2. a reasonable period of time (having regard to the nature of the default and the extent of the works required) in which the Occupant is to make good the default at its own cost.
3. if, at any time, the Developer serves notice under this Clause 8.2 and the Occupant fails to rectify the default within the time period specified, then the Developer may, without prejudice to the any other right or remedy available to it, take such steps as necessary to rectify the default and all costs incurred by the Developer shall be paid to it by the Occupant within fourteen (14) days of the submission of a claim for reimbursement by the Developer.

# WARRANTIES AND REPRESENTATIONS

The Occupant represents and warrants to the Authority that the Occupant:

* 1. is a company duly incorporated under the laws of Jamaica;
	2. has the technical expertise and/or shall procure the technical expertise to develop, design, finance, develop, operate and maintain the Occupant Zone Area in accordance with the terms of this Agreement as well as all relevant laws and the Applicable Regulations;
	3. has been duly authorised to enter into this Agreement and upon execution and delivery of it, by them, it will become legal, valid and binding upon them, and enforceable in accordance with its terms;
	4. will not by the execution and delivery of this Agreement to the Developer violate any law, rule, regulation or order applicable to it; and does not violate or contravene the provisions of, or constitute a default under any documents, contracts, agreements or any other instruments to which it is a party, or which is applicable to it;
	5. will ensure that the Sub-concession Agreement/s and the carrying out of obligations thereunder shall not infringe or otherwise lead to an Event of Default or a Material Breach as defined under Clause 15 of this Agreement;
	6. The Developer warrants that:
		+ 1. the Occupant Zone Area will be the sole legal and beneficial property of the Developer, or otherwise it will have leasehold rights to it for the duration of the Occupant Lease Agreement and the term of this Agreement;
			2. the Occupant Zone Area will not be subject to any Adverse Rights;
			3. no one will be in adverse possession of the Zone Area or will have acquired or is acquiring any Adverse Rights affecting the Zone Area;
			4. that there are no material disputes or claims, being disputes or claims which (i) will significantly affect the performance of its licence rights as set out in the Licence agreement and under the prescribed regulations, (ii) are outstanding and/or (iii) that are expected to prevent or disrupt the carrying out of the rights granted to the Occupant herein;

# ANTI-CORRUPTION LAWS AND COMPLIANCE

* 1. The Occupant shall ensure that, in relation to this Agreement and general business practices, neither it, nor any of its Sponsor/s, beneficial owners or Associated Persons engage in any activity, practice or conduct which may constitute an offence under the Anti-Corruption Laws. In particular, it shall not, and will ensure that any of its Sponsor/s, beneficial owners and/or Associated Persons do not offer or pay to, or solicit or receive from any person (including public and government officials) or company, any improper payment with the intent to obtain an advantage in the conduct of the business or cause any person to improperly perform their duties. The Occupant shall further ensure that, unless allowed or required by the Prescribed Regulations, neither it nor any of its shareholders or Associated Persons shall offer, promise or pay to any public government official any financial or other gift, favour, promise or advantage in order to secure or retain a business advantage, including payment intended to induce officials to perform duties they are otherwise obligated to perform.
	2. Before using any Associated Persons, the Occupant shall undertake all necessary background checks on such persons to ensure that they do not do business with persons or entities that engage or are likely to engage in money laundering, the manufacturing or proliferation of weapons of mass destruction, terrorist financing, bribery and corruption or other crimes or violation of sanctions and export-import controls.

#  Delay and Anti-Speculation

* 1. The Occupant shall expeditiously commence performance of its obligations under this Agreement and the Operating Certificate following the Effective Date.
	2. Without prejudice to clause 15 (Termination) herein, in the event, the Occupant does not meet the Milestone Dates or any one of them, the Occupant shall be subject to the following anti-speculation countermeasures:
		1. Suspension or cancellation of incentives conferred under the Act and/or Applicable Regulations; or
		2. Termination of this Agreement, revocation of the Occupant Zone Lease Agreement and revocation of any regulatory approvals.

# ORGANIZATION AND SHAREHOLDING OF THE occupant

* 1. The Occupant represents and warrants to the Developer that at the date of this Agreement, the legal and beneficial ownership of the Occupant is as set out in Appendix II hereto being a list of the shareholdings with respective percentage interests noted and that no arrangements are in place for a Change of Ownership. Subject to the following provisions, the Occupant shall not change those percentage interests without the prior written consent of the Developer and the Authority which consent shall not be unreasonably withheld or delayed.
	2. Without prejudice to the reporting obligations to the Authority under the Applicable Regulations, the Occupant shall submit any proposed Change of Ownership, requiring consent as per Clause 12.1, within at least two (2) months of such change taking effect and shall include in such notice particulars of the new ownership structure (legal and beneficial). Prior to the provision of consent, the Authority may request such information and disclosures as will enable it to provide its informed consent.

12.3 Without prejudice to the reporting obligations to the Authority under the Applicable Regulations, the Occupant shall submit any proposed Change of Ownership within at least one (1) months of such change taking effect and shall otherwise confirm, within ten (10) days of any request for information, whether any changes have occurred.

# Confidentiality

## Confidentiality Obligation

* 1. Each of the parties, their Associated Persons, contractors, consultants and agents, shall hold in confidence all documents and other information (including this Agreement) whether technical or commercial supplied to it by or on behalf of the other party relating to the operation, maintenance and management of the Zone in the course of this Agreement, and shall not publish or otherwise disclose or use the same for its own purposes otherwise than as may be required by the Applicable Regulations to perform its obligations under this Agreement. This Clause 13.1 shall not apply to information:
		1. already in the public domain otherwise than by breach of this Agreement;
		2. disclosed pursuant to an order of a court of competent jurisdiction or otherwise to satisfy other regulatory or governmental requirements;
		3. already in the possession of the receiving party before it was received from the other party in the course of this Agreement and which was not obtained under any obligation of confidentiality; or
		4. obtained from a third party who is free to divulge the same and which was not obtained under any obligation of confidentiality.

## Survival of Obligations

* 1. The parties’ obligations under this Clause 13 shall survive until three (3) years after termination of this Agreement.

# FORCE MAJEURE AND UNFORESEEN CIRCUMSTANCES

## Force Majeure

* 1. Definition of Force Majeure:

For the purpose of this Agreement, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impracticable as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), or confiscation by government agencies;

* 1. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement and (B) avoid or overcome in the carrying out of its obligations hereunder.

Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

## No Breach of Contract

* 1. The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

##  Measures to be taken

* 1. A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations hereunder with a minimum of delay;
	2. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible; The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

**Extension of Time**

* 1. Any period within which a Party shall, pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

##  Consultation

* 1. No later than thirty (30) days after a Party, as the result of an event of Force Majeure, has become unable to perform a material portion of its obligations, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

## Termination

* 1. Upon the occurrence of such Force Majeure the parties shall within not more than fourteen (14) days enter into discussions to reach a mutually satisfactory agreement. If the parties fail to reach a mutually satisfactory solution within ninety (90) days of the commencement of such discussions, either party may issue a Notice of Intention to Terminate, and the Authority should be notified.

## Unforeseeable Change of Circumstances

* 1. The rights and obligations of the parties set out in this Agreement represent the Parties' positions relative to each other on the basis of the circumstances existing at the date hereof and on the basis of the common view the parties have of the way those circumstances shall develop until the end of the Licence Period. The Parties agree and acknowledge that neither seeks to benefit unduly from any unforeseen development of circumstances that actually occurs. Accordingly, if, after the date of this Agreement, a change of circumstances occurs which is beyond the control of either party, which does not constitute Force Majeure, which could not have been foreseen by either party at the date hereof and which shall over the term of the Licence Period materially upset the economic balance of this Agreement such as it exists at the date hereof (an "Unforeseeable Change of Circumstances"), the parties shall, upon notice given by either of them, enter into discussions to agree on the measures necessary to restore that economic balance.
	2. If the parties have failed to reach a mutually solution within ninety (90) days of the commencement of such discussions, either party may issue a Notice of Intention to Terminate.

# Termination

* 1. For the purposes of this Clause 15, the following shall be deemed material breaches (“Material Breach or Breaches) which shall entitle the Developer to terminate this Agreement:
		1. a Persistent Breach;
		2. the Occupant abandons the Zone, including any works at any time; or
		3. a failure to achieve a Milestone Date in respect of which the Developer has, in its sole discretion, not exercised the Anti-Speculation Measures (under Clause 10) of the Licence Agreement.
	2. In the event the Occupant commits a Material Breach, the Developer shall provide a Notice of Intention to Terminate, with a copy of said notice sent to the Authority, and the Occupant shall have twenty-one (21) days after receipt of said notice to request a hearing in person or via written submissions of reasons. Notice of any decision of the Developer shall be promptly provided to the Occupant with a copy to the Authority. The failure by the Occupant to request a hearing shall be a waiver of the opportunity to be heard and the Developer shall be entitled to terminate the Agreement by providing three (3) months’ notice.
	3. For the purposes of this Clause 15, the following shall be Events of Default by the Developer and the Occupant, that is, whereby the Developer or the Occupant:
		1. fails to pay or evades the payment of any required taxes, fees, charges or penalties owed to a competent authority;
		2. wilfully provides or provided (in the case of information provided to the Authority whether in the application for approval phase or under the reporting obligations set out under the Prescribed regulations) false or misleading information, declarations or representations;
		3. engages in excluded activities as set out under section 41 of the Act or under the Applicable Regulations or otherwise outside the ambit of the type of Special Economic Zone licence issued;
		4. a court makes an order that the Developer or the Occupant thereof holding more than a simple majority be wound up or a resolution for a voluntary winding–up of the Developer or the Occupant thereof holding more than a simple majority of the shareholding is passed;
		5. any receiver or insolvency trustee is appointed in respect of the Developer and/or the Occupant thereof holding more than a simple majority;
		6. possession is taken, or there is an attempt to take possession, by or on behalf of any creditor of any property of the Developer and/or the Occupant thereof holding more than a simple majority, that is the subject of a charge;
		7. any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 2014 or the Companies Act 2004 (or similar legislation in any foreign jurisdiction) in respect of the Developer or the Occupant thereof holding more than a simple majority;
		8. an administration order is made, or an administrator is appointed in respect of the Developer or the Occupant thereof holding more than a simple majority; or
		9. a breach by the Developer of Clause 8 (Warranties and Representations), Clause 9 (Anti-Corruption and Compliance), Clause 10 (Delay and Anti-Speculation) and Clause 16.2 (Assignment by the Developer) of the Licence Agreement.
	4. Subject to the above provisions, the Developer may, after consultation with the Authority, revoke this Agreement on the grounds set out in Regulation 42 (1) of the Prescribed Regulations. This Agreement may be rescinded by the Developer if the Occupant elects to discontinue authorized SEZ activities and general operations within the SEZ in accordance with Regulation 44 of the Prescribed Regulations and the Developer shall promptly notify the Authority of the Occupant’s decision. ***[Note: The parties may prescribe other grounds for termination as is commercially feasible].***

# CONSEQUENCES OF TERMINATION of developer’s LICENCE & subconcession agreement

**Developer’s Licence**

* 1. Upon the termination of this Agreement, the Occupant shall cease to enjoy the status of an Occupant within the SEZ and shall be subject to the conditions subsequent as provided under the Act and Regulations.
	2. The Occupant acknowledges that in the event the Developer commits an Event of Default or otherwise the Developer Licence Agreement is terminated, the Authority shall be entitled to immediately revoke the Developer’s Operating Certificate and Licence Agreement and the Occupant’s sub-concession rights herein shall thereafter be subject to the step-in rights of the Authority as set out under the Act and Prescribed Regulations;
	3. Upon revocation of the Operating Certificate issued to the Developer and the termination of the Developer’s Licence Agreement, the Authority shall be empowered to immediately take responsibility for the Occupant Zone Area and the Occupant shall execute all transfers, authorisations and assignments so as to facilitate acquisition of all Developer rights by the Authority under related agreements within fourteen (14) days of the date of said termination;
	4. The Occupant acknowledges that the Authority may, in its sole discretion, take possession of the Developer Assets and that it shall be vested with all rights therein for the purpose of operating the Zone for an interim period until the engagement of a new Developer in respect of the Zone. The Occupant undertakes to use it best endeavours to reach a new sub-concession agreement with the replacement Developer licenced by the Authority on terms which shall be similar to those under this Agreement as far as is commercially reasonable.

**Sub-Concession Agreement**

* 1. Upon the termination of this Agreement, the Occupant shall cease to enjoy the status of an Occupant within the SEZ and shall be subject to the conditions subsequent as provided under the Act and Regulations.

# ASSIGNMENT OF THIS AGREEMENT

## Assignment by the Developer

* 1. The Developer shall not, without the prior written consent of the Authority, transfer all or any of its obligations under this Agreement. The Developer shall not create or allow to be created any security interest, lien, mortgage or encumbrance in respect of its rights and interests under this Agreement without the prior written consent of the Authority which consent shall not be unreasonably withheld or delayed.

## Assignment by the Occupant

* 1. The Occupant shall not, without the prior written consent of the Developer and the Authority, transfer all or any of its obligations under this Agreement. For the avoidance of doubt, a Change in Ownership shall be construed as a transfer for the purposes of this clause 17.2 and the Occupant shall be subject to the obligations which arise upo0n a prospective Change of Ownership as set out at Clause 11.

# DISPUTE RESOLUTION

## Amicable Settlement

* 1. If any dispute arises in connection with this Agreement, either party may give notice to the other party of the same, whereupon the parties shall meet within fourteen (14) days of the dispute arising and in good faith attempt to reach an amicable settlement.

## Submission of Complaints to the Authority

* 1. Where the Occupant is aggrieved by a decision of the Developer, in regard to tariffs, fees, including the competitive basis for fees, or otherwise by any sums payable under a lease or to a utility company, it shall submit such complaint forthwith to the Authority in any event, within fourteen (14) days of a failure to resolve said dispute under the amicable settlement measures contemplated herein.

## Use of Regulatory Dispute Resolution Mechanism

* 1. A Party aggrieved by a decision of the Minister shall use the dispute resolution mechanism as set out under the Applicable Regulations PROVIDED HOWEVER that the obligation to undertake mediation and/or arbitration under the said Applicable Regulations shall not preclude either Party from obtaining interlocutory injunctive relief from a court of competent jurisdiction.

#  MISCELLANEOUS PROVISIONS

## Primacy of this Agreement

* 1. This Agreement shall govern all aspects of, and all contractual relationships relating to, the Zone as between the parties. The Developer shall ensure that the provisions herein relating to operation in the Zone are consistent with the terms and conditions of the Developer Licence thereof. In the event of a conflict between this Agreement and any agreement on a matter affecting the Parties, including the Occupant Lease Agreement, including all questions of interpretation, this Agreement shall prevail. In the event of any inconsistency between the clauses of this Agreement on the one hand and the Act and the Prescribed Regulations thereto, the Act and the Prescribed Regulations shall prevail.

## Variations in Writing

* 1. All additions, amendments and variations to this Agreement shall be binding only if in writing and signed by duly the authorized representatives of each of the parties.

## Entire Agreement

* 1. This Agreement, including, the Business Plan and all other Appendices and Schedules attached hereto together with any conditions/milestones approved by the Authority upon the filing of the Developer’s application for the authorizations and the Operating Certificate, represents the entire agreement between the Parties in relation to the subject matter hereof and supersedes any or all previous agreements or arrangements, whether oral or written, between the parties in respect of the Zone, the Zone Area and the Licence Rights or the other contents of this Agreement.

## Severance

* 1. If any part or parts of this Agreement are agreed by the parties or declared by any competent tribunal to be invalid, the other parts shall remain valid and enforceable. In any such case, the parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid or unenforceable provision in order to give effect, so far as practicable, to the spirit of this Agreement.

## Non- Waiver

* 1. None of the provisions of this Agreement shall be deemed waived by either party except when such waiver is given in writing. The failure by either party to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

## Notices

* 1. Unless otherwise stated, notices to be given under this Agreement shall be in English, in writing and shall be given by hand delivery, recognized international courier, mail, email telex or facsimile transmission and delivered or transmitted to the parties at their respective addresses set forth below:

**The Developer:**

Attention:

Telex:

 Email

Fax:

**The Occupant:**

Attention:

Telex:

 Email

Fax:

* 1. Or such other address (email or civic), attention, telex number, or facsimile number as may be notified by that party to the other party from time to time, and shall be deemed to have been made or delivered (i) in the case of any communications made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communications made by telex or facsimile, when transmitted properly addresses to such telex number or facsimile number.

## Applicable Law

* 1. This Agreement shall be governed by the laws of Jamaica and the Courts of Jamaica shall have exclusive jurisdiction.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day of Two Thousand and

SIGNED for and on behalf of

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

by ,Director

and by ,Director/ Secretary

duly authorized in that behalf

in the presence of:-

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESS

SIGNED for and on behalf of

by Director \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

and by Director/Secretary

in

in the presence of:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESS

**INTENTIONALLY LEFT BLANK**

# SCHEDULE 1 – PARTICULARS OF ZONE TYPE

TYPE OF SEZ DEVELOPER: (SINGLE ENTITY/MULTIPURPOSE ENTITY/SPECIALISED SEZ)

**PERMITTED OCCUPANT USE:**

#

# SCHEDULE 2 – DISCLOSURE OF SHAREHOLDERS AND/OR BENEFICIAL OWNERS

**Item 1:**

DEVELOPER

Shareholder Class of Shares Number and Percentage of Holding

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  |  |

**Item 2:**

OCCUPANT

Shareholder Class of Shares Number and Percentage of Holding

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  |  |

**Item 3:**

SPONSOR 1 (As applicable)

Shareholder Class of Shares Number and Percentage of Holding

|  |  |  |
| --- | --- | --- |
|  | Ordinary |  |

# SCHEDULE 3 MILESTONE DATES

Item 1 COMMERCIAL MILESTONE DATES: N/A

Item 2 DEVELOPMENT MILESTONE DATES: N/A

**SCHEDULE 4**

**APPLICATION FEE**

**USD $1500.00**

# ANNEX 1 ZONE – DESCRIPTION OF LANDS

# ANNEX 2 – OCCUPANT LEASE AGREEMENT

# ANNEX 3 - DEVELOPMENT (IF APPLICABLE)