

BELIZE:

SOUTHERN DEEP PORT DEVELOPMENT FACILITY ACT, 2024

ARRANGEMENT OF SECTIONS

1. Short title.
2. Interpretation.
3. Exemption from taxes and duties for the Facility.
4. Other exemptions.
5. Collection and payment of fees.
6. Regulations.

SCHEDULE



No. 14 of 2024

I assent,

(H.E. MR. STUART LESLIE)
Deputy Governor-General

30th July 2024

AN ACT to provide for certain exemptions from taxes and duties proposed to be granted to the Southern Deep Port Development Ltd. by the Agreement; to provide for the effective implementation of the Southern Deep Port Development Facility; and to provide for matters connected therewith or incidental thereto.

(Gazetted 31st July , 2024).

BE IT ENACTED, by and with the advice and consent of the House of Representatives and Senate of Belize and by the authority of the same, as follows:

1. This Act may be cited as the

Short title.

**SOUTHERN DEEP PORT DEVELOPMENT
FACILITY ACT, 2024.**

Interpretation.

2. In this Act–

Schedule.

“Agreement” means the agreement dated the 12th of March, 2024, between the Government of Belize and Southern Deep Port Development Ltd., set out in the Schedule;

CAP. 275.

“BTB” means the Belize Tourism Board established under the Belize Tourism Board Act;

“Commerce Bight Port” means the port located about 1.5 miles south of Dangriga Town, Stann Creek District or 16°56.00’N and 088°14.15’W.;

Act No. 11 of
2022.

“Developer” means the Southern Deep Port Development Ltd., a company formed under the Belize Companies Act, with registered office situate at 1 Commerce Bight Road, Belize;

“Facility” means the construction, development and infrastructure works of any port, marina and terminal facility at the Commerce Bight Port;

“Fee” means the Commerce Bight Passenger Fee;

“Lease” means the lease entered into by the Developer with the Government of Belize for a term of no less than thirty years;

“Minister” means the Minister with responsibility for industry and investment;

“Project” means the lease, design, financing, engineering, procurement, construction, commissioning, operations and maintenance of the Port Facility for the Term on a Lease-Develop-Operate basis; and

“Project Facility” means the assets including but not limited to the entirety of the Commerce Bight Port, the Lease and

related assets acquired by the Developer for the purpose of fulfilment of Developer's obligations as set forth in the Agreement, including the entirety of the undertaking of the business connected therewith.

3.-(1) Notwithstanding anything to the contrary in the-

(a) General Sales Tax Act;

(b) Customs and Excise Duties Act; and

(c) Customs Regulation Act;

Exemption
from taxes and
duties for the
Facility.

CAP. 63.

CAP. 48.

CAP. 49.

and any regulations made under any of the said Acts, or any other law, rule, regulation, order or instrument whatsoever, the Developer shall be exempt from the taxes, duties or imposts under the said Acts.

(2) The exemption specified under sub-section (1) shall be for the term of the Agreement.

(3) The exemptions from taxes and duties granted under this section shall apply only to the following as they relate directly to the construction aspect of the Facility-

(a) capital machinery;

(b) equipment, including marine and terrestrial vehicles, and spare parts;

(c) building materials;

(d) fixtures and fittings;

(e) office equipment; and

(f) professional services.

Other
exemptions.

4.-(1) During the term of the Agreement, the Developer shall be exempt from-

CAP. 52.

(a) the provisions of the Exchange Control Regulations Act; and

CAP. 64.

(b) stamp duty payable under the Stamp Duties Act in relation to-

(i) shares for the Project Facility and the Project;

(ii) the Lease;

(iii) the Project Facility;

(iv) the Project; and

(v) the Agreement.

Collection and
payment of
Fee.

5.-(1) During the term of the Agreement, BTB is hereby authorised to collect the prescribed Fee from all cruise ship passengers entering the Commerce Bight Port.

(2) The manner of payment and the ratio of the distribution of the Fee shall be as set out in regulations made under this Act.

Regulations.

6. The Minister shall make regulations as may be expedient for giving effect to the provisions of this Act and for prescribing anything that needs to be prescribed.

SCHEDULE
[section 2]

BELIZE

THIS AGREEMENT is made this 12th day of March, 2024

BETWEEN

- (1) The Government of Belize acting by and through the Prime Minister and Minister responsible for Finance and the Minister responsible for Logistics (“the **Government**”)

AND

- (2) Southern Deep Port Development Ltd., a company incorporated under provisions of the Companies Act, Cap 250 of the Laws of Belize, having its principal place of business at District, Belize (hereinafter “the **Developer**”)

Recitals

WHEREAS:

- (1) The developer has accumulated substantial experience and expertise in the development and management of port facilities and logistics.
- (2) The developer has invested considerable finances, time and other resources (“the Accumulated Capital”) in and for the conceptual design and preliminary business plan for the development, construction, operation and management of a Port, Marina and Terminal facility at the Commerce Bight Port (hereinafter referred to as “the Port”).
- (3) The Government of Belize is desirous of expanding and developing the marine economy through developing a marina, port facilities, nautical tourism and ancillary services with a view to enhancing tourism, creating jobs, and entrepreneurial opportunities, and expanding the national income of the country of Belize.
- (4) The Government of Belize, through the Minister responsible for Ports, on the 13th day of December 2022, presented to the Cabinet of Belize the Developer’s development plan for the Port and the Cabinet approved that the project proceeds to be developed by way of a public private partnership in the form of a thirty-year arrangement between the Government of Belize and the Developer.
- (5) With a view to achieving certain public policy objectives hereinafter set forth, the Government of Belize has agreed with the Developer that the Developer shall undertake the development and operation of the Port and shall provide all services therein and the Government shall facilitate the Development of the Port and the provision of the Services through, inter alia, lobbying for and supporting the enactment of the Legislation (hereinafter defined in Section

15) and performance of certain obligations set forth hereunder upon the terms and subject to the conditions set forth in this Agreement.

Operative Provisions

NOW, in consideration of the mutual covenants, agreements and undertakings hereinafter set forth and for other good and valuable consideration the receipt and sufficiency where the Parties hereby acknowledge, THE PARTIES HEREBY AGREE as follows:

ARTICLE I – INTERPRETATION AND EFFECT

1. Definitions

- 1.1. "Acting as an Expert and not an Arbitrator" means, in the context of any person determining any matter or dispute in terms of this Agreement, such person doing so on the following basis:
 - 1.1.1. Such person shall investigate the matter or dispute in such manner as he in his sole discretion considers appropriate, provided that each Party to the dispute shall have the right to make written representations to such person in relation to the matter or dispute;
 - 1.1.1.1. In carrying out his investigations, such person shall be entitled to consult with any or all of the Parties, or with any other person and to take advice from any third party;
 - 1.1.1.2. The determination of such person shall be final and binding on the Parties, save in instances of bias or manifest error;
 - 1.1.1.3. The costs and charges (including but not limited to the attorney and own client costs) of such person shall be borne by that party which, in the sole discretion of such person, is the appropriate party to bear such costs and charges, provided that such person shall be entitled to direct that the costs and charges be borne by all or certain of the Parties, in such ratios as such person may determine;
- 1.2. "Agreement" means this Agreement executed between the Government and the Developer including all the Annexes, Schedules, amendments, design plans for the implementation of the Port;
- 1.3. "Bonds" means the bonds, debentures, notes, or other debt, equity or other financing instruments or derivatives thereof issued by the Developer for the purpose of financing the Development of the Project and the Project Facility including but not limited to bonds issued or to be issued in substantially similar terms as that contained in Schedule B hereto;

- 1.4. "COD" or "Commercial Operations Date" means the date on which the Developer commences commercial operations upon securing written approval from the Government;
- 1.5. "Commencement Date" means the date of signing the Agreement;
- 1.6. "Competent Authority" means the Government or any Government Agency or any provincial or national authority, department, inspectorate, minister, official, court, tribunal or public or statutory body (whether autonomous or not), of Belize (including for the avoidance of doubt any licensing authority) exercising a statutory authority;
- 1.7. "Debt Financing" means the debt financing raised by the issuance of the Bonds or otherwise for purposes of the Development of the Project and the provision of the Services
- 1.8. "Developer" means Southern Deep Port Development Ltd and any successors or assigns thereof;
- 1.9. "Development" means the conceptualization, installation/construction, financing, commissioning of the Port Facility together with the operations and maintenance thereof by the Developer for the performance of its obligations as stipulated under this Agreement;
- 1.10. "Direct Agreement" means an agreement entered into or to be entered into between the Government, the Developer and the Funders, as contemplated in clause 15.6 and as may be required;
- 1.11. "Encumbrance" includes any mortgage, bond, charge, security bill of sale, pledge, lien, hypothecation, assignment, cession in *securitatem debiti*, deposit by way of security or any other agreement or arrangement (whether conditional or not) which has or will have the effect of giving to one person a security interest in or preferential treatment in respect of another person's assets, but excludes statutory preferences, and "Encumber" shall be construed accordingly;
- 1.12. "EPC Contract" means that certain contract made contemporaneously herewith between the Developer and an eligible contractor for the provision of the EPC Services for the execution of the Works in accordance with the EPC Requirements;
- 1.13. "EPC Contractor" means the contractor engaged by the Developer under the EPC Contract to fulfill the EPC Requirements;
- 1.14. "EPC Requirements" means the engineering, procurement and construction requirements of the Project as more particularly set forth in Schedule C hereto;
- 1.15. "EPC Services" means the engineering, procurement and construction services by the Developer through the EPC Contractor as (sub-)contractor under the EPC Contract for the execution of the Works in accordance with the EPC Requirements;

- 1.16. "Equity Capital" means the equity capital raised by the Developer for the purposes of the Development of the Project and the provision of the Services;
- 1.17. "Expert" means an Expert in the area under dispute appointed pursuant to the provisions of clause 29 below;
- 1.18. "Financial Year": means (a) the period commencing on the Commencement Date until 31 December 2024; and (b) thereafter, each period of 12 months commencing 1 January and ending on 31 December or (where applicable) the Termination Date if occurring before 31 December;
- 1.19. "Funders" means the party/ies providing Funding to the Developer for the Development of the Project and the provision of the Services;
- 1.20. "Funding" means cumulatively the Equity Capital and the Debt Financing raised by the Developer for the purposes of the Development of the Project and the provision of the Services;
- 1.21. "Funding Agreement/s" means the agreement/s entered into or to be entered into between the Developer and the Funders in terms of which, *inter alia*, the Funders will provide Funding to the Developer for the Development of the Project and the provision of the Services;
- 1.22. "Government" means the Government of Belize;
- 1.23. "Government Agency" means any relevant government authority responsible for regulating the management of marinas, ports, terminals and the marine sector generally including but not limited to the Belize Port Authority;
- 1.24. "Government's Shares" means those certain ordinary shares in the capital of the Developer comprising twenty percent (20%) of the authorized share capital of the Developer to be issued and allotted by the Developer to the Government in pursuance of clause 8.1 hereof;
- 1.25. "IRR" means the internal rate of return of 6.00% (six percent), which is the interest rate at which the net present value (NPV) of all cash flows (both positive and negative) from the investment by the shareholders of the Developer equal to zero;
- 1.26. "Lease" shall have the meaning ascribed in clause 5.1.3.
- 1.27. "Losses" mean all losses, damage/s, liabilities, costs, reasonable expenses, fines, penalties and claims;
- 1.28. "Material Adverse Effect" means a material adverse effect on:

- 1.28.1. The ability of the Developer to exercise any of its rights to perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or
- 1.28.2. The legality/validity, binding nature or enforceability of this Agreement;
- 1.29. “O & M Requirements” means the operational and maintenance requirements of the Project as more particularly set forth in Schedule D hereto;
- 1.30. “O & M Services” means the operational and maintenance services provided by Developer, through the O&M Service Provider, as (sub-)contractor in pursuance of the O&M Services Contract, to fulfill the O&M Requirements;
- 1.31. “O & M Services Contract” means that certain contract made contemporaneously herewith between the Developer for the provision the O & M Services to fulfill the O & M Requirements;
- 1.32. “Project” means the lease, design, financing, engineering, procurement, construction, commissioning, operations and maintenance of the Port Facility for the Term on a Lease-Develop-Operate basis;
- 1.33. “Project Facility” means the assets including but not limited to the entirety of the Port, the Lease and related assets acquired by the Developer for the purpose of fulfilment of Developer’s obligations as set forth in this Agreement including the entirety of the undertaking of the business connected therewith;
- 1.34. “Project Site” means the property on which the Port is to be built and developed as defined in the Lease;
- 1.35. “Scheduled Project Completion Date”: (“SPCD”) means 24 months after the Construction Commencement Date;
- 1.36. “Services” means the EPC Services and the O & M Services;
- 1.37. “Term” means the period commencing from the Commencement Date and ending on the Termination Date;
- 1.38. “Termination Date” means the thirty-year anniversary of the Commercial Operations Date or the date on which the Agreement is earlier terminated as per the provisions of the Agreement;
- 1.39. “Works” means the works of design and construction of the port to be carried out at the Project Site in accordance with this Agreement.

2. Interpretation

- 2.1. Unless the context otherwise requires references in this agreement to clauses and schedules are to clauses and schedules in this agreement and reference to a clause includes a sub-clause.
- 2.2. The headings to clauses and other parts of this agreement are for reference only and do not affect its construction.
- 2.3. This agreement may only be varied in writing signed by or on behalf of the parties.
- 2.4. Any obligation on a party to do any act or thing includes an obligation to procure that it be done and any obligation not to do any act or thing includes an obligation not to allow that act or thing to be done by any person under its control.
- 2.5. The words importing singular shall include plural and vice versa and a reference to a person includes an individual, a corporation, company, firm or partnership or government body or agency, whether or not legally capable of holding land.
- 2.6. Unless otherwise specified, a reference to legislation (including subordinate legislation) is to that legislation as extended, amended, modified, consolidated, or re-enacted from time to time and includes any instrument, order, regulation, permission, consent, license, notice, direction, bye-law, statutory guidance or code of practice made or granted under such legislation.
- 2.7. References to applicable laws shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law.
- 2.8. For all purposes of this agreement, unless the context otherwise clearly requires:
 - 2.8.1. The terms “include,” “including” and similar terms shall be construed as if followed by the phrase “without being limited to”
 - 2.8.2. The term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”.
- 2.9. No inference in favour of or against any party shall be drawn from the fact that such party has drafted any portion hereof.
- 2.10. The schedules to this agreement form an integral part of this Agreement as though they were expressly set out in the body of this agreement.

- 2.11. Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any party shall be valid and effectual only if it is in writing under the hands of the duly authorized representative of such party and not otherwise.
- 2.12. Any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include either such days or dates.

ARTICLE II – BACKGROUND, POLICY AND OBJECTIVES

3. Background and Context

- 3.1. Nautical Tourism has grown significantly over the past two (2) decades in Belize.
- 3.2. The Stann Creek District offers a wide variety of gastronomical & cultural activities that would enhance the Tourism product offered by Belize.
- 3.3. The Commerce Bight Port is a natural port and is ideally placed to serve as a hub for smaller and boutique-class cruise vessels, luxury yachts as well as a full-service marina for servicing vessels.
- 3.4. The development of a Port, Terminal and Marina at Commerce Bight would bring significant economic growth and employment opportunities for the people of Stann Creek District.

4. Policy and Objectives

- 4.1. Having regard to the foregoing background and context of the nautical tourism market and tourism industry in Belize, the Government is desirous of achieving the public policy objectives described in the National Sustainable Tourism Master Plan, National Cruise Policy and the National Ports Policy.
- 4.2. In furtherance of and to facilitate the achievement of the foregoing objectives, the Government has entered into this Agreement (including all ancillary agreements, instruments, assurances and documents) and commits to fulfil its obligations hereunder including but not limited to lobbying for and supporting the enactment of enabling and/or other necessary and/or prudent legislation to ensure the realization of the Project Facility and the Project and to providing further support as may be required from time to time.

5. Conditions Precedent

- 5.1. The whole of this Agreement, save for the provisions of clauses 1 to 4, clause 5, clauses 6.2 to 6.4 (both inclusive), and clause 7.2, which shall be of immediate force and effect on the Commencement Date, is subject to the following conditions precedent:
 - 5.1.1. The developer has concluded the Funding Agreements, pursuant to which it has obtained all third-party funding for the Development of the Project, on terms and conditions acceptable to the Developer and the Developer has confirmed to the Government in writing that it has obtained such funding;
 - 5.1.2. Unless the developer otherwise waives in writing, the Government, the developer and the Funders have entered into a Direct Agreement on terms and conditions acceptable to the developer;
 - 5.1.3. The developer has entered into a lease of the Project Site with the Government for a term of no less than thirty years ("the **Lease**"). The Lease shall be entered into in substantially the same form as that contained in Schedule A; and
- 5.2. Forthwith after the Commencement Date, the Parties shall use their respective reasonable endeavors and co-operate in good faith to procure the fulfilment of the Conditions Precedent, to the extent that it is within their power to do so, as expeditiously as reasonably possible.
- 5.3. Unless the Conditions Precedent have been fulfilled or (where applicable) waived, the provisions of this Agreement save for clause 1 to 4, this clause 5, clauses 6.2 to 6.4 (both inclusive), clause 7.2, clause 15.7, clauses 21 to 24 (both inclusive) and clauses 26 to 42 (both inclusive) which will remain of full force and effect, will never become of any force or effect and the status quo ante will be restored as near as may be possible and none of the Parties will have any claim against any other in terms hereof or arising from the failure of the Conditions Precedent, save for any claims arising from a breach of clause 5.2 and/or any prior breach of any of the provisions of this Agreement which became effective prior to the Commencement Date.

ARTICLE III – APPOINTMENT AND ACCEPTANCE

6. Appointment and Acceptance

- 6.1. The Government hereby appoints the Developer to Develop the Project and to provide the Services in accordance with the terms and conditions stipulated in this Agreement ("the **Appointment**") and the Developer accepts the appointment upon the terms and conditions stipulated in this Agreement.

- 6.2. This Agreement and the Appointment hereunder commences from the Commencement Date and endures for the Term during which the Developer is authorized to Develop the Project and to provide the Services in accordance with the provisions hereof.
- 6.3. The Developer shall at its sole and absolute discretion create any Encumbrances on or over its leasehold interest in the Project Site, the Project and/or this Agreement in pursuance of the Development of the Project and the provision of the Services or any part thereof and otherwise in the fulfilment of its obligations under this Agreement.
- 6.4. Subject to the exercise by the Government of its rights under the Agreement, the Government agrees that it shall not, and shall procure that any third party engaged by or on behalf of the Government shall not, prevent or materially hinder or disrupt the Developer in the implementation of the Project, or adversely affect or prejudice the Developer's performance of the Services, in accordance with the Agreement and in furtherance thereof shall lobby for and support enactment of such enabling and/or other necessary and/or prudent legislation including but not limited to the Legislation (hereinafter defined) to ensure the realization of the Project Facility and the Project and to provide further support as may be required from time to time.

ARTICLE IV – DEVELOPER'S OBLIGATIONS

7. Funding Arrangements

- 7.1. The Developer shall, at its own cost and expense raise capital in the sum of \$50,000,000.00 through the sale of shares and/or the issuance of Bonds for the Development of the Project Facility and the Project and the provision of the Services as per the terms of the Agreement;
- 7.2. The Developer shall be permitted to grant first priority first ranking fixed and floating charges and other Encumbrances over the entirety of the Project and its leasehold interest in the Project Site including this Agreement as security for the Funders in pursuance of the Funding Agreements and otherwise as may be necessary for the development of the Project and the Project Facility and the provision of the Services.

8. Shares and Constitutional Documents

- 8.1. In consideration of the Government agreeing to enter into this Agreement, the Developer shall issue and allot the Government's Shares to the Government immediately upon execution of this Agreement.
- 8.2. The Developer shall ensure and procure that the necessary amendments are made to its Articles of Association so as to ensure that the Government's shares cannot be diluted.

9. Design & Construct

- 9.1. The Developer shall be responsible for the execution of the Works and shall provide the EPC Services in furtherance thereof in accordance with the EPC Requirements.
- 9.2. The Developer shall have the right at all times to assign, delegate or subcontract any of its rights or obligations under this clause to another company or entity, provided that:
 - 9.2.1. In the event of any such assignment, delegation or subcontract, the Developer will remain liable for all such obligations;
 - 9.2.2. The party to whom the assignment or delegation is made shall have the appropriate qualifications, degree of skill, competence, resources, financial standing, experience, expertise and reputation to perform the obligations assigned or delegated.

10. Operations and Maintenance

- 10.1. The Developer shall provide the O&M Services in accordance with the O&M Requirements.
- 10.2. The Developer shall 30 days prior to the commissioning of the Project Facility submit to the Government, the operations and maintenance plan for the forthcoming Financial Year.
- 10.3. The Developer may request approval from the Belize Port Authority to exercise the right to assign, delegate or subcontract any of its rights or obligations under this clause to another company or entity, provided that:
 - 10.3.1. In the event of any such assignment, delegation or subcontract, the Developer will remain liable for all such obligations;
 - 10.3.2. The party to whom the assignment or delegation is made shall have the appropriate qualifications, degree of skill, competence, resources, financial standing, experience, expertise and reputation to perform the obligations assigned or delegated.

11. Permits, Licenses, Consents etc.

- 11.1. The Developer agrees that it shall be in compliance with all applicable laws for all aspects of the Project Facility. The developer shall seek, secure and maintain all clearances/ permits required in relation to the provision of the Services and shall comply with all applicable environmental, health and safety laws. The developer shall adopt corrective steps to ensure compliance with the applicable norms for the Development of the Project Facility.

12. Insurance

- 12.1. The developer, at its own cost and expense, shall insure and maintain, during the Term all such insurances as may be required from time to time as per good industry practice. The developer shall maintain adequate records in this respect.
- 12.2. The proceeds from such Insurance Policies shall first be applied to restore the assets to its original position, except for normal wear and tear, to ensure that the O&M requirements are fulfilled at all times. The Developer may assign the Insurance Policies in favour of Funders as Loss Payees or designate the same in favour of Funders as security for Funding.

13. Other Obligations

- 13.1. The Developer shall with the assistance of the Government:
 - 13.1.1. Obtain all applicable permits as required under applicable law and be in compliance therewith at all times during the Term;
 - 13.1.2. Investigate, study, operate and maintain the Project Facility as per the provisions of this Agreement;
 - 13.1.3. Comply with Applicable Law governing the operations of ports, marinas and terminals at all times of the Term;
 - 13.1.4. Ensure and procure that any contract relating to the Project Facility, entered into by the Developer for Development of the Project Facility in accordance with the provisions of this Agreement shall not be any way detrimental to the interests acquired or obligations undertaken by the Government under this Agreement;
 - 13.1.5. Ensure and procure that any sub-contracts entered into by the Developer towards the performance of obligations shall be co-terminus and adhere to the principles, in letter and spirit, as stipulated in this Agreement;
 - 13.1.6. Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
 - 13.1.7. Make commercially reasonable efforts to ensure and procure that only Belizean citizens are employed by it save and except where the required expertise is not available locally;
 - 13.1.8. comply with or cause to be complied with provisions of the various labour laws and regulations as applicable to it in regard to matters provided therein and shall indemnify the Government in respect of all claims that may be raised against the Government for non-compliance thereof by the Developer;
 - 13.1.9. Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the project and hereby indemnifies the Government against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall the Government be treated as employer in this regard;

- 13.1.10. Make arrangement on its own for the construction materials and observe and fulfil the environmental and other requirements under the applicable law and applicable permits;
- 13.1.11. Be responsible for all health, security, environment and safety aspects of the project at all times during the Term;
- 13.1.12. Ensure that the Project Facility is free from encroachments at all times and take all steps necessary to remove encroachments, if any; and
- 13.1.13. Upon receipt of a request thereof, afford access to the Project Facility to the authorized representatives of Government for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement.

14. No Breach

- 14.1. The Developer shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability of and to the extent performance of any of its obligations under this Agreement is affected by or on account of:
 - 14.1.1. Force Majeure Event;
 - 14.1.2. Government's Event of Default;
 - 14.1.3. Compliance with the instructions of the Government or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Developer of any of its obligations hereunder; or
 - 14.1.4. Closure of the Project Facility or part thereof with the approval of the Government.

ARTICLE V – GOVERNMENT'S OBLIGATIONS

15. Specific Obligations

15.1. The Legislation

- 15.1.1. The Government shall introduce into the National Assembly and make best efforts to pass such primary and subsidiary legislation (collectively, "the **Legislation**") and/or take such executive action as may be required to:
 - 15.1.1.1. Exempt the Developer from the payment of any and all customs and excise and revenue replacement duties, general sales taxes, contract taxes and withholding taxes (or any other duties and taxes in substitution thereof) on or in connection with the importation, purchase or procurement of capital machinery, equipment, spare parts, building materials, fixtures and fittings, and office equipment, permits, design, engineering, procurement, construction and other technical services for purposes of the Development of the Project Facility during the Construction phase of the Project Facility;
 - 15.1.1.2. Exempt the Developer from the payment of taxes in section 15.1.1.1 in substitution thereof) during the Term;
 - 15.1.1.3. Exempt the Developer from stamp duty payable on the allotment and/or transfer of shares, the Lease, the Project Facility, the Project and/or this Agreement as the case may be during the Term;

- 15.1.1.4. Authorize the BPA to enter into the Lease with the Developer;
- 15.1.1.5. Exempt the Developer from all exchange control laws during the Term;
- 15.1.1.6. Enable, permit and/or cause The Belize Tourism Board to collect a passenger fee/facility fee of \$10.00 USD for each international passenger arriving at the port. During the term of engagement \$5.00 USD from the passenger fee will be paid to the Belize Tourism and \$5.00 USD paid to the Developer;
- 15.1.1.7. Enable the developer to collect \$0.17 USD per passenger, to be allocated to a Community Development Fund
- 15.1.1.8. Enable and permit the Developer and/or its tenants to operate duty-free shops at/within the Port during the Term;
- 15.1.1.9. Allow for the designation of the Port at Commerce Bight as an official Port of Entry into Belize
- 15.1.1.10. Enable, permit and/or cause the Government's Shares to be duly transferred to the Developer at no cost to the Developer at the end of the Term; and
- 15.1.1.11. Incorporate the Agreement as part of the Legislation and otherwise ensure compliance with the Government's obligations hereunder including but not limited to clauses 15.3 to 15.7 hereunder.

15.1.2. The Legislation shall be passed substantially in the same form contained in Schedule E.

15.1.3. The Government shall introduce the Legislation to the House of Representatives and take such executive action as is reasonably practicable and upon assent by the Governor General cause such Legislation to be published in the Gazette

15.2. Permits

15.2.1. The Government shall grant in a timely manner all such approvals, permissions and authorizations which the Developer may require or is obliged to seek from the Government under this Agreement, in connection with the implementation of the Project and the performance of its obligations including the provision of the Services.

15.2.2. The Government shall provide all necessary assistance to the Developer in securing any and all applicable permits, licenses or consents for purposes of the Project and the Provision of the Services including but not limited to all consents, permits and approvals required from the Department of the Environment, the Central Building Authority, the Belize Port Authority, the Belize Tourism Board and Beltraide for the completion and success of the Project as contemplated herein.

15.3. Foreign currency

15.3.1. The Government shall not hinder that the Developer from being able to purchase foreign currency, through authorized dealers permitted by the laws of Belize to supply foreign currency, for:

- 15.3.1.1. The purchase of materials, equipment and supplies necessary for the Development of the Project and the provision of the Services;
- 15.3.1.2. meeting the Developer's liabilities and obligations, if any, to Funders under the Funding Agreements to finance the Development of the Project and the provision of the Services (including, without limitation, repayments of principal and interest and other financing costs);
- 15.3.1.3. the repatriation of salaries and consultancy fees and charges of expatriate personnel, consultants and contractors employed by the Developer (if any) in the provision of the Services.

15.4. Funders' Rights

- 15.4.1. As the Developer will, on the basis of the Funding Agreements procure project financing for the transactions set out in this Agreement, Government and Developer agree to enter into good faith negotiations with the Funders regarding conclusion and execution of a direct agreement on customary terms (which will, *inter alia*, include the Funders' step-in rights and the process to be followed in relation thereto) (the "**Direct Agreement**").

15.5. Transfer of Government's Shares

- 15.5.1. The Government shall, on the Termination Date transfer or otherwise cause to be transferred the Government's Shares to the Developer free from and clear of any and all encumbrances.

ARTICLE VI – MONITORING OF THE PROJECT FACILITY

16. Monitoring of Facility

- 16.1. In order to ensure fairness and transparency, the Government, shall appoint a qualified representative as a Supervisor of the Development of the Project Facility to monitor the progress and development of the Project Facility.
- 16.2. The objective of such appointment is to have close coordination between the Developer and the Government in order to take timely action on events that may hinder the Development of the Project Facility in a transparent and timely manner.
- 16.3. Upon notification by the Developer to the Government that construction of the Project Facility is complete, the Government's representative shall inspect and review the Project Facility and the Works to determine whether completion conditions have been satisfied in accordance with the EPC Requirements.
- 16.4. If Government's representative determines that any of the completion conditions have not been satisfied, he shall identify any deficiencies in a written report delivered as soon as possible but no later than seven business days following the date of the inspection. The Developer shall thereupon rectify all such matters. Upon the

Developer's notification of such rectification to Government's representative, he shall confirm such rectification to the Government and the Developer as soon as possible but no later than three business days following the date that such rectification has been completed.

- 16.5. Upon confirmation by Government's representative that the Project Facility has satisfied all completion conditions set out in the EPC requirements (either after the initial inspection or inspection of the rectification works), the Government shall issue a performance certificate to the Developer, within two business days of the completion conditions being satisfied, certifying that the Project Facility has satisfied all completion conditions and requirements of the Government.

17. External Consultant

- 17.1. In the event of any difference in opinion/ dispute between the Developer and the Government with respect to the Project Facility, the parties shall consider the option of appointing an external consultant/ expert, on a case-to-case basis, in relation to the matter in dispute. The option to appoint such an external consultant shall however be subject to the Developer's consent and further it is clarified that neither the Government nor the Developer shall be under any obligation to abide by the report so submitted by the external consultant/ expert.
- 17.2. The cost of the appointment of the External Consultant shall be the responsibility of the Developer. The Government, directly or through its representative, may monitor the Project Facility at such intervals, as it may deem necessary. The Developer shall offer reasonable access to the Government and/or its authorized representative to visit and inspect the Project Facility

ARTICLE VII – TRANSFER TO GOVERNMENT

18. Transfer of Project Facility

- 18.1. In consideration of the Government fulfilling all its obligations as set forth in this Agreement including but not limited to the transfer of the Government's Shares to the Developer on the Termination Date in pursuance of clause 15.7 hereof, the Developer shall on the Termination Date, at the sole cost and expense of the Developer, deliver possession of the Project Facility and Project Site to the Government, free from any Encumbrances in a reasonably good operating condition.
- 18.2. The Developer shall, at least 12 months prior to the end of the Lease term, organize for a detailed inspection of the Project Facility. The Government with the assistance of the Developer, within 60 days of the inspection shall prepare a detailed plan, including but not limited to the technology aspects of the Project Facility that would need to be transferred to the Government.

- 18.3. The Government shall be solely responsible for any and all costs, taxes, stamp duty or other applicable fees in connection with the transfer of the Government's Shares or any other assets of the Project, if applicable, to the Developer.
- 18.4. From the Termination Date, there shall be no obligation on the Developer to provide any services under the Agreement. However, the Parties shall for a period of 30 days after the Term enter into good faith negotiations with one another in order to agree which services the Developer will render to the Government after the Term and the terms and conditions on which such services will be rendered by the Developer to Government.
- 18.5. Until the Termination Date:
- 18.5.1. Full leasehold title of the entire Project Facility (and all sections thereof and any item of material in respect thereof and all components thereof) (the "**Relevant Assets**") shall vest in the Developer and the Parties hereby agree that it is their intention that none of the Relevant Assets shall accede to any property on which they are located and/or installed;
- 18.5.2. All risk in the Relevant Assets (or the relevant section thereof), as the case may be, shall be borne by the Developer with effect from the Commercial Operations Date; and
- 18.5.3. All benefit attaching to the Relevant Assets accrue to the Developer.
- 18.6. Notwithstanding anything to the contrary contained herein, nothing shall prohibit the Developer from granting any Encumbrance over any of the Terminal, the Project Facility, the Project or this Agreement (or a portion thereof).
- 18.7. On termination of the Lease, the Government shall be responsible for the shifting of utilities, if any. Any costs/ charges that may arise on account of shifting of utilities, including the associated relocation costs shall be to the account of the Government. The Government shall endeavor to shift/ relocate the Utilities in the minimum possible time to ensure that the Developer does not suffer any pecuniary losses on account of the same.

19. [Intentionally Omitted]

ARTICLE VIII – EVENTS OF DEFAULT**20. Developer Event of Default**

- 20.1. Any of the following events shall constitute an Event of Default by the Developer ("**Developer Event of Default**") unless such event has occurred as a result of one or more reasons as stated in Clause 22:
- 20.1.1. The Developer has failed to adhere to the EPC Requirements and such failure, in the reasonable opinion of the Government is likely to delay achievement of COD beyond 180 days of the Scheduled Project Completion Date.
 - 20.1.2. The Developer has failed to achieve COD within 180 days of the Scheduled Project Completion Date for any reason whatsoever other than that caused as a result of omission on part of the Government.
 - 20.1.3. At any time during the Term, the Developer fails to adhere to the O&M Requirements and has failed to remedy the same within 90 days of receipt of notice in this regard from the Government.
 - 20.1.4. The Developer is in Material Breach of any of its obligations under this Agreement and the same has not been remedied within 90 days of having received notice in writing of the specific Material Breach from the Government.
 - 20.1.5. Developer is declared insolvent;
 - 20.1.6. Any petition for winding up of the Developer has been admitted and liquidator or provisional liquidator has been appointed or the Developer has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of Government, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Developer under this Agreement.
 - 20.1.7. Developer has abandoned the Project Facility.
 - 20.1.8. Developer has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
 - 20.1.9. Developer has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 90 days.

21. Government Event of Default

- 21.1. Any of the following events shall constitute an event of default by Government ("**Government Event of Default**") provided that the default is not as a result of Developer Event of Default or Force Majeure Event:
- 21.1.1. Government is in Material Breach of any of its obligations under this Agreement and has failed to cure such Breach within 45 days of receipt of notice in writing thereof issued by the Developer.
 - 21.1.2. Government has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement.
 - 21.1.3. Government has unreasonably withheld or delayed grant of any approval or permission which the Developer is obliged to seek under this Agreement, or otherwise has unreasonably withheld or delayed fulfillment of its obligations hereunder and thereby caused or likely to cause Material Adverse Effect.

- 21.1.4. The Government has failed to use best efforts to assist the Developer in procuring any necessary permits, consents or licenses.
- 21.1.5. Any representation made or warranties given by the Government under this Agreement has been found to be false or misleading.

22. Termination

22.1. Termination for Developer Event of Default:

- 22.1.1. Upon Developer's Event of Default, Government shall, without any prejudice to its other rights in respect thereof under this Agreement, be entitled to terminate this Agreement. The process for Termination through the Termination Notice shall be as laid down in Clause 23.3 herein below.
- 22.1.2. If the Government decides to terminate this Agreement, as per Clause 23.1.1 above, then a Preliminary Notice of Termination shall be issued to the Developer by the Government citing the events underlying such notice. Within 90 days of receipt of such notice from the Government if the Developer does not submit an action plan indicating the steps to be taken by the Developer to rectify the underlying Events of Default, then the Government shall be entitled to terminate this Agreement by issuing a Termination Notice.
- 22.1.3. If the action plan is submitted within 90 days by the Developer, then the Developer shall have a further period of 90 days to cure the underlying Events of Default. If, however, the Developer is unable to cure the underlying Events of Default within the said period of 90 days, then the Government shall be entitled to terminate this Agreement by issuing a Termination Notice.

22.2. Government's Event of Default:

- 22.2.1. Upon Government's Event of Default, the Developer shall, without any prejudice to its other rights thereof under this Agreement, be entitled to terminate this Agreement. The process of Termination by issue of the Termination Notice is laid down in Clause 23.3 herein below.
- 22.2.2. If the Developer decides to terminate this Agreement, as per clause 23.2.1 above, then a Preliminary Notice of Termination shall be issued to the Government by the Developer citing the events underlying such notice. Within 30 days of receipt of such notice from the Developer, if the Government does not submit an action plan indicating the steps to be taken by the Government to rectify the underlying Events of Default, then the Developer shall be entitled to terminate this Agreement by issuing a Termination Notice.
- 22.2.3. If the action plan is submitted within 30 days by the Government, then the Government shall have a further period of 30 days to cure the underlying Events of Default. If, however, the Government is unable to cure the underlying Events of Default within the said period of 30 days, then the Developer shall be entitled to terminate this Agreement by issuing a Termination Notice.

22.3. If a Party, having become entitled to do so decides to terminate this Agreement pursuant to the preceding clause 23.1 or 23.2, it shall issue Termination Notice setting out:

- 22.3.1. in sufficient detail the underlying Event of Default;

- 22.3.2. the termination date ("**Early Termination Date**") which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
 - 22.3.3. the estimated termination payment including the details of computation thereof calculated as on the date of termination ("**the Termination Payment**") calculated in accordance with clause 24 hereof;
 - 22.3.4. any other relevant information.
- 22.4. Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:
- 22.4.1. until Termination the Parties shall fully discharge their respective obligations, as may be reasonably possible, so as to sustain the operations of the Project Facility.
 - 22.4.2. The Termination Payment, if any, payable by the Government in accordance with the following clause 24 is paid to the Developer on the Early Termination Date and
 - 22.4.3. Possession of the Project Facility is delivered and other Project Assets are transferred to the Government by the Developer on the Early Termination Date free from any encumbrance along with any payment that may be due to the Government PROVIDED THAT the Developer is in receipt of the Termination Payment from the Government.
- 22.5. Upon Termination of this Agreement for any reason whatsoever, Government shall upon making the Termination Payment, if any, to the Developer have the power, authority and right to:
- 22.5.1. enter upon and take possession and control of the Project Facility forthwith.
 - 22.5.2. prohibit the Developer and any person claiming through or under the Developer from entering upon / dealing with the Project Facility.
- 22.6. Notwithstanding anything contained in this Agreement, Termination pursuant to any of the provisions contained in this Agreement shall not preclude any Party to seek redressal of the right to recover monetary damages or any other right which it may have under law or this Agreement. The rights and obligations of either Party under this Agreement, including without limitation to Termination Payments, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.
- 22.7. For the avoidance of doubt, neither this clause nor any other clause entitling the Government to cancel or terminate this Agreement shall permit the Government to cancel or terminate this Agreement prior to the Funders having elected whether or not to exercise their step-in rights in accordance with the Direct Agreement (if any).

23. Force Majeure

- 23.1. Any of the following events which is beyond the reasonable control of the party claiming to be affected thereby ("**Affected Party**") and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and results in Material Adverse Effect shall constitute Force Majeure Event:
- 23.1.1. Earthquake, flood, inundation;

- 23.1.2. Storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric/ climatic disturbances;
- 23.1.3. Fire or explosion;
- 23.1.4. Strikes, labour disruptions or any other industrial disruptions;
- 23.1.5. Action of a Government Agency having Material Adverse Effect including but not limited to:
 - 23.1.5.1. Acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project Facility or any part thereof or of the Developer's or its assignees rights in relation to the Project;
 - 23.1.5.2. Any judgement or order of a court of competent jurisdiction or statutory authority in Belize made against the Developer or its assignees in any proceedings which is non-collusive and duly prosecuted by the Developer, and
 - 23.1.5.3. Any unlawful, unauthorized and without jurisdiction refusal to issue or to renew or the revocation of any applicable permits, consents or licenses, in each case, for reasons other than Developer's or its assignees breach or failure in complying with the Project requirements, applicable laws, applicable permits, any judgements or orders of a Governmental Agency or of any Concession by which the Developer or its assignee may be bound.
- 23.1.6. Any failure or delay of the Developer caused by any of the sub-clauses hereinabove, for which no offsetting compensation is payable to the Developer or on behalf of the Developer.
- 23.1.7. War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, military action, civil war, ionizing radiation, contamination, any failure or delay of a sub-developer caused by the events mentioned in this sub-clause for which no offsetting compensation is payable to the Developer by or on behalf of the sub-developer.

ARTICLE IX – REPRESENTATIONS AND WARRANTIES

24. Developer's Representations and Warranties

- 24.1. The Developer represents and warrants to the Government that:
 - 24.1.1 The Developer has the legal capacity to execute deliver and perform this Agreement;
 - 24.1.2 No bankruptcy proceedings whether voluntary or involuntary has to the Developer's knowledge been commenced by or against the Developer nor has there been any disposition of all or part of the Project Site to or for the benefit of creditors nor has the Project Site or any part thereof been seized taken over or foreclosed by any government official in the exercise of his duties or by any creditor nor have the Project Site become attached or levied in any manner whatsoever; and
 - 24.1.3 The Developer is not engaged in any litigation or arbitration proceedings and no such proceedings and no prosecutions are pending or threatened against the Developer and the Developer knows of no facts or matters likely to give rise thereto or otherwise which may affect the Project Site.

25. Government's Representations and Warranties

- 25.1. Government represents and warrants to the Developer that:
- 25.1.1. it has full power and authority to enter into and carry out its obligations under this Agreement and the Direct Agreement (if any);
 - 25.1.2. It has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
 - 25.1.3. This Agreement constitutes Government's legal, valid and binding obligation enforceable against it in accordance with the terms hereof and do not conflict with the terms of any agreement by which it may be bound;
 - 25.1.4. There are no suits or other legal proceedings pending or threatened against Government in respect of the Project Facility or the Project.
 - 25.1.5. There are no applicable constitutional provisions, laws, regulations, decrees, bylaws, rules, practice directions, administrative instructions or other applicable law of Belize in force on the date of execution of this Agreement, which restrict or prohibit the ability of the Government to enter into and perform the terms of this Agreement and the Direct Agreement (if any). The Government is not entitled to immunity from legal process or jurisdiction on grounds of sovereignty or otherwise.
 - 25.1.6. Neither this Agreement nor the Direct Agreement (if any) conflicts with any provisions of any law, including any regulation, of Belize as in effect on the date of execution of this Agreement.

26. Limitation of Liability

- 26.1. Neither of the Parties shall have any claims for any Losses whatsoever (including any claims under common law or otherwise) save as contemplated in this Agreement.
- 26.2. Notwithstanding anything to the contrary in this Agreement, under no circumstances shall either Party or any of its directors, officers, shareholders, employees, agents, advisers or consultants be liable to the other Party for any incidental, consequential, special or indirect damages (including, without limitation, indirect lost profits, indirect lost revenue or loss of opportunity).
- 26.3. The Developer shall have no liability to the Government in respect of any Losses which have not been prescribed and which: (a) arise after the Term; and/or (b) arise during the Term if the Government has not notified the Developer in writing of the relevant breach by not later than 12 (twelve) months after the last day of the Term.
- 26.4. Notwithstanding the warranties, representations and undertakings given by any party (the "**Warranting Party**") to the other Party (the "**Other Party**") under this Agreement or any other provision to the contrary in this Agreement, subject to clause 28.6, no liability shall attach to the Warranting Party in respect of any breach of this Agreement in relation to Losses:
- 26.5. if and to the extent that the breach giving rise to such Losses is as a result of:

- 26.5.1.1. any matter or thing done or omitted to be done pursuant to and in compliance with this Agreement or otherwise at the request in writing or with the approval in writing of the Other Party;
 - 26.5.1.2. any act or omission of the Other Party or its respective directors, officers, employees or agents or successors in title (other than acts or omissions pursuant to the Other Party enforcing its rights and/or complying with its obligations under this Agreement);
 - 26.5.1.3. a factual matter or circumstance which was actually known by the Other Party, its officers, directors and/or staff as at the Commencement Date.
- 26.6. The limitations of the Warranting Party's liability in this clause 28 do not apply to Losses arising out of a breach of this Agreement due to the misrepresentation, negligence or willful misconduct on the part of the Warranting Party.
- 26.7. Nothing in this clause 28 or contained elsewhere in this Agreement shall:
- 26.7.1. in any way diminish the Other Party's common law obligation to mitigate its Losses; nor
 - 26.7.2. limit the Government's liability whatsoever:
 - 26.7.2.1. to pay any amounts, fees, charges and/or expenses which fall due for payment by it under this Agreement (including without limitation all amounts to be paid by the Government to the Developer in terms of clause 15.4, 18 and 24); nor
 - 26.7.2.2. if the breach in question is a breach by the Government of the warranties or obligations set out in clauses 15, 18, 24 or 27.

ARTICLE X – DISPUTE RESOLUTION

27. Expert Dispute Resolution

27.1. Procedure for appointment

The procedure for the appointment of an Expert shall be as follows:

- 27.1.1. the Party wishing to appoint or to refer a matter to an Expert shall give notice to the other Party that it is (in terms of clause 29.3) referring the matter to Expert determination;
- 27.1.2. the Parties shall meet and endeavor to agree upon a person to be the Expert;
- 27.1.3. if, within 5 (five) days from the date of the notice under clause 29.1.1 above, the Parties have failed to agree upon an Expert, the matter shall forthwith be

referred by the Party wishing the appointment to be made to the President of the Association of Professional Engineers of Belize if the dispute is of a technical nature or if of a commercial nature to the President of the Institute of Chartered Accountants of Belize (each, an "appointer") who shall be requested to make the appointment of the Expert as soon as is reasonably possible but in any event within 5 (five) days and, in so doing, may take such independent advice as he thinks fit;

27.1.4. upon a person being appointed as Expert under the foregoing provisions, the Parties forthwith shall notify such person of his selection and shall request him to confirm within 2 (two) days whether or not he is willing and able to accept the appointment;

27.1.5. if such person is unwilling or unable to accept such appointment, or shall not have confirmed his willingness and ability to accept such appointment within such period of 2 (two) days, then (unless the Parties are able to agree upon the appointment of another Expert) either Party may, in the manner aforesaid, request the appointer to make an appointment or (as the case may be) a further appointment and the process shall be repeated until a person is found who accepts the appointment as Expert.

27.2. Qualifications and disqualifications

A person shall not be appointed as the Expert:

27.2.1. unless he is qualified by education, experience and training to determine the matter in dispute;

27.2.2. if he has an interest or duty which would materially conflict with his role (including being a director, officer, employee, consultant or supplier to either Party, contractor or to any affiliate of either Party or contractor); or

27.2.3. if he is an employee or agent or former employee or agent of such person.

27.3. Procedures

27.3.1. The following procedures shall apply where an Expert's determination is sought:

27.3.1.1. the Expert shall determine the dispute Acting as an Expert and not an Arbitrator.

27.3.1.2. the Expert shall have the powers given to an arbitrator under section 8 of the Arbitration Act, (the "Arbitration Act") and, if such Arbitration Act or section is no longer in force, then the Expert shall have similar powers under any statutory provision which replaces such section, and if none does, the Expert shall have similar powers as if that section of such Arbitration Act were still in force;

27.3.1.3. each Party shall supply to the Expert such information as the Expert may request;

27.3.1.4. the Expert shall (subject to clause 29.3.1.5 below) make his decision as soon as reasonably practicable after receiving data, information and submissions which shall be supplied and made to him by the Parties not

- later than 7 (seven) days after he has confirmed to the Parties acceptance of his appointment;
- 27.3.1.5. the Expert shall be entitled to obtain such independent advice and secretarial assistance as he may reasonably require; and
- 27.3.1.6. the Expert shall give full written reasons for his decision.
- 27.3.2. All communications between a Party and the Expert and/or the appointer shall be made in writing and a copy thereof provided simultaneously to the other Party. No meeting between the Expert and/or the appointer and the Parties or either of them shall take place unless both Parties have a reasonable opportunity to attend any such meeting.

28. Dispute Resolution and Arbitration

- 28.1. Should any difference or dispute, except in breach of an obligation in terms of this Agreement arise at any time between the Parties, the duly authorized senior officials of each Party shall meet within 5 (five) Business Days, or such period as the Parties may agree, from the date on which the dispute arose to resolve the dispute amicably.
- 28.2. In the event of a dispute arising between the Parties, it will, pending resolution of the dispute, continue to fulfil all other obligations under this Agreement that is/are not in dispute.
- 28.3. If the dispute is not resolved at the meeting contemplated in clause 30.1, or extended meeting as the Parties may agree to in writing, or such meeting does not take place within the 5 (five) Business Day period contemplated in clause 30.1 or such later date at the Parties may agree in writing, then either of the Parties shall for a period of 10 (ten) Business Days thereafter be entitled to refer the dispute to Expert determination in terms of clause 29. If the matter is not referred to Expert determination within the aforesaid 10 (ten) Business Day period then either of the Parties shall be entitled to refer the matter to arbitration to be determined by arbitration in accordance with the Arbitration Act as amended from time to time, such arbitration shall be held in Belize.
- 28.4. The appointment of the arbitrator shall be agreed upon between the Parties in writing but, failing agreement between them, within a period of 10 (ten) Business Days after the arbitration has been demanded in terms of clause 30.3 above, either Party shall be entitled to request the President of the Bar Association of Belize ("the Bar") to make the appointment and, in making such appointment, to have regard to the nature of the dispute. If the Bar fails or refuses to make the nomination within 10 (ten) days, any Party may approach the Supreme Court of Belize to make such an appointment. To the extent necessary, the court is expressly empowered to do so.

- 28.5. There shall be one arbitrator who shall be a practicing senior counsel or, alternatively, a practicing attorney of not less than 15 (fifteen) years' experience as an attorney.
- 28.6. The arbitrator shall have the powers conferred upon an arbitrator under the Arbitration Act.
- 28.7. The arbitrator shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration, which judgment the arbitrator shall be entitled to rescind on good cause shown in terms of the legal principles applicable to rescission of judgments.
- 28.8. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.
- 28.9. The arbitrator shall be obliged to give his award in writing fully supported by reasons.
- 28.10. The provisions of this clause are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

ARTICLE X – MISCELLANEOUS

29. Delegation

- 29.1. The Developer may subcontract and otherwise delegate in favour of any person this Agreement or the rights, benefits and obligations hereunder or any portion thereof.

30. Severance

- 30.1. If any term or provision in this agreement is in whole or in part held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of this agreement and the enforceability of the remainder of this agreement shall not be affected. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

31. Sovereign Immunity

- 31.1. The Government unconditionally and irrevocably and to the maximum extent permitted by law:
- 31.1.1. agrees that the execution, delivery and performance by it of this Agreement do not constitute sovereign acts;
- 31.1.2. agrees that, should any proceedings be brought against it in relation to this Agreement or any transaction contemplated by this Agreement, no sovereign

- immunity from such proceedings shall, to the extent that it would otherwise be entitled to do so under the law, be claimed by or on behalf of itself; and
- 31.1.3. to the maximum extent permitted by law, waives any right of sovereign immunity which it or any related entity now has or may acquire in the future.

32. Variations

- 32.1. No variations to this agreement shall be effective unless in writing and signed on behalf of each party by a director or other authorized person.

33. OPTION TO EXTEND

Provided that the Developer is not in breach of the Agreement, the Developer shall have the option to extend the Agreement for a further period of twenty years from the originally contemplated Termination Date by giving notice of its election to extend the Agreement after the 23rd anniversary of COD but before the 24th anniversary of COD.

34. Relevant law

This agreement shall be governed by and construed in accordance with the laws of Belize. The Parties submit to the non-exclusive jurisdiction of the Supreme Court of Belize and agree that in the event of any action being begun in respect of this agreement the process by which it is begun may be served on them in accordance with clause 37.

35. Notices

- 35.1. Any notice required to be given by either party to the other shall be in writing, and shall be served by delivering it by hand to either:

- 35.1.1. the registered office for the time being of the relevant party addressed as follows:

- 35.1.1.1. in the case of the Government:

.....

Belize

- 35.1.1.2. in the case of the Developer:

Mr. Emilio B. Zabaneh
 Southern Deep Port Development Ltd
 Dangriga Town, Belize

35.2. Any notice so served shall be deemed to have been served at the time of such delivery.

36. Time

36.1. Time shall be of the essence of the contract created by this Agreement.

37. Interest

37.1. Should any amount due, owing and payable by either Party under this Agreement fail to be made on the due date therefor then, without prejudice to such other rights as may accrue consequent upon such failure, such overdue amounts will bear interest at the US Prime Rate plus 6% (six percent) from the due date for payment to the date of actual payment, which interest shall be payable simultaneously with payment of the due amount.

38. Governance

38.1. The Parties will establish a governance structure to facilitate their liaison with respect to this Agreement. The governance structure will reflect the needs of the Services and may be revised from time to time by agreement in writing between the Parties when appropriate to the requirements of the Service.

38.2. Each Party's representatives on any committee may appoint additional persons whose participation they require, either on a permanent or temporary basis.

38.3. Any committee will meet more frequently than scheduled upon the reasonable request of either Party.

38.4. Minutes of each meeting of the steering committee and operations committee must be kept by the Developer and distributed to the Government's committee representatives within 5 (five) Business Days of each meeting.

39. Non-Solicitation

39.1. Neither party shall without the prior written consent of the other party, either during, or within 12 (twelve) months after termination or expiration of this Agreement, solicit for employment, whether directly or indirectly, any person who, at any time during the duration of this Agreement, was a member of the other party's staff and who was directly involved with any activity relating to this Agreement.

40. Execution

40.1. This agreement may be executed in counterparts and all such counterparts shall for all purposes constitute one agreement, binding on the Parties, provided each of the Parties has executed at least one counterpart, and each shall be deemed to be an

original, notwithstanding that all Parties are not signatory to the same counterpart. Signatures delivered by telecopier, facsimile or e-mail shall be deemed to be original signatures for the purpose of this agreement.

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals the day and year first before written.

SIGNED SEALED AND DELIVERED by)
.....)
for and on behalf of)
the GOVERNMENT OF BELIZE)
In the presence of:)

John Burt



[Signature]

Witness

THE COMMON SEAL OF SOUTHERN DEEP PORT DEVELOPMENT LTD)
was hereunto affixed in accordance with)
its Articles of Association)
in the presence of:)

SEAL



[Signature]

Mr. Emilio B. Zabanch
DIRECTOR

[Signature]

Witness

SCHEDULE A

Lease