
NON-DISCLOSURE AGREEMENT

for

PPP FINANCING PARTNERSHIP

between

**PUBLIC PRIVATE PARTNERSHIP AUTHORITY, PRIME MINISTER'S
OFFICE, GOVERNMENT OF THE PEOPLE'S REPUBLIC OF
BANGLADESH**

and

[INSERT THE NAME OF THE BANK/FINANCIAL INSTITUTION]

Dated: _____, 2016

NON-DISCLOSURE AGREEMENT¹

This Non-Disclosure Agreement (hereinafter referred to as the “**Agreement**”) is made on _____, 2016 by and between:

PUBLIC PRIVATE PARTNERSHIP AUTHORITY, PRIME MINISTER'S OFFICE, GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH, an authority established under the Bangladesh Public-Private Partnership Act, 2015 having its office at Green Delta AIMS Tower, Level 13, 51-52, Mohakhali, Dhaka-1212, Bangladesh (hereinafter referred to as the “**PPP Authority**” which expression shall unless repugnant to the context and contrary to the meaning thereof include its successors and assigns);

AND

[INSERT THE NAME OF THE BANK/FINANCIAL INSTITUTION], a [scheduled bank/financial institution] in Bangladesh incorporated under [Insert the name of the statute] and carrying out its banking business under [Insert the name of the statute] having its head office at [Insert the address] (hereinafter referred to as the “**Bank**”² which expression shall unless repugnant to the context and contrary to the meaning thereof include its successors and assigns).

The PPP Authority and the Bank are together referred to in this Agreement as “**Parties**” and individually as a “**Party**”.

WHEREAS:

- (A) The PPP Authority has launched a programme known as the PPP Financing Partnership to ensure quick and easy access to project information for lenders so as to facilitate access to financing for selected PPP projects (the “**Projects**”) with the objective to shorten the timeframe for achieving financial close.
- (B) The Bank wishes to participate in the PPP Financing Partnership and obtain priority access to key project information prior to finalization of the Invitation for Bid (“**IFB**”) or Request for Proposal (“**RFP**”), as the case may be, for each Project with the intention to provide comments thereon to ensure that each Project meets its investment parameters and to enable it to provide an indicative term sheet for circulation to bidders or shortlisted bidders, as the case may be.
- (C) In connection with the Memorandum of Understanding (“**MOU**”) for PPP Financing Partnership signed between the Parties on _____, 2016, each Party wishes to disclose to and receive from the other Party Confidential Information (as defined below) relating to the other Party and/or the Projects for the purpose of enabling each Party to evaluate the potential role of the Bank in financing the Projects (the “**Specified Purpose**”).

¹ Note: To be executed on non-judicial stamp paper of BDT 300.00 (Bangladesh Taka Three Hundred).

² Note: In case of a financial institution, the term “Bank” should be replaced with “Financial Institution” here and everywhere else in this NDA.

NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION

- 1.1 For the purpose of this Agreement, the following words shall, unless the context requires otherwise, have the following meanings:

"Bid Submission Information" means all information provided to the PPP Authority as part of a bid submission, which shall be governed by the terms of the relevant IFB or RFP, as the case may be.

"Confidential Information" means all information of any kind whatsoever, whether written, oral, electronic or in any other form supplied to the Receiving Party in connection with the Specified Purpose, including information concerning the existence, nature or progress of the negotiations relating to the Projects but excluding Bid Submission Information.

"Disclosing Party" means the party that discloses (or otherwise makes available) Confidential Information, directly or indirectly to the Receiving Party or its Representatives.

"Receiving Party" means the Party that receives Confidential Information, directly or indirectly from the Disclosing Party or its Representatives.

"Representatives" means, in relation to a Party, its professional advisers, directors, officers and employees and those of its subsidiaries and associated companies.

2. CONFIDENTIALITY

- 2.1 Subject to this Clause 2, the Receiving Party will:

- (a) keep all Confidential Information private and confidential;
- (b) only disclose the Confidential Information to those of its Representatives whose participation in the evaluation and furtherance of, and negotiations relating to, the Specified Purpose is reasonably necessary;
- (c) not disclose the Confidential Information to anyone other than the persons referred to in Clause 2.1(b) without the Disclosing Party's prior written consent; and
- (d) not use the Confidential Information for any purpose (including, but not limited to, any competitive or commercial purpose) other than for the Specified Purpose.

- 2.2 Any person referred to in Clause 2.1(b) and any other person to whom the Receiving Party passes any Confidential Information in accordance with Clause 2.1(c) will be expressly informed by the Receiving Party of the confidential nature of the Confidential Information and the purpose for which it may be used. The Receiving Party will be responsible for procuring their compliance with the terms of this Agreement as if they were subject to the same obligations as the Receiving Party is subject to under this Agreement.

- 2.3 The Receiving Party will promptly notify the Disclosing Party if the Receiving Party becomes aware of any breach of confidence or the terms of this Agreement by any of its Representatives or any other person to whom the Receiving Party has passed any part of the Confidential Information or who becomes aware of it in breach of this Agreement.
- 2.4 Without prejudice to any rights or remedies, including damages, that the Disclosing Party may have against the Receiving Party, the Receiving Party acknowledges and agrees that damages would not be an adequate remedy for any breach by it of the provisions of this Agreement and that the Disclosing Party shall be entitled to the remedies of injunction and specific performance (or their equivalent in any jurisdiction) and other equitable relief for any threatened or actual breach of this Agreement and that no proof of special damages shall be necessary for the enforcement of this remedy.
- 2.5 At any time after the execution of this Agreement, if so requested in writing by the Disclosing Party, the Receiving Party shall forthwith return to the Disclosing Party all documents and information of the Disclosing Party and all copies thereof in the possession or under the control of the Receiving Party and no copies, extracts or other reproduction shall be retained by the Receiving Party or its Representatives. Further, if so requested by the Disclosing Party, the Receiving Party shall destroy all Confidential Information and all copies, extracts and other reproductions in whole or in part thereof, together with any documents or materials containing, reflecting, based on or incorporating the Confidential Information which are in the Receiving Party's possession or control or in the possession or control of any of its Representatives or any other person to whom the Receiving Party has passed Confidential Information in accordance with Clause 2.1(c).

3. PERMITTED DISCLOSURE OF CONFIDENTIAL INFORMATION

- 3.1 The Receiving Party will be under no obligation to keep confidential any Confidential Information which:
- (a) was already in the public domain at the time of its disclosure to the Receiving Party by or on behalf of the Disclosing Party or subsequently enters the public domain other than by way of a breach of this Agreement;
 - (b) was lawfully acquired by the Receiving Party from an independent source or was known to the Receiving Party prior to the date it was disclosed to the Receiving Party by or on behalf of the Disclosing Party (as can be demonstrated by the Receiving Party's written records or other reasonable evidence) where the Receiving Party had no obligation to maintain the confidentiality of such information; or
 - (c) becomes available to the Receiving Party from a third party who is not, so far as the Receiving Party is reasonably aware, in breach of any duty of confidentiality owed to the Disclosing Party.
- 3.2 The Receiving Party will be entitled to disclose any Confidential Information if and to the extent that it is required or requested to do so by any law, court, governmental or other regulatory agency or authority in any jurisdiction, provided that the Receiving

Party will only disclose that portion of the Confidential Information which is strictly required to be disclosed and will use all reasonable endeavours to ensure that the person to whom it is disclosed continues to observe its confidentiality. To the extent it is legally permitted to do so, the Receiving Party will notify the Disclosing Party as soon as possible upon becoming aware of any such requirement and take into account any reasonable requests of the Disclosing Party in relation to the content of any such disclosure.

4. TERMINATION

- 4.1 Following termination of (i) the Bank's involvement in the PPP Financing Partnership or (ii) any discussions relating to specific Projects, as the case may be, the Receiving Party will, upon receipt of a written request from the Disclosing Party, return to the Disclosing Party or destroy all Confidential Information and all copies, extracts and other reproductions in whole or in part thereof, together with any documents or materials containing, reflecting, based on or incorporating the Confidential Information which are in the Receiving Party's possession or control or in the possession or control of any of its Representatives or any other person to whom the Receiving Party has passed Confidential Information in accordance with Clause 2.1(c).
- 4.2 Clause 4.1 shall not apply to the extent that the Receiving Party, any of its Representatives or any other person to whom the Receiving Party has passed Confidential Information in accordance with Clause 2.1(c) is required to retain any Confidential Information pursuant to any law or regulation or by any competent judicial, governmental, supervisory or regulatory authority, or where it has been archived pursuant to an automated archive system and is not readily retrievable. In such a case the Receiving Party, its Representatives or any other person to whom it may have passed Confidential Information in accordance with Clause 2.1(c), shall be responsible to maintain the confidentiality of the said Confidential Information in accordance with the provisions of this Agreement.
- 4.3 The Receiving Party acknowledges that neither the return nor the destruction of any Confidential Information will release the Receiving Party from its obligations under this Agreement.

5. GENERAL

- 5.1 The Disclosing Party warrants that it has the right to disclose the Confidential Information to the Receiving Party and to authorise the Receiving Party and its Representatives to use the Confidential Information for the Specified Purpose.
- 5.2 The Receiving Party acknowledges that neither the Disclosing Party nor any of its respective Representatives makes any representation, warranty or undertaking, express or implied, as to the accuracy, reliability, completeness or reasonableness of the Confidential Information. The Disclosing Party will not be under any duty to provide access to any additional information or to update or correct (if required) any Confidential Information. Accordingly, the Disclosing Party will not be liable for any loss or damage suffered by any person as a result of relying on any statement contained in or omitted from the Confidential Information, save to the extent that any

inaccuracy in the Confidential Information is attributable to the Disclosing Party's fraud, gross negligence or wilful default.

- 5.3 The Disclosing Party retains all rights in relation to the Confidential Information disclosed by it and no right or licence to any intellectual property in such Confidential Information is granted or implied by virtue of this Agreement.
- 5.4 Nothing in this Agreement shall constitute an offer to enter into any further agreement relating to any specific Project, nor is anything intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another nor authorise any Party to make commitments for and on behalf of another.
- 5.5 This Agreement shall be effective from the date of execution and shall remain valid and the obligations under this Agreement will continue for a period of two (2) years from the date of termination of the Bank's involvement in the PPP Financing Partnership.
- 5.6 No failure or delay by either Party or any of its Representatives in exercising any right, power, remedy or privilege under this Agreement or by law will operate as or constitute a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, remedy or privilege under this Agreement or by law.
- 5.7 The provisions of this Agreement shall be severable in the event that any of the provisions are held by a court of competent jurisdiction to be invalid, void or unenforceable and the remaining provisions shall remain enforceable to the fullest extent permitted by law.
- 5.8 No amendments hereof shall be considered to be validly made unless the same are in writing duly executed by both Parties.
- 5.9 Neither Party shall assign or transfer the Agreement without the prior written consent of the other Party.
- 5.10 This Agreement contains the entire agreement between the Parties and supersedes any and all prior agreements or understandings with respect thereto.
- 5.11 This Agreement will be governed by and construed in accordance with the laws and regulations of Bangladesh and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Bangladesh in respect of any claim, dispute or difference arising out of or in connection with this Agreement.

In witness whereof, the Parties have caused this Agreement to be executed by their respective duly authorised signatories as at the date first written above.

For and on behalf of **the Public Private Partnership Authority**)
acting by:)
Name:)
Title:)

For and on behalf of **[insert name of Bank/Financial Institution]**)
acting by:)
Name:)
Title:)