

G. BASIC TERMS AND CONDITIONS GOVERNING UNIDO PROJECTS

APPENDIX ... to PROJECT DOCUMENT

dated

PROJECT TITLE:
PROJECT NUMBER:

BASIC TERMS AND CONDITIONS GOVERNING UNIDO PROJECTS

Pending the conclusion of a Standard Basic Co-operation Agreement between UNIDO and the Government of (hereinafter referred to as "the Government") which shall govern the provision by UNIDO of industrial development assistance financed from the UNIDO Industrial Development Fund (IDF) or from other funds administered by UNIDO, the Government agrees to the following Basic Terms and Conditions which shall apply to the above-mentioned Project as laid down in the Project Document and its Appendices (hereinafter referred to as the "Project Document"), and which form an integral part of the subject Project Document:

I. IMPLEMENTATION OF THE PROJECT

1. The Government shall have overall responsibility for the Project, including responsibility for its implementation and the realization of its objectives, in accordance with the Project Document.
2. The Government and UNIDO shall each carry out such activities or implement such measures as are stipulated in the Project Document and Work Plan forming part of the Project Document, and which they have undertaken to accomplish by signing the Project Document.
3. The Government shall inform UNIDO of the Government cooperating agency directly responsible for the Government's participation in the Project. Without prejudice to the Government's overall responsibility for UNIDO-assisted projects, the Government and UNIDO may agree that UNIDO shall assume primary responsibility for implementation of the Project in consultation and agreement with the cooperating agency;¹ arrangements to this effect shall be stipulated in the Project Document or in the related Work Plan forming part of the Project Document, together with arrangements for the transfer of such

¹ In this case, clearance by the Legal Service should be requested, see H. Introduction, paragraph 5 [of DGB (E).54 on model agreements and related guidelines for projects financed from trust funds, special purpose contributions to the Industrial Development Fund or the Regular Budget].

responsibility to the Government or to any entity designated by the Government, which shall be envisaged in the course of project implementation and not later than at the operational completion of the Project.

4. Compliance by the Government with any prior obligation agreed to be required for UNIDO assistance to the Project shall be a condition for performance by UNIDO of its responsibilities with respect to the Project. Should provision of such assistance be commenced before such prior obligations have been met, it may be suspended or terminated without notice at the discretion of UNIDO.

5. UNIDO shall, as appropriate and in consultation with the Government, appoint a Chief Technical Adviser or Project Co-coordinator responsible to UNIDO for overseeing the participation of UNIDO in the Project at the project level. He/she shall supervise and coordinate activities of experts and other UNIDO personnel and be responsible for on-the-job training of Government counterpart personnel. He/she shall be responsible for the management and efficient utilization of all UNIDO-financed inputs, including equipment provided to the Project.

6. In the performance of their duties, advisory experts or associate experts, consultants, firms, organizations and volunteers² shall co-operate with the Government and with persons or bodies designated by the Government, and shall comply with such guidance from the Government as may be appropriate to the nature of their duties and the assistance to be given and as may be mutually agreed upon between UNIDO and the Government.

7. Technical and other equipment, materials, supplies and all other property financed or provided by UNIDO shall belong to UNIDO unless and until ownership thereof is transferred, on terms and conditions mutually agreed upon between the Government and UNIDO, to the Government or to an entity nominated by it.

8. Patent rights, copyrights and other similar rights to any discoveries or work resulting from UNIDO assistance under this Agreement shall belong to UNIDO. Unless otherwise agreed by the Government and UNIDO in each case, however, the Government shall have the right to use any such discoveries or work within the country free of royalty or any charge of similar nature.

II. INFORMATION CONCERNING THE PROJECTS

1. The Government shall furnish UNIDO with such relevant reports, maps, accounts, records, statements, documents, statistical data and other information as it may request concerning the Project, its implementation or its

² United Nations Volunteers.

continued feasibility and soundness, or concerning the compliance by the Government with its responsibilities under the Project Document.

2. UNIDO undertakes that the Government shall be kept currently informed of the progress of its assistance activities under this project. Either party shall have the right, at any time, to observe the progress of operations on the Project.

3. The Government shall, subsequent to the completion of the Project, make available to UNIDO at its request information as to benefits derived from and activities undertaken to further the purposes of the Project, including information necessary or appropriate to its evaluation or to evaluation of UNIDO assistance, and shall consult with and permit observation by UNIDO for this purpose.

4. The Government and UNIDO shall consult each other regarding the publication, as appropriate, of any information relating to the Project or to benefits derived therefrom.

III. PARTICIPATION IN AND CONTRIBUTION OF THE GOVERNMENT TOWARDS THE IMPLEMENTATION OF THE PROJECT

1. If the provision of equipment forms part of UNIDO's assistance to the Government, the latter shall meet charges relating to customs clearance of such equipment, and unless otherwise provided in the relevant Project Document, also the charges relating to its transportation and insurance from the port of entry to the project site together with any incidental handling or storage and related expenses, its insurance after delivery to the project site and, its installation, commissioning and maintenance.

2. The Government also shall meet the salaries of trainees and recipients of fellowships during the period of their fellowships.

3. The Government shall, as appropriate, display suitable signs at each project identifying it as one assisted by UNIDO.

IV. PRIVILEGES AND IMMUNITIES

1. The Government shall apply to UNIDO, including its organs, its property, funds, assets and its officials, the provisions of the Convention on the Privileges and Immunities of the United Nations, except that if the Government has acceded in respect of UNIDO to the Convention on the Privileges and Immunities of the Specialized Agencies, the Government shall apply the provisions of the latter Convention, including any Annex to that Convention applicable to UNIDO.

2. (a) The Government shall grant all persons, other than Government nationals employed locally, performing services on behalf of UNIDO, who are not covered by paragraph 1 above, the same privileges and immunities as are

granted to officials under Section 18 or 19, respectively, of the Conventions on the Privileges and Immunities of the United Nations or of the Specialized Agencies, as applicable.

(b) For purposes of the instruments on privileges and immunities referred to in the preceding parts of this Chapter:

- (i) All papers and documents relating to the Project in the possession or under the control of the persons referred to in sub-paragraph 2(a) above shall be deemed to be documents belonging to UNIDO;
- (ii) Equipment, materials and supplies brought into, or purchased, or leased by those persons within the country for purposes of the Project shall be deemed to be property of UNIDO.

3. The expression "persons performing services" as used in Chapters IV and V of this Appendix includes operational experts, volunteers, consultants and juridical as well as natural persons and their employees. It includes governmental or non-governmental organizations or firms which UNIDO may retain to implement or to assist in the implementation of UNIDO assistance to the Project and their employees.

V. FACILITIES AND LIABILITY FOR IMPLEMENTATION OF UNIDO ASSISTANCE

1. The Government shall take any measure which may be necessary to exempt UNIDO, its officials or experts, and other persons performing services on its behalf from regulations or other legal provisions which may interfere with operations under this project and shall grant them such other facilities as may be necessary for the speedy and efficient implementation of UNIDO assistance. It shall, in particular, grant them the following rights and facilities:

- (a) Prompt clearance of officials or experts and of other persons performing services on behalf of UNIDO;
- (b) Prompt issuance without cost of necessary visas, licenses or permits;
- (c) Access to the site of work and all necessary rights of way;
- (d) Free movement within or to or from the country to the extent necessary for proper execution of UNIDO assistance;
- (e) The most favourable legal rate of exchange;
- (f) Any permits necessary for the importation of equipment, materials and supplies, and for their subsequent exportation;
- (g) Any permits necessary for importation of property belonging to and intended for the personal use or consumption of officials of UNIDO, or of other persons performing services on its behalf, and for the subsequent exportation of such property;
- (h) Prompt release from customs of the items mentioned in sub-paragraphs (f) and (g) above.

2. The Government shall bear all risks of operation arising under this project. It shall be responsible for dealing with claims, which may be brought by third parties against UNIDO, its officials, experts, or other persons performing services on their behalf, and shall hold them harmless in respect of claims or liabilities arising from operations under this project. The foregoing provision shall not apply where the Government and UNIDO have agreed that a claim or liability arises from the gross negligence or wilful misconduct of the above-mentioned individuals.

VI. SUSPENSION OF ASSISTANCE

UNIDO may by written notice to the Government suspend its assistance to the Project if in the judgment of UNIDO any circumstance arises, which interferes with or threatens to interfere with the successful completion of the Project, or the accomplishment of its purposes. UNIDO may, in the same or a subsequent written notice, indicate the conditions under which it is prepared to resume its assistance to the Project. Any such suspension shall continue until such time as such conditions are accepted by the Government and as UNIDO shall give written notice to the Government that it is prepared to resume its assistance.

VII. SETTLEMENT OF DISPUTES

1. Except for disputes regarding privileges and immunities, which are subject to settlement in accordance with Section 30 of the Convention on the Privileges and Immunities of the United Nations or Section 32 of the Convention on the Privileges and Immunities of the Specialized Agencies, the Parties agree that any dispute between UNIDO and the Government arising out of or relating to the interpretation or application of the Project Document or of these Basic Terms and Conditions that is not settled by negotiation or other agreed mode of settlement, shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator, or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the parties as the final adjudication of the dispute.

2. Any dispute between the Government and an operational expert arising out of or relating to the conditions of his service with the Government may be referred to UNIDO by either the Government or the operational expert involved, and UNIDO shall use its good offices to assist them in arriving at a settlement. If the dispute cannot be settled in accordance with the preceding sentence or by other agreed mode of settlement, the matter shall at the request of either the Government or UNIDO be submitted to arbitration following the same provisions as are laid down in paragraph 1 of this Chapter, except that the arbitrator not

appointed by either Party or by the arbitrators of the Parties shall be appointed by the Secretary-General of the Permanent Court of Arbitration.

VIII. GENERAL PROVISIONS

1. Assistance made available by UNIDO to the Government under the subject Project Document shall be provided and received in accordance with the pertinent regulations, resolutions and decisions applicable to UNIDO, and subject to the availability of the necessary funds to UNIDO.

2. This Appendix may be modified by written agreement between UNIDO and the Government. Any relevant matter for which no provision is made in this Appendix shall be settled by UNIDO and the Government in keeping with the relevant resolutions and decisions of the appropriate organs of UNIDO.

SIGNED by the duly authorized representatives of the Government of and of UNIDO, in two copies in [English] [French], at, on this day of 19...

For the United Nations
Industrial Development Organization:

For the Government
of

(Name and functional title)

(Name and functional title)