**IDGOM: Annexure 7**

**Government of the Peoples' Republic of Bangladesh**

**National University**

**College Education Development Project (Component 2.1)**

**Institutional Development Plan Subproject**

**PERFORMANCE CONTRACT**

***Between***

**National University**

***And***

………………………[name of institution]………………………

***Agreement No: -----------------------------------------------------------***

***Title of Sub-Project: -----------------------------------------------------------***

***Total IDG Amount: -----------------------------------------------------------***

***Date: 24/08/2019***

**PERFORMANCE CONTRACT**

**For**

**The Implementation of**

**Institutional Development Plan Sub-Project by Colleges**

**PREAMBLE**

THIS PERFORMANCE CONTRACT IS ENTERED INTO THIS **24th day of August 2019** BETWEEN The National University, (hereinafter **NU**, which approved the sub-project, acting by and through its duly authorized representative (hereinafter referred to as “ **FIRST PARTY** ”) of the one part **AND**, the …………..college (hereinafter referred to as the **SECOND PARTY**) which shall be responsible for implementing the sub-project, acting by and through its duly authorized representative, the other **PARTIES**, WHEREBY IT IS AGREED AS FOLLOWS:

(a) Whereas the International Development Association (hereinafter **IDA**) and the Government of Bangladesh (hereinafter **GoB**) have entered into ***Financing Agreement*** dated September 8, 2016 (hereinafter the **FA**), whereby **IDA** is to make a Credit to the **GoB** in an amount equivalent to US$ 100 million (the Credit) to assist in the financing of the Project as described in Schedule 1 of the **FA** (the Project) and on the terms and conditions otherwise set forth or referred to in the **FA**; and whereas pursuant to Section IV of the Schedule 2 of the **FA**, the **GoB** is to provide part of the proceeds of the Credit as **Grants** for ***Institutional Development Plan*** sub-project and whereas the **PARTIES** hereto wish the terms and conditions hereinafter set forth to constitute the **Performance Contract**:

(b) Pursuant to the Development Project Proposal (**DPP)** on College Education Development Project (hereinafter **CEDP**) approved by the Executive Committee of National Economic Council (hereinafter **ECNEC)** in its duly meeting held on August 9, 2016;

(c) Pursuant to the ***Institutional Development Grant Operations Manual*** (hereinafter the ***IDGOM***) on the implementation of the **Institutional Development Plan** sub-projects under the **CEDP Component 2.1;**

(d) Pursuant to the Institutional Development Grant Selection Board (hereinafter **IDGSB**) meeting held on **23 July, 2019** for approving grant award to the successful applicants for of the Institutional Development Grant (**IDG**); **AND**

(e) Pursuant to the Order of **IDGSB** for awarding of **IDG** grant to the successful applicant on **31 July, 2019;**

(f) Provided, the **SECOND PARTY** means a College affiliated to the **NU**, under the NU Act and relevant Statuas and regutation, AND, offering Bachelor (Hons) and Master’s study programs, and eligible to receive **IDG** funds according to the criteria set forth in the ***IDGOM***;

(g) Provided, **Grant** means the funds received by the **FIRST PARTY** from **IDA** through **GoB** as delineated in the ***Financing Agreement*,** and at paragraph (a) above of this **Performance Contract** and to be allocated time to time under their contact by the **FIRST PARTY** to the **SECOND PARTY**;

(h) Based on the requirements and capacities of the **TWO PARTIES** to this **Contract**, the said parties shall undertake a collaborative venture to finance and implement the *(sub-project title)* at the *(name of institution)* in accordance with the terms and conditions stipulated in the Clauses included in this **Contract** hereinafter:

**The TWO PARTIES:**

**1. FIRST PARTY:**

**NATIONAL UNIVERSITY**

Address: Board Bazar, Gazipur, 1704 , Bangladesh

Tel: + 880-2-929 1016

Fax: + 880-2-929 1037, + 880-2-929 1049

Authorized by:

Position:

Bank Special Account Number:

**2. SECOND PARTY:**

…………College

Address:

Tel:

Fax:

Bank Account Number:

Represented by:

Position:

Email:

Sub-project title: ***“[proposal name]”***

Contract No: \_\_\_\_\_\_\_\_\_

**Clause 1**

**ASSIGNMENT AND SCOPE OF WORK**

**1.1 FIRST PARTY**, in its capacity as the **National University** responsible for allocating **IDG** Grants received from the **IDA**, as the implementing agency appointed by the **GoB** for **CEDP**:

(a) has awarded a grant to **SECOND PARTY** to implement the **IDP** sub-project submitted by the **SECOND PARTY** with the endorsement and undertaking of the **SECOND PARTY** in accordance with the provisions of the ***IDGOM*.** The contents of the sub-project assignment are described in the **IDP** sub-project proposal approved by the **IDGSB**;

(b) confirms that the sub-project proposal (**Annexure 1**), which is attached to this ***Contract*** serves as the Terms of Reference for the **IDG** sub-project assignment, and forms an integral part of this legal document;

(c) approves the sub-project implementation plan contained in the sub-project proposal submitted by the **SECOND PARTY** ;

(d) will monitor, review, and evaluate **SECOND PARTY**’s implementation of the sub-project assignment and with respect to the scope of work which conform to the provisions and conditions provided in the ***IDGOM***; and,

**1.3 SECOND PARTY**, in its capacity as the implementer of the approved **IDP** sub-project proposal:

(a) shall implement the sub-project with due diligence and efficiency, and in accordance with sound educational, scientific, technical, financial, and managerial standards and practices, aimed at achieving the objectives of **IDP** and satisfactory to the **GoB** and **NU**; and is responsible for reporting on the sub-project implementation to **FIRST PARTY** as stipulated in this **Contract**;

(b) shall be responsible for providing to **FIRST PARTY** the following: Table of Milestones, Table of Performance Indicators, Work Plan, Financing Plan, Procurement Plan, and Training Plan acceptable to **FIRST PARTY**. Such information provided by **SECOND PARTY** constitute indispensable part of the approved sub-project proposal attached to this **Contract**.

**Clause 2**

**DURATION OF CONTRACT**

**2.1.** This contract shall become effective immediately upon signing by the **TWO PARTIES** and shall remain valid throughout the time period specified in the sub-project proposal and in its implementation plan. The sub-project will be implemented for the period beginning from **24/08/2019** and will be completed on **30/06/2022** as specified in the sub-project proposal. The implementation time begins from the date of the signing of this Performance Contract.

**2.2**. If the implementation of the sub-project is delayed for any reason, **SECOND PARTY** must inform the **FIRST PARTY** in writing the reasons for the delay, and if necessary place before hand request an extension of the time allowed for implementation. **SECOND PARTY** should not exceed the time period specified in the approved sub-project proposal, unless so authorized in writing by the **FIRST PARTY**, provided, that the **FIRST PARTY** shall do so in accordance with the relevant provisions of the ***IDGOM*** in respect of duration of sub-projects.

**Clause 3**

**RESPONSIBILITIES OF FIRST PARTY**

**3.1** Monitoring of the sub-project implementation by **FIRST PARTY** will be made through reports required under Clause 4, which shall be monthly implementation progress report, quarterly financial progress report, and six monthly monitoring report submitted by the **SECOND PARTY**. Such monitoring will be continuous by **FIRST PARTY** throughout the entire implementation period of the sub-project.

**3.2** During the life of the sub-project, **FIRST PARTY** or its authorized representative may inspect at any time the location and activities of the sub-project, and any relevant documents and records for purposes of monitoring the implementation or conducting financial or technical audits.

**3.3 FIRST PARTY** shall be responsible for providing the **IDG** fund to **SECOND PARTY** in accordance with the provisions and conditions mentioned in the ***Guidelines for Fund Release and Utilization under Development Projects, Delegation of Financial Power for Development Projects, Delegation of Financial Power to Corporations, Autonomous, Semi-Autonomous Bodies***, the ***IDGOM*** and this **Contract**.

**3.4** The **FIRST PARTY** reserves the rights adequate to protect its interests and those of the **GoB**, including the right to (i) suspend or terminate the right of the **SECOND PARTY** to use the proceeds of the **IDG,** or to obtain a refund of all or any part of the amount of the **Grant** then withdrawn, upon the **SECOND PARTY**’s failure to comply with any of their obligations under this **Performance Contract**. In the instance of non-compliance with the operational procedures, misuse and/or misappropriation of the **IDG** grants by the **SECOND PARTY**, the **FIRST PARTY** shall take legal action against the institutions concerned and the respective persons responsible for such misdeeds according to the existing criminal laws of the country. Moreover, the **FIRST PARTY** may decide to suspend participation of the offending **SECOND PARTY** temporarily as a corrective measure with the objective to restore financial discipline in implementing the IDP subproject.

**Clause 4**

**RESPONSIBILITIES OF SECOND PARTY**

**4.1 SECOND PARTY** shall be responsible for the overall timely implementation of the sub-project in accordance with the implementation plan/work plan, financing plan, procurement plan, and training plan included in the approved sub-project proposal;

**4.2 SECOND PARTY** shall be responsible for submitting to **FIRST PARTY** and the following reports:

(a) monthly progress report on sub-project implementation in the formats provided by **FIRST PARTY**; (b) quarterly financial reports in formats provided by the FIRST PARTY; (c) six monthly monitoring report (d) data and information on achievements of the sub-project milestones and performance indicators (e) A Project Completion Report (hereinafter **PCR**) summarizing all the activities implemented and the results achieved over the entire period of the sub-project (due within two months of the completion of all activities specified in the sub-project proposal);

**4.3 SECOND PARTY** shall be held accountable and liable according to law of the land for any non-compliance with the operational procedure laid down in the ***IDGOM*,** and misuse, transfer and/or misappropriation of IDG funds received from the **FIRST PARTY,** as well as for inefficiency that may cause delay in implementation and non-attainment of crucial milestones and performance indicators mentioned in the sub-project proposal.

**Clause 5**

**PROCUREMENT**

**5.1 SECOND PARTY** shall strictly follow ***The Public Procurement ACT 2006***, and ***The Public Procurement Rules 2008*** together with the **World Bank**’s  ***Procurement Regulations for IPF Borrowers, July 2016,*** and the relevant provisions of ***IDG Operations Manual*** in respect of procurement; And, will be held accountable for any deviation from the regulations and procedures in matters of procurement stipulated in the aforementioned documents and pay fines and indemnity for such lapses determined by the **GoB**, **IDA** and **FIRST PARTY.**

**Clause 6**

**FINANCE**

**A. Sub-Project Cost and Financing**

**6.1** The estimated total cost, including local taxes, of the sub-project is BDT\_\_\_\_\_\_\_\_, as approved by the **IDGSB**;

**6.2** Over the life of the sub-project, **FIRST PARTY** will provide to **SECOND PARTY** a grant of up to BDT\_\_\_\_\_\_\_\_\_ (Total Grant Amount), which represents 100% of the total cost of the sub-project. **FIRST PARTY** will not be responsible for any financial liabilities which may arise due to deviation from financial rules and regulations, irregularities in fund utilization and expenditures and for inefficient implementation of the sub-project by the **SECONDPARTY**.

**B. Financial Management**

**6.3 SECOND PARTY** shall open a sub-project operating account in a commercial Bank for depositing the **IDG** funds received from the **FIRST PARTY** and for the sole purpose of making payments or/and expenditures for the activities mentioned in the **IDP** sub-project proposal and required for the implementation of the sub-project.

**6.4** The financial records relating to the bank accounts referred to in Clauses 7.4 and 7.5 above, and to the sub-project income and expenditure accounts and book-keeping ledgers maintained or/and stored in papers or/and in computer programs described above, as well as the quarterly financial reports described in Clause 4, may be subject to review and verification by the authorized **GoB** auditors or/and by independent auditors, at any time, as required by the **GoB, IDA** and **FIRST PARTY**.

**6.5** (a) the term “eligible expenditures” means expenditures for the activities and for procurement of goods, works and services described in the ***IDP Financial Management Guidelines*** (**IDPFMG**) annexed to the ***IDG Operations Manual***.

(b) the term ‘installments’ means the amount of fund that will be released quarterly by the **FIRST PARTY** in accordance with the ***Guidelines for Fund Release and Utilization for Development Projects*** for the utilization by the **SECOND PARTY.** If the specifically defined sub-project milestones and performance indicators are not achieved during the implementation of the subproject, such release of funds may be withheld by the **FIRST PARTY**;

**6.6** After **FIRST PARTY** has received evidence satisfactory to it that **SECOND PARTY** has **(i)** established an Institutional Development Plan Management Office (**IDPMO); (ii)**) duly opened **IDG** Bank Account, release of funds to **SECOND PARTY** shall be made as follows:

(a) First quarter shall be made by the **FIRST PARTY**, as stipulated in the ***IDPFM,*** upon receipt of the request in writing from the **SECOND PARTY** to that effect.

(b) Subsequent installments will be released, in the amounts indicated, against the achievement of the sub-project milestones and performance indicators included in the sub-project proposal. A request letter to the **FIRST PARTY** signed by the **SECOND PARTY** represented by the Principal of the sub-project implementing College attesting that the performance milestone and indicators have been achieved , will constitute each successive request for fund release in installments in accordance with **Financing Plan** and the approved budget of the **IDP** sub-project.

**6.7** For each expenditure made out of its **IDP** sub-project Bank Account opened and maintained by the **SECOND PARTY, it** shall, at such time as **FIRST PARTY** shall request, furnish to **FIRST PARTY** such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

**6.8**  For all expenditures from its **IDG** sub-project Bank Account, **SECOND PARTY** shall:

(a) maintain records and accounts adequate to reflect such expenditures in accordance with sound accounting practices;

(b) retain, until instructed otherwise by **FIRST PARTY**, all records (EoI, bidding documents, invitations of bids, contracts, orders, invoices, vouchers, cash-memos, bills, pay orders, receipts and other documents) evidencing such expenditures;

(c) authorize auditors of the **GoB** and/or independent auditors and representatives of **FIRST PARTY** and **IDA** to examine such records.

**6.9** Not with standing the provisions of Clause 6.5, **FIRST PARTY** shall not be required to make further fund release to **SECOND PARTY**:

(a) if **SECOND PARTY** have failed to furnish to **FIRST PARTY**, within the period of time specified in Clause 4 of this **Performance Contract**, the reports required to be furnished to **FIRST PARTY** pursuant to said Clause;

(b) Thereafter, release of **IDG** grants from the Bank Account maintained by **FIRST PARTY** for the **IDP** sub-projects, shall follow such procedures as **FIRST PARTY** shall specify by notice to **SECOND PARTY**. Further release of funds shall be made only after and to the extent that **FIRST PARTY** have been satisfied that all such amounts remaining in deposit in the **IDG s**ub-project Bank Account maintained by **SECOND PARTY** will be utilized in making payments for eligible expenditures;

**6.10** (a) If **FIRST PARTY** has the evidence at any time that any amount out of **IDG** sub-project operating account maintained by **SECOND PARTY**:

(i) was made for an expenditure or in an amount not eligible pursuant to ***IDPFMG*** ; or

(ii) was not justified by the financial rules and regulations of the **GoB** and **IDA**,

(b) **SECOND PARTY** shall, promptly upon notice from **FIRST PARTY**:

1. provide such additional evidence as **FIRST PARTY** may request; or

(ii) If **FIRST PARTY** shall so request, refund to **FIRST PARTY** an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless **FIRST PARTY** decides otherwise, no further release of fund by **FIRST PARTY** into the **IDG** operating account maintained by **SECOND PARTY** shall be made until **SECOND PARTY** has made such deposit or refund, as the case may be.

(c) If **FIRST PARTY** has evidence at any time that any amount outstanding in the **IDP** sub-project operating account maintained by **SECOND PARTY** will not be required to cover further payments for eligible expenditures, or/and amount deposited in the operating account maintained by the **SECOND PARTY** shall remain unutilized or/and unspent, then the **SECOND PARTY** shall promptly upon notice from **FIRST PARTY**, refund such outstanding or/and unspent amountto **FIRST PARTY**;

(d) refunds to **FIRST PARTY** made pursuant to Clauses 7.12 (a) and (b) shall be credited to the Project Account maintained by **FIRST PARTY** for the implementation of **IDP** sub-projects.

**Clause 7**

**SUB-PROJECT ASSETS AND SERVICES**

**7.1** Materials and services purchased under this **Performance Contract** shall be used exclusively for the purpose of implementation of sub-project;

**7.2** All books and journals procured under the sub-project must be registered in line with the coding system of the institution’s library for overall management purposes;

**7.3** All materials and equipment purchased under this **Performance Contract** shall become the property of **SECOND PARTY** and shall be registered in its inventory as provided in the relevant rules of the institution;

**Clause 8**

**PENALTIES**

* 1. In cases where disbursed **IDP** grants, or goods procured under the **IDP** grants for a sub-project are misappropriated by the **SECOND PARTY** and/or if the **SECOND PARTY** transfer amounts deposited in the **IDP** operating account maintained by them to a separate bank account, and/or withdraw fund from the **IDP** operating account and spend such fund for purposes not included in **IDP**sub-project proposal, then the **SECOND PARTY** shall refund the entire such withdrawn/transferred fund to the Project account maintained by the **FIRST PARTY** without fail;
  2. If the **SECOND PARTY** do not comply with the provision mentioned above, then the **FIRST PARTY** shall take recourse to recover the misappropriated and/or transferred **IDG** fund, among others, by deducting such equivalent amount from any other fund earmarked for the **SECOND PARTY,** and by taking recourse to legal action under the provisions of the Criminal Law of Bangladesh.

**Clause 9**

**SUSPENSION AND TERMINATION**

**9.1** This **Performance Contract** may be suspended or terminated prior to its stipulated expiry date in the following cases:

(a) **SECOND PARTY** fails to comply fully with the provisions and regulations governing IDP sub-project implementation, the requirements of IDG funds utilization, or responsibilities assigned under this **Performance Contract**. **FIRST PARTY**, based on the level of violation by **SECOND PARTY**, shall give a written decision on suspension or termination of this **Contract** before completion;

(b) If delay in the **IDP** sub-project implementation by **SECOND PARTY** due to unforeseen factors such as natural disaster, earthquakes, fires, flood, cyclone or any unexpected situations beyond human capacity, and these situations are certified to be the direct reasons for the delay or obstacle to the implementation of the sub-project and **SECOND PARTY** has tried alternatives to overcome these situations, the provisions and conditions regulated in this Clause may not be applied provided that **SECOND PARTY** should inform **FIRST PARTY** in writing, within seven days after the occurrence of such events, of the reasons and the applied alternatives, and should inform **FIRST PARTY** as soon as possible after the situation has returned to normal.

**Clause 10**

**SETTLEMENT OF DISPUTES**

**10.1** Any dispute arising out of this ***Performance Contract*** shall, preferably, be settled out of court through consensus ensuring mutual understanding and benefits;

**10.2** If the dispute cannot be resolved on the basis of consensus, the contracting  **PARTIES**  may take it to a court of law and seek resolution in accordance with the relevant provisions of law.The court’s decree shall be final and binding on all **PARTIES**;

**10.3** Any fees and other related charges incurred in settlement of disputes shall be borne by the losing party.

**Clause 11**

**OTHERS**

**11.1** The terms and conditions of this **Performance Contract** may be reviewed at the request of either **PARTY** after the start of implementation of the **IDP** sub-project. Any modifications of the contents of this **Performance Contract** must be agreed upon by all **PARTIES** and in writing;

**11.2** Any regulations relating to the sub-project implementation not covered by this **Performance Contract** shall be followed by the **PARTIES** in accordance with the existing laws, rules and regulations in Bangladesh;

**11.3** This **Performance Contract** will come into effect and will be considered legal and binding on all parties on the date of signing by the **TWO PARTIES**;

Attached to this **Performance Contract** are the approved sub-project proposal with its Annexes referred to in Clause 1 paragraph 1.1 (b) of this **Contract** and constitute an integral part of this **Contract;**

IN WITNESS WHEREOF the duly authorized representatives of the **PARTIES** hereby commit their signatures below on the day and year indicated in the preamble to this **Performance Contract.**

Name, signature and seal of the FIRST PARTY

Name, signature and seal of the authorized representative

of the SECOND PARTY

Witnesses

1.

2.