



## **SPECIAL ECONOMIC ZONE AUTHORITY**

# **FORM OCCUPANT SUB-CONCESSION AGREEMENT GUIDELINES FOR THE OCCUPANT**

## **PURPOSE OF THE SUB-CONCESSION AGREEMENT**

The purpose of the Sub-Concession Agreement is to grant to the Occupant the right to maintain and operate the Business within the Special Economic Zone (SEZ), for a certain duration of years under the terms and conditions outlined in the Agreement. This Agreement governs all aspects of, and all contractual relationships relating to, the Zone as between the parties. It gives the Occupant the right to operate and maintain the Business within the Zone Area subject to the terms of the Agreement and the payment of the Application Fee.

The Sub-Concession Agreement is signed between the Developer and the Occupant and must be approved by the Special Economic Zone Authority (SEZA) in keeping with the *Special Economic Zones Act (2016)* and the Special Economic Zones regulations (2017) and any amendments thereafter.

## **REQUIREMENTS FOR THE OCCUPANT:**

An Occupant must be approved by the SEZA as having met the eligibility requirements. Namely:

- Be a Company incorporated under the Companies Act of Jamaica
- Demonstrate evidence of issued or paid-up share capital at the effective date of a Licence-agreement or as agreed otherwise of not less than USD \$25000
- Demonstrate agreement between itself and a current Developer to conduct business in the SEZ.
- Investments by the Occupant in the Zone related activities must be greater than USD \$50,000<sup>1</sup> within the first year of operation.

When a prospective Occupant is able to meet these standards, an Application ought to be submitted to SEZA and should include:

- Proof of payment of application fee
- Certified copy of Certificate of Incorporation and Articles of Incorporation
- Certified copy of Tax Registration Number, General Consumption Tax number and/or Certified copy of Tax Compliance Certificate
- Affidavit - setting forth all relevant commercial information of the Applicant, including its name, address, nationality, owners, board of directors (or equivalent management committee), auditors, and bankers, as well as the capital-ownership shares of the Applicant
- Copy of proposed Lease agreement
- Surveyor's ID report

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<sup>1</sup> the capital and investment requirements may be waived for micro, small and medium enterprises (MSMEs) with "sufficient development potential", if they have a sub-concession with a developer and will make an investment of at least USD25,000 in an SEZ. An MSME occupant is an occupant with no more than fifty (50) employees and an annual turnover of no more than USD150,000.00.

- Surveyor's Technical Description and Surveyor's ID Site Plan
- Business Plan setting out proposed activities
- Complete and executed Data Capture Form

## **OCCUPANT BENEFITS**

The Occupant may benefit from several tax incentives and other benefits afforded to them under the SEZ Act.

## **OCCUPANT'S OBLIGATIONS, WARRANTIES AND RIGHTS**

Per the Sub-Concession Agreement, the Occupant is required to make the following covenants:

- To punctually pay the Application Fee and any other applicable fees herein.
- To 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;
- To 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;
- To comply with all statutory obligations of the Occupant under the Prescribed Regulations including but not limited to the reporting obligations to the Authority;
- To 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
- To comply with the Applicable Regulations as amended from time to time, including the submission of reports pursuant to Regulation 39 of the SEZ Regulations.

The Occupant is also required to make Warranties under the Sub-Concession Agreement. These are:

- The Occupant is a company duly incorporated under the laws of Jamaica;
- The Occupant 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;
- The Occupant 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;
- The Occupant 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;
- v. The Occupant 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;

Whereas, the Developer will warrant that:

- a. 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;
- b. the Occupant Zone Area will not be subject to any Adverse Rights;
- c. 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;
- d. 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;
- e. that at the date of the Sub-Concession 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

Further, the Developer and Occupant can agree on what terms must be met by each before and after the signing of the Sub-Concession Agreement. Note however, that *the Agreement is not 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.* Thereafter with the Approval of the SEZA, and the execution of the Sub-Concession Agreement, the Occupant may be issued an Operating Certificate.

## **COMPLIANCE**

The Act and Regulations require the Occupant to comply with several rules. These are:

1. To permit inspection by the SEZA and/or any other GOJ Regulatory Authority or Agency;
2. To require reports from time to time as specified;
3. To refrain from any activity, practice, negligence, omission or conduct which may constitute an offence under the Anti-Corruption Laws or other laws of Jamaica;
4. To perform its obligations under the Agreement and the Operating Certificate following the Effective Date<sup>2</sup>.
5. To 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).

## **TERMINATION**

The Agreement may be terminated by the Developer where a Material Breach (for example a persistent breach) occurs. The SEZA may cause an Agreement to be terminated where an event of Default occurs. The Agreement sets out the procedure for Notice and potential resolution of such breaches.

Where the Agreement is terminated, the Occupant will cease to enjoy the status of an Occupant within the SEZ and will be subject to the conditions subsequent as provided under the Act and Regulations.

## **DISPUTE RESOLUTION**

If any dispute arises in connection with the Sub-Concession Agreement, either the Developer or the Occupant may give notice to the other party of dispute, and the parties are to meet within fourteen (14) days of the dispute arising and in good faith attempt to reach an amicable settlement.

*Disclaimer: This document is meant as a guide only and does not form part of legal advice. Kindly seek the advice of an Attorney-at-Law where you deem necessary. The Special economic Zone Authority reserves the right to amend, update or otherwise adjust the contents of this document from time to time.*

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<sup>2</sup> 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: a) Suspension or cancellation of incentives conferred under the Act and/or Applicable Regulations; or b) Termination of this Agreement, revocation of the Occupant Zone Lease Agreement and revocation of any regulatory approvals