



REPUBLIC OF GHANA

**MINISTRY OF ENVIRONMENT, SCIENCE, TECHNOLOGY
AND INNOVATION (MESTI)**

**GHANA JOBS AND SKILLS PROJECT
Credit # 6716-GH
PROJECT ID: P166996**

DEVELOPMENT OF FRAMEWORK FOR TECHNOLOGY TRANSFER

MODEL TECHNOLOGY TRANSFER AGREEMENTS

Know-How/Consulting Agreement

APRIL, 2023

THIS KNOW HOW AGREEMENT (“Agreement”) is made this.....day of.....20-- **BETWEEN** (insert name of party) of (address) and duly represented by (name and position of authorized representative), (hereinafter referred to as the “Licensee”) which expression shall where the context so requires or admits, include its lawful representatives and assigns of the one part **AND** (name of party) of (address) and duly represented by (name and position of authorized representative), (hereinafter referred to as “the Licensor” which expression shall where the context so requires or admits, include its lawful representatives and assigns) of the other part. The Licensee and the Licensor each shall be referred to herein as a “Party” and together as the “Parties”.

WHEREAS

- A. The Licensor is engaged in
- B. The Licensor is in possession of extensive know-how and technical information concerning and has at its disposal skilled technical personnel to assist in the transfer of such known-how and technical information to a third party;
- C. The Licensee desires to acquire from the Licensor know-how, technical information and assistance to enable the Licensee to.....;
- D. The Licensor is willing to furnish to the Licensee such know-how and technical information and assistance for the manufacture of

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, Parties agree as follows:

1. DEFINITIONS

For the purpose of this agreement, the terms set forth herein when employed in this agreement either in the singular or plural form, are defined to mean, unless the context otherwise requires, the following

1.1. ‘Technical Information’ means engineering and manufacturing information available with the Licensor relating to design, production methods, manufacture and testing of Contract Products as well as information relating to materials used in the manufacture thereof, insofar as such information has either been successfully incorporated in or forms part of the manufacturing or engineering technique of the Licensor and is applicable to the operations of the Licensee. With

regard to materials used in the manufacture of Contract Products, 'Technical Information' means instruction on the required quantity, quality and characteristics and on their treatment in the manufacture of the Contract Products as well as sources of supply.

1.2. "Documentation" means and comprise the written Technical information and Improvements pertaining to Contract Products.

1.3. "Improvements" means future modification relating to designs, production methods, manufacture and testing of Contract Products insofar as such modifications have either been successfully incorporated in or form part of the manufacturing or engineering technique of the Licensor and are applicable to the operations of the Licensee.

1.4. 'Documentation' means and comprises the written Technical information and Improvements pertaining to Contract Products.

1.5 'The Licensor's Patent Rights' means and includes all patents of the Licensor that are in force during the term of his agreement, and patent applications of the Licensor filed or having a priority date prior to the termination of this agreement to the extent they apply to Contract Products and/or cover information available to the Licensee under this agreement.

2. TECHNICAL ASSISTANCE TO BE RENDERED BY THE LICENSOR

2.1. The scope of technical assistance will cover the following:

2.2. The Licensor shall assist the Licensee in order to enable the Licensee to adapt its available plant, machinery and/or equipment (choose appropriate one) to the requirements for manufacture of Contract products by the Licensee.

2.3. The Licensor shall train adequate number of personnel of the Licensee.

2.4. The Licensor shall transmit its Technical Information to the Licensee.

2.5. The Licensor shall transmit its Technical Information to the Licensee.

2.6. The Licensor shall upon request of the Licensee render addition assistance to the Licensee.

3. TRAINING OF THE LICENSEE'S PERSONNEL

3.1. During the term of this agreement the Licensor shall receive the Licensee's personnel for training. Such personnel will be trained by the Licensor in the functions relating to the design/manufacture and testing of the Contract Products and/or materials and maintenance of same.

3.1.1 The Training shall be for such periods and for such numbers as may from time to time be agreed upon by the parties, but altogether for not more than twelve working man-months.

3.1.2 The Licensor shall endeavor to ensure that training of the Licensee's personnel will be adequate to impart complete competency in the respective fields to enable them to undertake eventual independent performance of these functions for the Licensee. The Licensee shall obtain the prior approval of the Government authorities concerned, wherever, applicable, for the delegation of their personnel to the Licensor.

3.2. The Licensee shall be responsible for and shall pay all such salaries, living allowances, travelling expenses and other remuneration and expenses to which its personnel delegated to the Licensor may be entitled.

3.3. The Licensee's personnel deputed to the Licensor shall have sufficient knowledge in their respective lines and actively participated in their respective functions.

3.4. A man-month as used in this paragraph is based upon and regular working time of five days per week with eight hours each, with no work on holidays in Ghana.

3.5. The Licensee's personnel shall during their training observe all the rules and regulations of the Licensor as applicable to the Licensor's own employees.

3.6. The Licensor shall not charge any additional remuneration apart from the payment provided for the training of the Licensee's personnel in its factory.

4. DELEGATION OF THE LICENSOR'S PERSONNEL

4.1. Subject to the Licensee obtaining the prior approval of the Government authorities concerned (where necessary), and upon mutual agreement of the parties, the Licensor shall delegate to the Licensee for periods to be agreed upon by the parties suitable specialists who are required in order to train personnel at the Licensee's factory/work place and to provide general technical assistance by active participation in establishing production, quality control and testing at the Licensee's factory/work place of Contract Products.

4.2. The delegation of the Licensor's technical personnel shall be on the terms and conditions and for the periods to be mutually agreed upon by the parties.

5. TERMINATION OF TECHNICAL INFORMATION

5.1. During the term of this Agreement, the Licensor shall transmit to the Licensee the Technical Information and Improvements except Technical Information and Improvements that the Licensor is precluded from passing on to the Licensee in view of contractual obligations under other agreements of the Licensor.

5.1.1 In spite of the above restrictions, the Licensor confirms that the Technical Information that will be transmitted by the Licensor under this Agreement is sufficient to enable the Licensee to fulfill the objectives of the License contract as well as this Agreement.

5.2. The time and extent of the transmission of Technical Information and Improvements will be mutually determined by the progress of the Licensee in the respective stages of the fulfilment of the objectives of the License agreement.

5.3. The Documentation to be supplied to the Licensee by the Licensor hereunder shall be in the in English (any other language may be added where necessary).

6. CHARGES

6.1 For the services agreed to be rendered by the Licensor pursuant to 6.1, the Licensee shall obtain the prior approval of the Government authorities concerned and pay to the Licensor charges to be mutually agreed upon. Such charges shall be paid by the Licensee to the Licensor in Ghanaian cedi (you may insert an equivalent in any other currency where necessary) in..... (insert bank agreed upon by parties).

6.2 The Licensor shall give an estimate of the charges and obtain the Licensee's clearance to go ahead commencing work.

7. LICENSES AND SUBLICENSES

7.1. During the term of this arrangement, the Licensor undertakes not to enter into a similar collaboration agreement with a third party for the without the prior written consent of the Licensee, which consent shall not be withheld unreasonably.

7.3. The Licensee shall have the right to sub-license the rights granted hereunder to any other party with the prior written approval of the Licensor, on terms and conditions to be mutually agreed upon by the parties hereto.

8. IMPROVEMENTS AND MODIFICATION BY THE LICENSEE

8.1 During the term of this agreement, the Licensee shall communicate to the Licensor all improvements and modifications developed by the Licensee with respect to Contract Products.

8.2. In case the Licensor or its sub-licensee make use of IP/IP's of the Licensee, the Licensor shall pay to the Licensee a reasonable royalty for such use, the amount of which shall be determined by mutual agreement.

9. LIMITATION OF LIABILITY

9.1. The Licensor shall proceed with its usual care in preparing, selecting and transmitting Documentation, Technical information and/or Improvements to the Licensor. However, the Licensor shall not be responsible for any bon fide oversight, which may occur in spite of such care.

9.2. The Licensor shall not be responsible for the Contract Products manufactured by the Licensee under Documentation, Technical Information, Patents of the Licensor and/ or Improvements of the Licensor or for the claims of third parties with respect to Contract Products.

9.3. Neither party to this Agreement shall be liable for any failure or delay on its part in performing any of its obligations under this Agreement or for any loss, damages, costs, charges or expenses incurred or suffered by the other party by reason of such failure or delay, if and so far as such failure or delay shall be the result of or arising out of force majeure.

10. STANDARD OF QUALITY

10.1. Subject to the Licensor providing the necessary Technical Information and Improvements, the Licensee shall take all reasonable measures to ensure that the Contract Products made under the Technical Information and Improvement of the Licensor conform to the quality laid down in such Technical Information.

10.2. The Licensee whenever asked by the licensor shall cease using any reference to the name of the Licensor.

10.3. Upon termination of this Agreement, the Licensee shall forthwith cease using any name, marking or other term or designation indicating that the Contract Products are made according to the Licensor's design, unless otherwise agreed to by and between the parties in writing.

11. SECRECY

The Licensee is obliged to use the Documentation, Technical information and Improvements furnished to it under this Agreement only towards the objective of the license agreement and keep confidential the same until the same has become public knowledge. The obligation subsist up to five years after the termination of this Agreement.

12. VALIDITY

12.1. This agreement shall come into force on the Effective Date of the Agreement and it shall be valid for a period of years therefrom,

12.2. Either party hereto may, by notice in writing to the party terminate this Agreement if any order shall be made or effective resolution passed for the winding up of such other party or if a receiver shall be appointed of such other party's undertaking and assets or, any part thereof.

12.3. Upon a change in the existing management and /or control of the Licensee whether through the alienation of shares, or through the increase of capital and the issue of new shares, otherwise howsoever, or should a different company form be chosen, then the Licensor shall forthwith be informed thereof by the Licensee in writing.

12.3.1 On receipt of such letter, the Licensor and the Licensee shall renegotiate with regard to the subject-matter of this Agreement, and upon such agreement being arrived at, the parties shall give effect to it.

12.3.2 In the event of no such mutually satisfactory agreement being arrived at within six months, the licensor shall be at liberty to terminate this Agreement by giving a three month notice in writing to the Licensee in that behalf.

12.4. Where the Licensor fails to terminate the agreement within the period indicated in this paragraph, the Licensor shall be entitled to terminate the Agreement on a later date if, in the opinion of the Licensor, the actions of the Licensee as a result of the change is prejudicial to the business interest of the Licensor.

12.5. After the termination of this Agreement according to any other Clause hereof, except for completion of work in progress under contract and orders already booked, the rights acquired by the Licensee under Technical Information, Improvements and Patent Rights shall expire with the termination.

13. ARBITRATION

Any dispute or difference or claim arising out of or in relation to this Agreement including the construction, validity, performance or breach thereof which the parties thereto cannot settle by reaching a mutual understanding, shall be referred to the Arbitration for settlement under the Arbitration Act then in force, and the Award of the Arbitration shall be final and binding on both the parties to this Agreement.

14. MISCELLANEOUS

14.1. Neither this Agreement nor any rights hereunder in whole or part shall be assignable or otherwise transferable by one party without prior written permission of the other party to this Agreement.

14.2. This Agreement cannot be modified except by a written instrument signed by both parties.

14.3. Relationship between the Parties

i. The relationship between the parties is that of licensor and licensee, and nothing shall be construed or interpreted to make one party the agent, partner, joint venturer or representative of the other.

ii. Neither party may at any time, without the prior written consent of the other act as or represent that it is the agent, partner, joint venturer or representative of the other.

14.4. Counterparts

This Agreement may be executed in separate counterparts, and all those counterparts together constitute one agreement.

14.5. Legal Costs

Each party shall be responsible for its own legal fees and costs in connection with the preparation, negotiation and execution of this Agreement.

14.6. Warranty of Authority

Where this Agreement is signed by a person for and on behalf of a party to this Agreement, that person:

- i. warrants that the person is the authorised agent of that party with express authority to enter into and sign this Agreement for and on behalf of that party, and thereby to bind that party to the obligations upon that party contained in this Agreement; and
- ii. acknowledges that the other party to this Agreement would not have entered into this Agreement but for the warranty of authority contained in paragraph (i).

14.7. Whole Agreement

The parties acknowledge that solely in relation to the subject matter of this Agreement this Agreement merges all discussions between the parties, up to the date of this Agreement, the whole of the agreement between the parties is contained in this Agreement, and there are no agreements, understandings, other terms whether express or implied, or collateral agreements in force or effect between the parties that are not contained in this Agreement.

14.8. Variations

No variation to this Agreement shall be binding upon the parties unless that variation is in writing, and is signed by officers or directors of all the parties to this Agreement.

14.9. Waiver

- i. No failure or delay of any party to exercise any right given pursuant to this Agreement or to insist on strict compliance by any other party of any obligation in this Agreement shall constitute a waiver of any party's rights to demand exact compliance with the terms of this Agreement.
- ii. Waiver by any party of any particular default by any other party shall not affect or prejudice each party's right in respect of any prior or subsequent default of the same or of a different nature.
- iii. Any delay or omission by any party to exercise any right arising from any default shall not affect or prejudice that party's right in respect to such a default or any subsequent default or the continuance of any default.
- iv. Any waiver shall be an effective waiver only if the waiver is expressly set out in writing and signed by the party making the waiver.

14.10. Applicable Law

- (a) The parties agree that this Agreement is made and entered into in Republic of Ghana and shall be construed according to the laws thereof.

(b) The parties agree to submit themselves to the exclusive jurisdiction of the laws in force for the time being in the Republic of Ghana.

15.12. Severance

If it is held by a court that any part of this Agreement is or would be void, voidable, illegal or unenforceable, or the application of any part of this Agreement to any person or circumstances is or may become invalid or unenforceable, that part shall be severable and shall not affect the continued operation of the remaining terms of this Agreement.

15. Force Majeure

15.1. Neither party shall be liable for any failure to perform as required by this Agreement, if the failure to perform is caused by circumstances reasonably beyond such party's control, such as labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, thefts, or other such occurrences.

15.2 Force majeure shall not include any of the following:

- i. Any event caused by the negligence or intentional action of either party, its agents, employees or subcontractors; or
- ii. Insufficiency of funds or the inability of a party to pay any sum of money required to be paid under this Agreement.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their respective hands and seals the day and year first above written.

SIGNED for and on behalf of the Licensee

By the above-named Representative

.....

Signature

In the presence of:

.....

Name & Signature

Name:

Address:

Occupation:

SIGNED for and on behalf of the Licensor

By the above-named Representative

.....

Name & Signature

In the presence of

.....

Signature

Name:

Address:

Occupation: