

## Sample UNIDO contract provisions for handover

### IV. THE TRANSFER PHASE

#### ARTICLE 14

##### THE SCOPE OF TRANSFER

###### 14.1 General Scope of Transfer

On the Transfer Date, the Company shall transfer and assign to the GOM or its designee, free of charge, all its rights, titles and interests in the Project in accordance with the provisions of this Article 14 and Schedule 16 (Maintenance Plan).

###### 14.2 Transfer of the Project Facilities and of the Project Land

To give effect to the obligation under Article 17.1, the Company shall, at the Company's cost and risk:

- (a) transfer to the GOM or its designee all the Company's rights, titles and interests in and to the Project Facilities, and the Project Land including:
  - (i) the buildings and structures comprising the Project Facilities;
  - (ii) all machinery and equipment used in connection with the Project Facilities; and
  - (iii) all its rights to use Land and Water for the Project;
- (b) deliver to the GOM or its designee all documents, manuals and records which are necessary to effect the transfer and to enable the GOM to operate and maintain the Project Facilities;
- (c) give to the GOM physical possession and control of the Project Land, and the Project Facilities to the exclusion of all others; and
- (d) assign to the GOM or its designee all unexpired quarantines, warranties and insurance policies.

- (e) The Project Facilities and the Project Land shall be transferred and assigned to the GOV free and clear of all liens, encumbrances, mortgages, security interests and other claims of any kind. The Project Land shall on the Transfer Date be free of all environmental contamination attributable to any Breach of Contract by the Company in the design, construction, operation and maintenance of the Project Facilities.

### **14.3 Technology Transfer**

At the Transfer Date, the Company shall transfer and assign to the GOV or its designee, free of charge, all technology and know-how used at the time of transfer and required to operate and maintain the Project Facilities, including by way of license or sublicense.

### **14.4 Spare Parts**

#### **14.4.1 Supplies and Spare parts to be Transferred**

At the Transfer Date, the Company shall transfer to the GOV or its designee, free of charge:

- (a) supply of consumable spare parts adequate to meet the normal needs of the Project Facilities for a period of twelve (12) months and spare parts for the repair of breakdowns. All spare parts shall be of the quality and standards as required under Article 9.4
- (b) fuels, chemicals and other materials required for the operation of the Project Facilities, sufficient for three (3) months of operation.

#### **14.4.2 Purchase of Additional Spare Parts**

Prior to Transfer Date, the GOV may provide the Company with a list of spare parts for the Project Facilities, which it requires in addition to those transferred under Article 14.4. The Company shall use its best efforts to transfer or procure the supply of such spare parts to the GOV for the same preferential prices as offered by the manufacturers to the Company.

## ARTICLE 15

### CONDITION OF THE PROJECT FACILITIES ON THE TRANSFER DATE

#### 15.1 Warranties

On the Transfer Date, the Company shall warrant that the Project Facilities:

- (i) meet the transfer standards set out in Schedule 16 (Maintenance Plan).
- (ii) meet all safety and environmental standards required by this Agreement; and
- (iii) are in good operational condition and well maintained, ordinary wear and tear excepted.

#### 15.2 Defect Liability Period

- (a) The Company further warrants that it will correct any defects in or damage to any part of the Project Facilities, which may appear or occur within a period of twelve (12) months after the Transfer Date due to the breach of warranties under Article 15.1.
- (b) The GOM shall give the Company notice promptly after having discovered any such defect or damage. Such notice must, in any case, have been given at the latest before the expiration of such twelve (12) months warranty period. Upon receipt of such notice, the Company shall correct the defect as soon as possible at its own cost.

#### 15.3 Correction Works

The GOM or its designee shall be entitled to perform the correction work of any such defect or damage as described in Article 15.2,

- (i) in cases of emergency, provided that it notifies the Company immediately of the emergency situation and permits a Company representative to be present during all such emergency work;

- (ii) if the Company fails or refuses to correct such defect or damage within a reasonable time after the GOV's notification; or
- (iii) the Company goes into liquidation or becomes insolvent under Applicable Law.

In such a case the Company shall pay the reasonable and necessary costs of the correction work and the GOV shall be entitled to draw on the Maintenance Bond to cover such costs.

#### **15.4 Limitation of Liability**

Except in case of Gross Misconduct of the Company, the liability of the Company to the GOV pursuant to this Article 15 shall be limited to the amount of the Maintenance Bond.

#### **15.5 Release of the Maintenance Bond**

The GOV shall release all or so much of the Maintenance Bond as shall remain outstanding within fifteen (15) days after the date which is twelve (12) months from the Transfer Date.

## **ARTICLE 16**

### **TRANSFER PROCEDURES**

#### **16.1 Transfer Procedure**

The Parties shall carry out the transfer in accordance with the procedure set forth in Schedule 19 and the requirements of this Article 16.

*(Transfer Standards and procedure)*

#### **16.2 Training of the GOL Personnel**

No less than twenty four (24) months before the end of the Concession Period, the Company shall submit to the GOV reasonable evidence that the programme for

training on the management and execution of construction, operation and maintenance of the Project Facilities, as set forth in Article 21.8 and in Schedule 18, has been satisfactorily completed. *(Training Programme)*

### **16.3 Cancellation of Contracts**

The GOV may require that the operation and maintenance (O&M) Agreement, equipment contracts, supply contracts and all other contracts entered into by the Company and subsisting at the time of the transfer shall be cancelled by the Company. The GOV shall not be liable for any cancellation costs arising thereby and shall be indemnified and held harmless by the Company in respect of such costs and claims.

### **16.4 Removal of Objects**

The Company shall, at its own cost and within sixty (60) days after the Transfer Date, remove all surplus and unsalvageable materials and equipment not to be assigned and transferred to the GOV and all hazardous or toxic wastes, not otherwise disposed of, except equipment needed to satisfy the Company's obligation for defect liability under Article 15. If the Company fails to remove such objects within the said time the GOV may remove and transport the same, after giving the Company notice of its intention, to a suitable location for safe storage. The Company shall bear the reasonable cost and the risk of such removal, transportation and storage.

### **16.5 Transfer Cost and Approvals**

- (a) The GOV shall not be required to make any payment to the Company in respect of the transfers and assignments referred to in this Chapter IV.
- (b) The GOV and the Company shall each pay its own costs and expenses, including legal fees, incurred in connection with the transfers and assignments.
- (c) The GOV shall, at its own cost, obtain or effect all Approvals which are necessary to effect the transfers and assignments.

## ARTICLE 17

### EFFECTS OF TRANSFER

#### 17.1 Passing of Risk for Loss or Damage

Subject to Article 22, until the Transfer Date, all risks shall lie with the Company for loss or damage to the whole or any part of the Project Facilities, unless the loss or damage is due to an act or omission of the GOM.

#### 17.2 Termination of the Rights and Obligations of the Company

From the Transfer Date the rights and obligations of the Company under this Agreement shall terminate, except for the rights and obligations which expressly or implicitly survive the termination of this Agreement, and except for liabilities of the Parties accrued and unpaid at the Transfer Date.

## VI. FINANCING AND FINANCIAL MANAGEMENT

## ARTICLE 18

### FINANCING OF THE PROJECT

#### 18.1 The Company's Principal Obligations

Subject to Article 18.3, the Company shall obtain all financing (equity and debt) necessary to design, construct, operate, and maintain the Project and in accordance with this Agreement.