

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
1	Recitals	1	The MOU with the Philippine Navy does not contain any fixed term and area, and the subject matter pertains to a underwater sports and aquamarine development center, how does this relate to the current BIDR? How will the termination of the MOU by the Philippine Navy affect TIEZA's right over the BIDR?		The current BIDR is the underwater sports and aquamarine development center. TIEZA's obligation under the JVA is delivery of peaceful possession of the BIDR project site to the Proponent. In case there are possible interruptions, applicable procedures outlined in the draft JV Agreement will apply. In case of any other interruption, pertinent provisions under Section 7 (Project Site) of the draft JV Agreement shall be applied.
2	Recitals	1	Paragraph 19 of Annex B of the TOR states that the consortium members shall incorporate a Special Purpose Company (SPC) which shall accede to the JVA. Since the Filinvest Consortium consists of 2 companies, kindly clarify whether the JV Partner in the JVA pertains to both members of the consortium as Parties thereto, pending the incorporation of the SPC?		SPC incorporation is optional in the draft JV Agreement. In case there is no incorporated entity at the time of signing, all members of the bidder's consortium will be parties to the agreement.
3	Definition of Terms - Final Acceptance Certificate	1	Please complete the sentence: 'Independent Consultant in accordance with section ___?'		Section 14 of Annex A which pertains to the duty of the Independent Consultant to issue a Final Acceptance Certificate for the Phase Works in accordance with the specifications provided under the JVA.
4	Definition of Terms -	1	Please confirm the commencement date for the 25 year concession period.		The Commencement Date for the 25-year period is the Signing Date of the Contract which is also the Effectivity Date.
5	Definition of Terms- Permitted Security	1	Please complete the sentence.		Permitted Security means any security interest created over (i) the JV Partner's rights and interests in this JV Agreement, and/or (ii) shares in the JV Partner in favor

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
					of lenders securing indebtedness under the Project Financing Agreements, as confirmed by the TIEZA.
6	Definition of Terms - Third Party Works	1	Please provide the definition.		The following definition shall be reflected in the revised draft of the JVA: "Third Party Works" means the works undertaken by a third party in the event of <i>Variation</i> as contemplated in Section 27 of the JVA.
7	Nature of Project	3	Please confirm the taxation issue if there is an unincorporated JV? Does the JV need to pay taxes on all assets that are given to the JV despite being unincorporated?		Yes, the JV shall pay the taxes. Regardless of the nature of the JV being unincorporated, it shall nevertheless be the obligation of the JV partner to promptly pay all taxes (such as but not limited to Real Property Tax, Value-Added Tax, etc.), fees, and charges relating to the property or its operation that are due to the local and national government during the whole period of the contract.
8	Management of the Joint Venture	5	Kindly confirm that Authority pertains to TIEZA.		Yes, the <i>Authority</i> contemplated under section 5 of the JVA, which provides for the Management of the Joint Venture, is TIEZA.
9	Management of the Joint Venture	5	What are the parameters for the exercise of TIEZA's inspection power and auditing rights?		In accordance to the provisions of the JVA, TIEZA shall have the right to conduct inspections, audit and evaluation. Nevertheless, Section 24 of the JVA provides that a regular Inspection shall be conducted by TIEZA at least once every 6 months.
10	Term of the Joint Venture	6	Please provide the definition of Long Stop Date.		The following definition shall be reflected in the revised draft of the JVA: Long Stop Date refers to the last day wherein TIEZA may grant Extensions.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
					The date shall be agreed upon by both parties in writing within 30 days from O&M Start Date.
11	Term of the Joint Venture	6		Section 6 of the JVA mentions that extension may be granted by TIEZA at its sole discretion, may we propose that the renewal be automatic subject to the request of the JV provided that there is no material breach between the JV Partners	No, the Extension shall be subject to a process indicated in the draft JV Agreement.
12	Term of the Joint Venture	6		We propose to add a provision for reasonable extensions of the term of the agreement in the event that JV partner infuses capital beyond its commitment and or expands the Project Site in order to recoup the additional capital infused.	Additional capital investment is a business risk of the JV Partner. In accordance to Section 6 of the draft JVA, all extensions shall be granted by TIEZA at its absolute discretion in accordance to all applicable laws.
13	Delivery of the Project Site - second bullet point	7.1	May a delay in the delivery of the Project Site result in a corresponding extension of the Concession period?		No, TIEZA shall be given 3-month grace period in case it is unable to deliver the Project Site within the committed time frame in the draft JV Agreement. However, TIEZA's delay to deliver the Project Site will not result in extension of the Concession Period.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
14	Delivery of the Project Site - third bullet point	7.1		Third bullet points states that TIEZA shall be deemed to have granted possession of the Project Site when they have issued to the JV Partner a written notice to occupy and use the Project Site, which may be accompanied by any appropriate order or declaration allowing TIEZA or the JV Partner to possess and occupy the Project Site. We propose to add the following phrase: Provided that there is no physical and or legal impediment for the JV Partner to actually and physically occupy the Project Site.	We retain the existing provisions in the draft JV Agreement.
15	Delivery of the Project Site- 5th bullet point	7.1	Please define the O&M Period		The following definition shall be reflected in the revised draft of the JVA: O&M Period refers to the O&M Start Date to End of Concession Period.
16	Delivery of the Project Site	7.1	The SDP provided in the VDR shows a land area of 1.9ha while the first bullet point of Section 7.1 shows an aggregate land area of 1.5ha, please confirm which area governs. If the area in the SDP is more accurate, please update the JVA to reflect this.		Our current best estimate is that the land area is approximately 1.9 hectares. Section 7.1 will be amended as follows: Sec. 7.1 of the draft JV Agreement is hereby amended as follows: "xxx The Project Site is located in the island of Balicasag, Bohol, with an aggregate area of approximately 1.9 hectares,

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
					more particularly described in the Annex []. xxx" Annex to be issued along with the revised JVA prior to the Pre-Selection Conference.
17	Delivery of the Project Site	7.1	Based on our plotting of the provided technical description in the SDP, the orientation of the Project Site		Please complete this query.
18	Disturbance in Possession of the Project Site - 6th bulletpoint	7.2	The JV partner shall bear costs of a temporary ROW to access the site. Please confirm that TIEZA controls the entire Balicasag island and there is no need for additional compensation to constitute in the ROW		We confirm that TIEZA controls the entire Balicasag Island and there is no need for additional compensation to constitute in the ROW acquisition. Section 7.2 will be amended as follows: Sec. 7.2 of the draft JV Agreement is hereby amended as follows: "xxx The JV Partner shall provide at its own cost any temporary additional facilities outside the Project Site required by it for construction. Xxx"
19	Disturbance in Possession of the Project Site	7.2	The JV partner shall provide at its own cost any additional facilities outside the Project Site required by it for its construction. Please confirm that TIEZA controls the adjacent areas and there is no need for additional compensation to use the same		We confirm that TIEZA controls the adjacent areas and temporary usage of the same for construction activities shall have no cost implication to the JV Partner. However, in case the JV Partner determines that there is a need for temporary facilities required for construction, such as but not limited to docking station, access way to the resort, etc., it will be at the cost of the JV Partner.
20	Expansion of the Project Site	7.3	Please confirm that the expansion referred to in this section is any land within Balicasag Island, but outside BIDR?		Yes, the Expansion referred to in this section is any portion outside of the delineated area of the BIDR. However, all proposals for Expansion shall be subject to TIEZA's approval in accordance with the draft JV Agreement.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
21	Expansion of the Project Site	7.3		May we suggest that we remove the first clause "within seven (7) years from the O&M Start Date"	Section 7.3 will be amended as follows: Sec. 7.3 of the draft JV Agreement is hereby amended as follows: "xxx Within seven (7) years from the O&M Start Date , the JV Partners may engage in negotiations for expansion of the Project Site subject to existing laws, rules, regulations, issuances, and pre-conditions. xxx"
22	Project Milestones	8		We would like to suggest that instead of specific dates, it will be number of days/months after the delivery of project site and asset to the JV Partner. So X date would be the delivery date and then everything would be a number of days after that delivery date.	Section 8 (<i>Project Milestones</i>) will be amended to indicate long stop dates and will be reflected in the revised JVA to be issued prior to the Pre-Selection Conference.
23	Project Milestones	8		The end of the concession and turnover project is 25 years of signing date. We propose to qualify this to be subject to extensions due to TIEZA delays.	There is no need to put qualification as this will be covered by any agreements on extension of JV period or contract variation. There is already existing mechanism in the JVA.
24	Project Milestones	8	What event triggers the start of the 25 Year concession period? If there are delays on TIEZA side can the concession period be moved in equal amount to the delay?		The 25-year Concession Period will commence on the Signing Date. In the event of TIEZA delay, provisions under the JVA will apply.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
25	Obligations of TIEZA - 1st bullet point	9	Please define Asset.		The Assets contemplated under this section pertains to all existing assets found within the BIDR.
26	Obligations of TIEZA	9	Section 9 states that TIEZA shall provide documents on basis of ownership/control over the property. Other than the Proclamation 1801 and MOU with the Philippine Navy are there other documents to support TIEZA's ownership/control over the property? If so, please provide prior to signing.		We have already provided a copy of the MOU and Proclamation 1801 in the VDR.
27	Obligations of TIEZA	9	Section 9 states that TIEZA will turn over the Project Site and Existing Asset on an "as is where is", please confirm that upon turnover, the Asset which is officially closed (e.g. real property tax up to the year 2020 has been fully settled, all suppliers have been paid for, all advance bookings have been cancelled and refunded, all utilities, if applicable, are also paid for). In connection, any accrued obligations prior to turnover shall be the obligation of TIEZA		TIEZA will issue a certification on these concerns prior or upon turn-over of Project Site and Existing Asset.
28	Obligations of the JV Partner - Financials f.	10	Can the JV Partner be qualified to apply for any tax holiday? What tax incentives may TIEZA provide, if any? If we expand the project site as provided in Section 7.3, will the project qualify as a TEZ?		The JV Partner's qualification to apply for tax holiday is subject to applicable laws and issuances of relevant agencies. To qualify as TEZ, the JV Partner is subject to the provisions of Republic Act 9593 and the TEZ Implementing Rules and Regulations.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
29	Obligations of the JV Partner - Financials f.	10	In case of conflict which standard will be followed?		All guidelines and policies prepared by the JV partner shall be in accordance with pertinent laws.
30	Obligations of the JV Partner - Operation - n.	10	Please add official definition for Concession period and Asset Register.		<p>The following definitions shall be reflected in the revised draft of the JVA:</p> <p>Concession Period means the period of 25 years commencing from the Signing Date until the termination of the JVA.</p> <p>Asset Register means the non-comprehensive list of Project Assets of Existing Facility prepared by TIEZA, to be taken over, maintained, and expanded by the JV Partner so as to create a comprehensive Asset Register and returned to TIEZA on the Termination Date or the Transfer Date.</p>
31	Obligations of the JV Partner - Marketing	10	May we request for TIEZA to provide best effort assistance in marketing the Asset		This is already stated in the draft JV Agreement. TIEZA will exert its best effort to market BIDR.
				Section 11 B states that the JV Partner shall have entered into a loan or financing agreement(s) (the "Financing Agreement") with Lender/s for the financing of the Project, and the JV Partner has submitted to TIEZA a copy of the Financing Agreement. A financing agreement will not be secured until a few	This request will be considered and will be reflected in the revised JVA to be issued prior to the Pre- Selection Conference.
32	Conditions Precedent to Effectivity - b	11			

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
				months before construction start date. As such we propose to remove Item B as a condition for the effectivity of the JVA	
33	Conditions Precedent to Effectivity - d	11	Please list all the consents, permits and approvals needed to be secured so that the JVA is considered effective. Who certifies completeness?		This CP will be modified in the revised JVA to be issued prior to the Pre-Selection Conference.
34	Conditions Precedent to Effectivity	11		May we suggest to place an official definition of Effective Date in the Definitions. Is the Effective Date is the same as the start of the 25 - year concession period? Could TIEZA please define what are all the relevant consents, permits and approvals.	The following definition shall be reflected in the revised draft of the JVA: Effective Date is the date where all the rights and obligations contained in the JVA shall become effective, specifically the Signing Date.
35	Conditions Precedent to Effectivity	11	Please insert number of months and reference section		This will be reflected in the revised JVA to be issued prior to the Pre-Selection Conference.
36	Conditions Precedent to Effectivity	11	Please define the long stop date and please provide the long stop date when the agreement will automatically terminate. Please provide the correct section reference		Definition and corrections on Section Reference will be reflected in the revised JVA to be issued prior to Pre-Selection Conference.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
37	Conditions Precedent to Construction Start Date	11	Please provide how many days TIEZA require to issue the Notice of Construction Start Date?		Long Stop Dates for this will be reflected in the revised JVA to be issued prior to Pre-Selection Conference.
38	Conditions Precedent to Construction Start Date	11		Section 11 states that the parties may agree to extend the period to achieve the construction start date. For flexibility, we propose to remove the succeeding phrase.	We retain the existing provision.
39	Conditions Precedent to Construction Start Date	11		We would like to suggest 24 months from the Effective Date.	We have made appropriate adjustments to the provisions accordingly. Section 11 will be amended as follows:: “xxx If the Construction Start Date has not occurred within <u>24 months</u> from the Effective Date due to the non-fulfillment (unless waived in accordance with this Agreement) of any of the Conditions Precedent to Construction Start Date, either Party may terminate this Agreement. xxx”
40	Conditions Precedent to O&M Start Date	11	Pleas clarify the Certificate of Final Acceptance being referred to		This pertains to the duty of the TIEZA to issue a Final Acceptance Certificate for the Construction Works in accordance with the specifications provided under the JVA.
41	Conditions Precedent to O&M Start Date	11	Is the O&M Start Date also the official start of the Concession? Please add in the definition of terms.		Concession starts at the Signing Date which is also the Effective Date.
42	Conditions Precedent to O&M Start Date - Last Paragraph	11	Please provide the number for the issuance of the Notice of O&M Start Date		TIEZA shall issue, within 15 days from the issuance of the Notice of O&M Start Date CP Satisfaction, a Notice of O&M Start Date, the issuance of which shall not be unreasonably withheld or delayed.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
43	Condition Precedent to O&M Start Date	11	Please list all the consents, permits and approvals needed to be secured as conditions precedent for the O&M Start Date.		Due diligence of the JV Partner.
44	O&M Start Date	11	Please provide applicable numbers for the following: 1. Days for the issuance of notice of O&M start date 2. Months from the effective date from which penalties will be triggered 3. Amount of penalties per day of delay 4. Penalty cap for default		Long stop dates for items 1 & 2 will be provided in the revised JV Agreement to be issued prior to Pre-Selection Conference. Amount of penalties are already in the JVA. Penalty cap for default is set at Php6 Million.
45	Conditions Precedent to O&M Start Date	11	Please provide how many days TIEZA require to issue the notice of O&M start date?		Long stop dates will be provided in the revised JVA to be issued prior to Pre-Selection Conference.
46	Handover of Existing Asset	12.2	Interim O&M Start Date has not been defined. Please clarify what this period covers.		Interim O&M start date is the period when the assets have already been handed over to the JV Partner but prior to the agreed O&M start date. Please note that the Interim O&M is only optional. The definition for Interim O&M shall be indicated in the revised JVA to be issued prior to Pre-Selection Conference, to reflect the optional commencement of operations.
47	Asset Register	12.2	Please provide the annex pertaining to the asset register.		Please refer to the VDR.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
48	Transferring Employees	12	Please provide a list of all the employees of BIDR - permanent and otherwise. Please include pertinent File 201 details. Please provide the compensation and benefits of each employee		Please refer to the VDR. Compensation for each employee may be provided but the 201 file needs consent from employees.
49	Turnover Before operation - Handover of Existing Asset	12.2	Please define Interim O&M Start Date. Is this the period during the time the new asset is being built? What if the asset will not be operated during this period?		The following definition shall be reflected in the revised draft of the JVA: Interim O&M start date is the period when the assets have already been handed over to the JV partner but before the O&M Start Date, and the JV Partner continues to operate the BIDR while the necessary developments are being constructed. This is only optional. The draft JV Agreement will be revised accordingly for clarification.
50	Transferring Employees	12.3	Please confirm that the employees to be identified by TIEZA in whose favor offers of employment will be given shall only pertain to permanent employees.		JVG contemplates all existing employees and hirees, regardless of status of employment.
51	Transferring Employees	12.3	What if we will not be operating during this period?		In this case, the reckoning period will be the O&M Start Date. The draft JV Agreement will be revised accordingly.
52	Turnover	12.6	Please confirm that the Relevant Rules and Procedures mentioned in Section 12.6 are rules issued by the JV Partner.		JV Partner's standards should be consistent with Labor Law provisions.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
53	Transferring Employees	12	Please define Legal Requirements		<p>The following definition shall be reflected in the revised draft of the JVA:</p> <p>Legal Requirement means any domestic law, statute, ordinance, rule, standard, administrative interpretation or guideline, regulation, order, writ, injunction, directive, judgment, decree, Relevant Consent, and any requirement of any competent Government Authority having jurisdiction over the person, or any of its respective properties, assets or representatives, or the matter in question, and in each case being of legally binding effect.</p>
54	Ownership of Asset	13.1	Please clarify that TIEZA's ownership of the Asset stipulated in Section 13.1 shall not prejudice the JV Partners right to demolish existing assets and that new structures to be erected in replacement of demolished improvements shall henceforth be classified as part of the Project Facility, to be owned by the JV Partner.		<p>TIEZA's ownership of the structures shall not prejudice the JV Partner's right to introduce improvements and demolish existing assets subject to TIEZA's approval and COA rules and regulations. Moreover, the ownership of all Existing Assets and the Project Facility shall be retained to TIEZA at all times.</p> <p>Section 13.2 will be amended in the revised draft JVA.</p>

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
55	Ownership of Asset	13.1	Please confirm that this is referring to the Existing Assets. Why is there a need to indicate that this will automatically vest with TIEZA?		This refers to the Existing Asset and the Project Facility.
56	Security Interests	13	Section 13 states that the JV Partner should not create any Security Interest over the Project Facility. Considering that ownership of the Project Facility pertains to the JV Partner during the entire Concession Period, we propose that our right over the Project Facility be allowed as a Permitted Security Interest under Section 14.		No, we clarify that the ownership of the Project Facility shall be retained to TIEZA at all times. Thus, we reiterate there will be no Permitted Security Interest over the Project Facility. Section 13.2 will be amended in the revised draft JVA.
57	Security Interests	13	Does these mean you can not take out a mortgage on this property?		Yes, a mortgage cannot be taken out on the property.
58	Ownership of Project Facility	13.2	Please add Concession Period to the defined terms. Please also define Security Interests		Concession Period means the period of 25 years commencing from the Effectivity Date until the termination of the JVA. Security Interest means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, right of set-off, security trust, assignment by way of security, reservation or retention of title, right to repossession and any other security interest or any other agreement or arrangement (including a sale and repurchase agreement) having the effect of conferring security.
59	Permitted Security Interest	14	Please define Permitted Security Interest in definitions		Permitted Security Interest means any security interest created over (i) the JV Partner's rights and interests in this JV Agreement, and/or (ii)

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
					shares in the JV Partner in favor of lenders securing indebtedness under the Project Financing Agreements, as confirmed by the TIEZA.
60	Permitted Security Interest	14	Please define Lock In Period in the definition of terms		Lock-in Period means the period-commencing from the Sign Date and ending of the date falling on the [x] anniversary of the earlier
61	JV Partner Composition	15	Section 15 states that the JV Partner shall submit a report on its JV Partner Composition listing all entities that own, directly or indirectly, regardless of the number of layers. Since a member of the Consortium is publicly listed company, please clarify that the JV Partners obligation to report its composition will be limited to its Top 10 stockholders and that the JV Partner will have no obligation to further report regarding the composition of corporate stockholders that are not affiliated to the JV Partner.		Yes, limited only to its Top 10 Stockholders.
62	Formation of the Special Purpose Company	16.1	Section 16.1 uses the word "may". Please clarify if the formation of the SPC is optional.		The formation of the SPC is optional.
63	Formation of the Special Purpose Company	16 -1.2	What is the min required Equity? Min by law?		The JV Partner shall be a shareholder of the SPC with a minimum of equity that will enable it to have control over the SPC pursuant to applicable laws.
64	Securities	17	Please define Security and Performance Security are these being		The term Security as indicated in section 17 of the JVA is used in a general term which pertains

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
			used interchangeably? Are these referring to the same ?		to all the necessary securities which the JV Partner is bound to furnish to TIEZA. Performance Security means the guarantee or security that the JV Partner must furnish for the satisfaction of the JV Partner's obligations under this JVA.
65	Securities - General	17.1.b		Instead of the term Accredited Financial Institution, we propose to replace the term with universal or commercial bank duly registered and licensed by the Bangko Sentral ng Pilipinas (BSP).	We adopt proposed revision.
66	Securities - General	17.3.a		We propose to remove the phrase: "to be decided upon by TIEZA in its sole discretion"	We retain the provision as currently worded.
67			It is stated that the return of the performance security will be equivalent to the % amount of how much of the committed capital is already injected. Please confirm that the same rule applies for the release of the operational performance security.		This rule does not apply to operational performance security. Operational Performance Security is governed by the appropriate provision in the draft JVA.
	Performance Security	17.6			
68	Construction Performance Security	17	Please confirm the fees and securities required as the some fees stated in the TOR are not in the JVA. Please confirm the mechanism and the timing of payment for each.		The mechanism and timing for these fees and securities will be reflected in the revised JVA to be issued prior to the Pre-Selection Conference.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
69	Construction Performance Security	17	Please provide definition of Construction Performance Security		Construction Performance Security means the guarantee or security that the JV Partner must furnish for the satisfaction of the JV Partner's obligations during the construction period.
70	Construction Performance Security - 1.d.	17	Please provide annex, amount and Section reference.		The amounts and section references will be reflected in the revised JVA to be issued prior to the Pre-Selection Conference.
71	Operation Performance Security	17	Please provide definition for Operations Performance Security		Operation Performance Security means the guarantee or security that the JV Partner must furnish for the satisfaction of the JV Partner's obligations from the O&M Start Date until the end of the Concession Period.
72	Operation Performance Security - b.	17	Partial draws may not be possible for SLCs.		Please clarify your comment. We note that partial draws are possible for SLCs.
73	Warranty Security	17	Please provide definition and computation of Warranty Security.		Warranty Security means the security to be provided by the JV Partner in accordance with Section 17 of this JVA.
74	Warranty Security - e	17	Please define Hand Back Requirements		Handback Requirements means the checklist as set forth in the Handback Survey that serve as a guide in determining whether the condition of the Project Site is in accordance with that which is required upon turnover as provided in the MPSS.
75	Warranty Security - f.ii	17	Please provide the Section		Section 17, under TYPES OF SECURITIES, item no. 3
76	Handback Security	17	Please define - Handback Security, Handback Security Date, Handback Rectification Amounts, Handback Rectification Works		Handback Rectification Amount means the aggregate of the cost necessary to deliver the Handback Rectification Works as estimated by the Handback Engineer in the Handback Survey.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
					<p>Handback Rectification Works means the works required to rectify deficiencies in the facility so as to ensure compliance with the Handback Requirements.</p> <p>Handback Security means the security to be given by the JV Partner for the Handback Rectification Works.</p> <p>Handback Security Date means the date that is no later than 5 days after the date of delivery of the Handback Survey to the parties.</p>
77	Handback Security	17.4	Please clarify the concept and mechanism with Handback in relation to the Transfer Date. Please clarify when is the handback security date?		<p>The mechanism for handback is discussed in Section 34.</p> <p>On the Transfer Date or in the event of Termination, each element of the Project Facility shall be in a condition that results in the system achieving the following levels of performance (the "Handback System Performance Requirements")</p> <p>The Long Stop date for the handback security will be reflected in the revised JVA to be issued prior to Pre-Selection Conference.</p>
78	Handback Security	17.4.a	Who will deliver the handback survey and what does this contain?		<p>The Parties shall procure twelve months prior to the Transfer Date, a leading engineering consultancy, selected by the TIEZA from a list of three firms that are proposed the JV Partner (the "Handback Engineer"), shall undertake a comprehensive survey to determine whether the Project Facility complies with the Handback Requirements and whether the Assets Register</p>

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
					accurately reflects the condition of the Project Facility (the "Handback Survey").
79		17. 4.a	Please provide more clarity on what can constitute Handback rectification works and amounts. There needs to be some acknowledgment that handback rectification work should not include regular wear and tear of the asset. At hand over period it will be over 20+ years old.		<p>In accordance to Section 20 (Operations and Maintenance) of the draft JVA, the JV Partner and TIEZA shall jointly appoint an independent expert who will conduct a Handover Punchlist Inspection of the Facility. The Handover Punch List contains an overview of the maintenance activities and replacement investments that need to be undertaken above those scheduled in the Operations and Maintenance Plan for the Project to meet the standards and specifications in the MPSS on the end date. The overview shall also include a time planning for the implementation of these additional activities and an overview of their costs.</p> <p>☑ If the JV Partner does not carry out the maintenance activities and replacement investments defined in the Handover Punch List TIEZA may draw the amount of the corresponding costs, augmented by 20%, from the Handback Performance Security.</p>
80	Handback Security	17	<p>Is our understanding correct, if the rectification amount is 100 then the operation performance security is 90 then the handback security is 10?</p> <p>What if the handback rectification amount does not EXCEED the face amount of the operation performance security, does it mean there will be no handback security? Or it will be</p>		Yes, your understanding is correct and there will be no handback security if the handback rectification amount does not exceed the face amount of the operation performance security. For avoidance of doubt, the operation performance security will be used to cover for the rectification works.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
			automatically secured through the operation performance security?		
81	Design and Construction of the Works	18		Can we propose to extend the infusion of committed capital to 5 years from Effective Date.	We retain the requirements under the JVA.
82	Design and Construction of the Works	18	Please confirm that DED pertains to Detailed Engineering Design and it is synonymous with the Development Plans and Detailed Design required in the MPSS.		Yes.
83	Design and Construction of the Works	18	The JVA states that the DED must be submitted no later than 6 months upon signing of JVA. The MPSS on the other hand states that Development Plan and Detailed Design and must be submitted in 120 days upon signing of the JVA. Upon review of the requirements in the MPSS, while the updated conceptual layout may be submitted within 120 days, we would an additional 12 months in order to prepare plans that have been thoroughly reviewed by external consultants in order to comply with all the requirements listed in Page 22 and Page 23 of the MPSS. After the submission of the requirements of the DED, we undertake another 90 days to complete the tender and		Amendments will be made to effect consistency in periods and will be reflected in the revised JVA to be issued prior to the Pre-Selection Conference. We adopt the 6-month period for submission of DED provided in the JVA.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
			bidding process for the implementation of the DED.		
84	Procedure for Issuance of Certified DED - 3rd bullet point	18	15 days will likely be too short especially if there are major changes.		JV Partner can send a written request for extension of time from the JVSC
85	Procedure for Issuance of Certified DED	18	Based on industry practice, the intellectual property rights over a DED is retained by the design consultant. As such the JV Partner is not at liberty to assign or grant a license over the DED in favor of TIEZA. Please remove the obligation of the JV Partner imposed by this relevant provision.		<p>We Delete ff. Provision:</p> <p>The JV Partner grants to TIEZA a worldwide, irrevocable, non-exclusive, perpetual, transferable, royalty-free license (including the right of sub-licenses) to use and exercise all or any of the intellectual property rights in or used in the Certified DED and in any additional intellectual property developed in connection with the design and construction of the Project facility and the provision of maintenance services. The JV Partner shall have the obligation obtain an exemption from the appropriate government authority as may be necessary under the Intellectual Property Code of the Philippines to ensure enforceability of this Joint Venture Agreement.</p>

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
86	Monitoring of Construction	18	Please confirm that costs related to TIEZA's validation to ensure that Project is constructed in accordance with the JVA (e.g. Site Visit and employment of a designated contractor or subcontractor) will be covered by TIEZA.		TIEZA shall cover the cost for its inspection and validation during the O&M period.
87	JV Partner Obligations during Construction - 5th bullet point	18	Permits for construction are going to take a long time. Especially the ECC and EIA. Please confirm that the concession period moves along when the b v will be issued by the Local and National Government.		The JVA provides mechanisms to address delays caused by the executive branch, excluding local governments.
88	Excusable Delays in Construction - b.	18	How about permit issuances?		Refer to response in Item No. 87.
89	Completion of Construction	18	Please confirm that costs related to TIEZA's punch list inspection will be covered by TIEZA.		TIEZA shall cover the cost for its inspection and validation during the O&M period.
90	Completion of Construction	18	Since TIEZA is allowed to collect LD if the project delivery is late, does this mean there will be no fixed and variable charges during the construction period?		Payment of fixed and variable charges shall be enforced by TIEZA upon signing.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
91	Operation, Maintenance, and Services	20	If the performance deductions stipulated in the MPSS will be first applied to the operation performance security then the revenue share of the JV partner, what is the PHP 8.750M KPI fee for that was stated in the TOR?		The Php 8.750M KPI Fee is included in the Operation Performance Security.
92	Operation, Maintenance, and Services	20	Please confirm that costs related to TIEZA's inspection during operations and maintenance period will be covered by TIEZA.		Yes.
93	Subcontracting	19	Please provide definition of subcontracting. If we hire an architect, ID, or a contractor we need TIEZA To approve each time? Also why does TIEZA need to be able to seek damages from the subcontractor when the contract is the with JVA partner?		<p>The following definition of Subcontracting shall be reflected in the revised draft of the JVA.</p> <p>Subcontracting means engaging the services of a subcontractor to perform any of the obligations of the JV partner with respect to any part of the design, construction, operation, and maintenance of the Project.</p> <p>Yes, TIEZA's written consent is a requirement for hiring of subcontractors in relation to fulfilment of JV Partner obligations.</p> <p>There is no provision in the JVA that the subcontractor shall be liable for damages. The</p>

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
					JVA provides that in the event of breach by a subcontractor, such breach shall be deemed to be a breach by the JV Partner. Notwithstanding any subcontracting, the JV Partner shall remain directly responsible and liable for all obligations under this JV Agreement. In the event of breach by a Subcontractor, such breach shall be deemed to be a breach by the JV Partner under this JV Agreement.
94	Subcontracting - 4th bullet point	19	Please specify timeline since this can materially impact dates.		To be supplied in the revised JVA to be issued prior to Pre-Selection Conference.
95	Subcontracting	19	Section 19 states that the JV Partner must submit a CTC of the Sub Contracting Agreement. However, considering that no subcontractor shall be engaged without the prior consent of TIEZA, please confirm that an unsigned final draft would suffice for purposes of securing TIEZA approval.		The CTC of the Subcontracting Agreement and other requirements under Section 19 shall be submitted after a subcontractor has already been engaged. The JV Partner must provide to TIEZA for each Subcontractor: a certified true copy of the subcontracting agreement.
96	Subcontracting	19	Please clarify the mechanism for subcontracting.		Provided under Section 19
97	Obligation to repair	20	We would like to request to update from 30 days to 90 days as this is an island destination and logistics is a challenge / difficult to get suppliers and materials to the location and dependent on weather conditions		We adopt the proposal of 90 days.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
98	Handover of Maintenance at the end of the Maintenance Period	20	Where are the maintenance activities and the replacement investment defined in the JVA?		<p>The Project shall have a reported maintenance programme including planned and preventive maintenance to the same level as being provided over the last one year of the JV, and in accordance with Section 34 of the JVA. All inspection and maintenance records shall be current.</p> <p>Examples of replacement investments will be reflected in the revised JVA to be issued prior to the Pre-Selection Conference.</p>
99	O&M	20	The standard and specifications of the end date of the MPSS for purposes of handback must consider reasonable wear and tear		For further consideration in the revised JVA.
100	Handover of Maintenance at the end of the Maintenance Period	20	Please clarify the mechanism. Please consider that the asset will be over 20 years old.		For further consideration in the revised JVA.
101	Key Performance Indicators	21		We propose that the initial KPIs shall be finalized by the Joint Venture Management Committee 6 months before O&M Start Date	The KPIs are included in the MPSS and other relevant documents during the competitive selection process.
102	Key Performance Indicators	21		Suggest that the JV Partner as part of the committee must take part in the adjustment of the KPI every 5 years.	Adjustments to KPI will have to be done thru variation which may be initiated by either party but subject to processes indicated in the JVA
103	Revenue Sharing	22	Section 4.2.1 of the TOR provides for a secured peso share to TIEZA from		Retaining 4.2.1 of the TOR and will be reflected in the revised JVA for consistency.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
			its share in the Gross Revenues. No counterpart provision appears in the JVA. Please confirm that this no longer applies.		
104	Revenue Sharing - Financial Benefits to Tieza	22	Please indicate if the TOR will prevail here or the JVA?		The JVA shall be revised to reflect this.
105	Revenue Sharing	22	Please confirm that the reference to TIEZA in the first paragraph should pertain to the JV Partner		We confirm.
106				We propose that the financial benefits to TIEZA shall commence on the O&M start date but in no case later than 3 years after the signing of the JVA.	We retain the current provision.
107	Reports	24.4.a	Please insert blanks of sections		This will be reflected in the revised JVA to be issued prior to the Pre-Selection Conference.
108	Reports	24	To match the remittance timing, we propose reporting frequency to be quarterly as well.		Further evaluation of the Proposal for quarterly reports will be reflected in the revised JVA to be issued prior to the Pre-Selection Conference.
109	JV MC	25.1 25.2 25.3	Kindly describe / define the functions and obligations of the following if they are not one and the same JV Management Committee, Project Steering Committee and Project Management Team.		We will make the necessary corrections on the consistent use of "Joint Venture Management Committee" to refer to all the terms mentioned.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
110	Approval of Variation	27	The last sentence states that no notice has been issued by TIEZA within 30 days, the Variation is denied. We propose that the Variation shall be deemed approved instead.		To be amended, the Variation shall be deemed approved instead.
111	Approval of Variation	27	Who or which government body needs to conset to changes in the JVA?		TIEZA will be approving all proposed changes with the JVA.
112	Taxes	29	Are the Existing Assets, both the Project Land and the Current Improvements, covered by Tax Declarations? Please confirm that the turnover of the Assets as condition for the Effective Date include delivery of the tax declarations.		BIDR has always been exempt from Real Property Tax and no tax declaration has been issued to TIEZA.
113	Taxes	29	Are real property taxes being paid for all or some of the Existing Assets?		Kindly refer to response in item 112.
114	Taxes	29	How about taxes related to the unincorporated JV?		All taxes due relative to the JV shall be shouldered by the JV partner.
115	Force Majeure	30	Please complete the Paragraph error states 'Error! Reference source not found'.		Please specify paragraph being referred.
116	Damage Caused by Force Majeure - 2nd bullet point	30	Please provide section		Section 28 (<i>Insurance</i>)
117	Damage Caused by Force Majeure - 3rd bullet point	30	Please provide section		Section 28 (<i>Insurance</i>)

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
118	Damage Caused by Force Majeure - 5th bullet point	30	Please complete the Paragraph error states 'Error! Reference source not found'.		Section 33 (<i>Default and Termination</i>)
119	Damage Caused by Force Majeure - 6th bullet point	30	Please complete the Paragraph error states 'Error! Reference source not found'.		Section 30 (<i>Force Majeure</i>)
120	Force Majeure Event	30	We propose to insert a provision that allows extension of the Concession Period on account delays or interruptions brought about by Force Majeure		A mechanism will be considered in the revised JVA to be issued prior to the Pre-Selection Conference.
121	Remove	31.1	We propose to expand the definition to include an adverse action of the legislative branch and any adverse judicial interpretation of an existing law or regulation		No.
122	Delay and Compensation	32	What is the late payment rate in relation to interest for unpaid amounts?		The legal rate is 6% but the TIEZA may opt to increase the rate as long as it is not unconscionable.
123	Consequences of JV partner Delay Event	32.1	Please provide Cap		The maximum amount of Liquidated Damages owed is limited to PhP 6,000,000.00.
124	Consequences of JV partner Delay Event	32.1	Is the Liquidated Damages the same as was stipulated earlier in the contract?		Yes, the liquidated damages referred to in this section is the same with the one earlier mentioned in the JVA. To reiterate, in case of delay, TIEZA is entitled to collect from the JV Partner Liquidated Damages amounting to (including any VAT due allowed by relevant rules and procedures, if any):

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
					<p>(a) PhP 50,000.00 per day for the first 30 days of delay;</p> <p>(b) PhP 60,000.00 per day from the 31st up to and including the 90th day of delay;</p> <p>(c) PhP 70,000.00 per day from the 91st day of delay;</p> <p>provided that the maximum amount of Liquidated Damages owed is limited to PhP 6,000,000.00.</p>
125	Events of Default	33.1	Please provide Cap		A cap will be considered in the revised JVA to be issued prior to the Pre-Selection Conference.
126	Default and Termination	33	There is no separate section discussing on leverage ratio. We propose to delete this.		Retain provision but the ratio will be provided in the revised JVA.
127	Voluntary Termination	33	Please clarify that reference to grantor pertains to TIEZA in the heading for voluntary termination.		Yes, the grantor referred in this section is TIEZA
128	No Fault Termination	33	Please provide the details for no fault events for a no fault even termination.		To be reflected on the revised JV Agreement.
129	Payment arrangements	33	What is the late payment rate in relation to interest for unpaid amounts?		The legal rate is 6% but the TIEZA may opt to increase the rate as long as it is not unconscionable.
130	Handback of the project	34	What is the curing period for any non-compliance with MPSS?		Section 34 provides that In the event the JV Partner fails to repair or rectify such defect or deficiency within fifteen (15) days after written notification from the TIEZA, the TIEZA shall be entitled to have the same repaired or rectified at the TIEZA's discretion, but at the JV Partner's risk and cost.

RESPONSES TO THE JOINT VENTURE AGREEMENT (JVA) QUERIES

	Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)	TIEZA Responses
131	Handback of the Project	34	Please confirm that entire page 66 was left blank		Error in printing.
132	Handback of the project	34	The term Annual Test is not defined in the MPSS. Please clarify.		Section 34 provides that at the end of the Concession Period, the JV Partner shall turnover to the TIEZA the Project in the condition required for turnover as described in MPSS. Nevertheless, we will include the term "Handback of the Project" in the definition of terms.
133	Tourism Infrastructure Support	40	When will the mechanism for the disbursement and monitoring of the trust fund for the LGU be provided?		Section 40.4 of the JVA provides that the mechanisms for the disbursement and monitoring of the trust fund shall be created by TIEZA. The mechanism for the collection and disbursement of the TIS shall be created TIEZA as soon as the JVA takes effect.
134	Tourism Infrastructure Support	40	Please define when this will be required. Also please define computation for Net Revenue		TIS will be required a year after O&M.
135	Annexes		When will the Annexes be sent to the Eligible Bidder?		The Annexes will be sent along with the revised JVA.
136	MPSS Duringn Design and Approval Phase		If there is conflict between the National building code and the items here which will prevail?		The National Building Code will prevail and the inconsistent provision will be deemed amended.
137	Monitoring Procedures and KPI Charges		If it doesn't seek to penalize why are there so many penalties?		The KPIs are used to assess and evaluate performance of the Project in relation to defined performance standards and indicators. The amounts charged is a mechanism to encourage compliance with the MPSS and KPIs.