

Sample Boiler Plate Clauses

The Infrastructure and Law website of the World Bank presents a number of checklists and annotated concession agreements and BOTs.



Infrastructure and Law website (UserID and password required; refer “Create account” for free access)
<http://web.worldbank.org/external/default/secmain?theSitePK=4817374&pagePK=4710368&contentMDK=21759230&menuPK=5099523&piPK=64860384#sample>

Sample clauses are provided hereafter for boiler plate provisions described in the previous section.

Sample Contractual Clauses on Liability and Indemnification

Option 1: Concession Contract:

Liability and Indemnity

The concessionaire shall indemnify, defend and hold harmless the contracting authority from and against, all liabilities, damages, losses, expenses and claims of any nature whatsoever for personal injury and for damage to or loss of any property arising out of or in any way connected with the indemnifying party’s performance of this Agreement except to the extent that such injury, damage or loss is attributable to a negligent or reckless act or omission of the party seeking to be indemnified.

Environmental Damage

The concessionaire shall be liable for, and shall defend, indemnify and hold the contracting authority harmless from and against, all liabilities, damages, losses, expenses and claims caused by environmental contamination from the construction, operation and maintenance of the Project, except when such losses, expenses or claims are solely attributable to the negligent or reckless act or omission of the contracting authority [or to the very existence of the Motorway itself].

Joint Responsibility

In the event that any loss or damage referred to in Clause x or y is caused only in part by the negligent or intentional act or omission of the contracting authority and in part by the act or omission of the concessionaire, each party shall be liable to the other only in proportion to its relative degree of fault.

Liability for information provided by the contracting authority

The contracting authority makes no warranty in respect of and shall not be held liable for the accuracy of any information, drawings, designs or other documents of whatever nature relating to the Project provided by the contracting authority.

Survival

The obligations under Clauses x, y, and z above shall survive termination of this Agreement.

Option 2: O&M Contract:

Operator's Indemnity

Save to the extent that the Operator is entitled to an indemnity from the DBFO Co under Clause X (the DBFO Co's Indemnities) and subject to Clause Y, the Operator shall indemnify and keep indemnified the DBFO Co from and against any Claims or Losses of any person (including, without limitation, the Secretary of State) if and to the extent that such Claims or Losses arise out of, or in the course of or in connection with a breach of this Agreement or other negligence, omission or default by the Operator, its contractors or subcontractors of any tier or agents or its or their employees (save where and to the extent that the Operator is relieved of liability in respect of any such breach, negligence, omission or default by the terms of this Agreement) including but not limited to any breach of the warranties contained in Clause Z or any other act, neglect or omission of the Operator, its contractors or sub-contractors of any tier or agents or its or their employees except and to the extent that action by the DBFO Co in respect of such Claims or Losses is prohibited by the proviso to Clause XX.

Option 3: Design Build Contract:

1. Limitation of operator's liability

The aggregate liability of Operator to Developer arising from or in connection with this Contract shall in no circumstances whatsoever exceed an amount equal to six months of the Operation Fee due to Operator under Section 2 of Appendix 5.

2 Operator's indemnity

2.1. Subject to Sections X and Y hereof, Operator shall indemnify and hold harmless Developer and its officers for all damages, costs, claims, suits, liabilities, expenses or actions suffered or incurred by Developer as a consequence of third party claims to the extent caused by any negligent act or default or omission or Operator, its employees, contractors and/or Subcontractors in the performance of its obligation under this Contract.

2.2. Subject to Sections X and Y hereof, and without prejudice to the generality of Section

2.3. Hereof, Operator shall indemnify and hold Developer harmless from any fines, penalties and hold Developer harmless from any fines, penalties and similar charges which may be attributed to or imposed on or asserted against Developer by reason of the failure of Operator to comply fully with all Governmental Approvals, save to the extent such failure was caused by an act or omission of Developer (or its agents, employees or contractors).

3. Developer's indemnity

Developer shall indemnify and hold harmless Operator and its officers for all damages, costs, claims, suits, liabilities, expenses or actions ("Claims") suffered or incurred by Operator as a consequence of the performance of the Services to the extent:

- a) Such Claims arise as a result of the negligence or default or omission of Developer, its employees, agents and/or contractors (other than Operator); or
- b) Such Claims arise in connection with error or defaults in the design and/or the construction of the Toll Road.

Option 4: O&M Agreement:

Operator's Indemnity

The Operator shall indemnify and hold harmless the Company and its officers for all damages, costs, claims, suits, liabilities expenses or actions suffered or incurred by the Company as a consequence of third party claims caused by negligence or default or omission by the Operator in the performance of its obligations under this Agreement.

Sample Contractual Clauses on Dispute Resolution

Option 1

SECTION n.1 Governing Law

The rights and obligations of the parties under or pursuant to the Operational subsidy Agreement shall be governed by and construed in accordance with the laws of the [Host Country].

SECTION n.2 Arbitration

The parties hereto will use their best efforts to settle amicably all disputes arising out of or in connection with the [Project Agreements] or the interpretation thereof. Any dispute which cannot be settled amicably within thirty (30) days after receipt by one party of the other party's request to do so may be submitted by either party to arbitration. Each dispute submitted by the parties to arbitration shall be heard by an arbitration panel composed of three (3) arbitrators. Each party shall appoint one arbitrator, and these two will appoint the third arbitrator who shall chair the arbitration

panel. The third arbitrator shall be able to speak English and shall have a knowledge of [host government] law and financial transactions. Arbitration proceedings shall be conducted in [Geographic Location] and in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force at the date of the commencement of the arbitration. Arbitration shall be conducted in the English language. Any award provided by the arbitral tribunal shall be final and binding unless otherwise decided by the arbitral tribunal.

In the event that the two arbitrators appointed by the parties cannot reach agreement on the appointment of the third arbitrator, the President of the International Court of Arbitration of the ICC shall be asked to appoint an appropriate person to act as the third arbitrator. The decision of the President of the International Court of Arbitration in respect of such appointment shall be binding on the parties. If, and only to the extent that, [Host Country] law fails to address an issue arising under the [Project Agreements], the parties shall authorize the arbitrators to apply relevant international practices.

SECTION n.3 Multiparty Dispute Resolution

The Parties shall agree to join any dispute resolution proceeding under this Agreement with any other dispute resolution pending in respect of any other Project Contract relating to substantially the same matter.

SECTION n.4 Performance During Dispute Resolution

Pending the submission of a dispute, controversy or claim to the Arbitration Panel and thereafter until the final decision of the Arbitration Panel, the Parties shall continue to perform all of their obligations under this Agreement, without prejudice to a final adjustment in accordance with such decision.

SECTION n.5 Waiver of Sovereign Immunity

Each Party hereto unconditionally and irrevocably:

- a** agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts;
- b** agrees that should any proceedings be brought against it or its assets, other than the assets protected by the diplomatic and consular privileges under the Foreign Sovereign Immunities Act or any analogous legislation (“Exempted Assets”) in any jurisdiction, in relation to this Agreement or any transaction contemplated by this Agreement, no immunity, sovereign or otherwise, from such proceedings, executions, attachment or other legal process shall be claimed by or on behalf of itself or with respect to any of its assets (other than the Exempted Assets);
- c** consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings including without limitation

the making, enforcement or execution against or in respect of any property irrespective of its use or intended use subject to Sub clause (b) above.

Option 2

n. Dispute Resolution

n.1 Amicable settlement

If any dispute arises in connection with this Agreement, either party may give notice to the other party of the same, whereupon the parties shall meet promptly and in good faith attempt to reach an amicable settlement.

n.2 Panel of Experts

n.2.1 The Panel of Experts shall be comprised of [either one or three suitably technically qualified members. The members can either be named in the contract, or a procedure for their appointment and replacement should be specified.]

n.2.2 In the event that the parties do not resolve a dispute, controversy or claim in accordance with Clause 24.1 within [twenty (20)] days of notice of the dispute being given, then either party may refer the dispute to the Panel of Experts.

n.2.3 The party who initially issued the notice of intention to refer the matter to the Panel of Experts shall within ten (10) days of such notice submit to the Panel of Experts and to the other party the following written documents:

- a** a description of the dispute;
- b** a statement of that party's position;
- c** copies of relevant documentary evidence in support.

n.2.4 Within ten (10) days of receipt of the above documents, the other party shall submit:

- a** a description of the dispute;
- b** a statement of that party's position;
- c** copies of relevant documentary evidence in support.

n.2.5 The Panel of Experts may call for such further documentary evidence and/or interview such persons as they deem necessary in order to reach their decision.

n.2.6 The Panel of Experts shall reach a majority decision and give notice to the parties of their decision within twenty (20) days of receipt of the documents provided under Clause 24.2.4. The decision of the Panel of Experts shall be binding unless one party issues a notice of intention to refer the matter to arbitration in accordance with Clause [].

n.2.7 The costs of the engaging the Panel of Experts shall be borne equally by the Parties, and each Party shall bear its own costs of preparing the materials for and making presentations to the Panel of Experts.

n.3 Arbitration

All disputes arising in connection with this Agreement, which are not settled in accordance with Clauses 24.1 or 24.2, shall be finally settled under the Rules of [Conciliation and Arbitration of the International Chamber of Commerce] by three arbitrators appointed in accordance with the said Rules. The language of the arbitration proceedings shall be [English] and the place of the arbitration shall be [Geographic Location]. The applicable law shall be the law of [Country].

n.4 Waiver of Sovereign Immunity

To the extent that the Grantor may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment or other legal process, the Grantor hereby agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

n.5 Survival

The dispute resolution provisions contained in this Clause 22 shall survive termination of this Agreement.

Option 3

Section n.1 Amicable Settlement

In the event that any dispute, controversy or claim arises among the Party in connection with this Agreement or the interpretation of any of its provisions or upon the occurrence of an Event of Default, each Party shall appoint one senior representative who is not involved in the day-to-day operations relating to the Project and is readily available in the vicinity of [Geographic Location] to serve on a Consultation Panel (the "Consultation Panel") and such Consultation Panel shall meet promptly upon the request of any member thereto or of any Party, in an effort to resolve such dispute, controversy or claim. All such disputes shall be amicably settled through mutual consultation and negotiation between the representatives on the Consultation Panel. The decision of the Consultation Panel shall be binding upon the Parties. All reasonable costs incurred by the members of the Consultation Panel in connection with the Project, including travel expense to and from [geographic location], shall be borne by the Concessionaire and shall form part of the Total Cost of the Project. The Parties hereto agree to use their respective best efforts to resolve all disputes arising hereunder through the Consultation Panel.

Section n.2 Mediation by Panel of Experts

- a** In the event that the Parties are unable to resolve a dispute, controversy or claim in accordance with Section 23.1 or upon the occurrence of an Event of Default, then any Party may refer the dispute, controversy or claim to a Panel of Experts. Within 15 days of the issue of a notice of intention to refer the dispute to a Panel of Experts, the concessionaire and [Government Entity] shall either agree on the appointment of one Person to act as expert or, failing agreement, appoint one expert each and such experts shall, within seven days of their appointment,

designate a third Person to act as expert in order to organize a Panel of Experts. The Consultation Panel may unanimously appoint a permanent Panel of Experts if so requested by the Parties.

- b** The Party who initially issued the notice of intention to refer the matter to the Panel of Experts shall submit to the Panel of Experts and to the other Party the following written documents: (i) a description of dispute; (ii) a statement of that Party position; and (iii) copies of relevant documentary evidence in support of such position.
- c** Within 10 days of receipt of the above documents, the other Party shall submit: (i) a description of the dispute; (ii) a statement of that Party's position; and (iii) copies of relevant documentary evidence of such position.
- d** The Panel of Experts may call for such further documentary evidence and/or interview such Persons as they deem necessary in order to reach their decision.
- e** The Panel of Experts shall reach a majority decision and give notice to the Parties of their decision within 20 days of receipt of the documents provided by the Parties pursuant to subsections (b) and (c) above. The decision of the Panel of Experts shall be binding unless a Party issues a notice of intention to refer the matter to arbitration in accordance with Section 23.3.
- f** The costs of engaging the Panel of Experts shall be borne equally by the Parties, and each Party shall bear its own costs of preparing the materials for and making presentations to the Panel of Experts. In the event that the Parties are unable to resolve a dispute, controversy or claim pursuant to this Section 23.2 within 45 days of the date when such dispute, controversy or claim first arise, then the provisions of Section 23.3 shall apply to such dispute, controversy or claim.

Section n.3 Arbitration Panel

- a** In the event that the Parties are unable to resolve any dispute, controversy, or claim in accordance with Sections 23.1 or 23.2, such dispute, controversy or claim shall be finally settled by a panel of arbitrators (the "Arbitration Panel") in accordance with the [AAA, UNCITRAL or ICSID]. The Arbitration Panel shall consist of three parties. The Concessionaire and [Government Party] shall appoint one arbitrator each and such arbitrators shall, within seven days of their appointment, designate a third Person to act as an arbitrator in order to organize an Arbitration Panel. The arbitral proceedings shall take place in [geographic location] and shall be conducted in the English language. The award of the arbitrators shall be a reasoned one giving reasons for each claim allowed or disallowed.
- b** Any award by the Arbitration Panel shall be final and binding on the Parties.

Section n.4 Multiparty Dispute Resolution

The Parties shall agree to join any dispute resolution proceeding under this Agreement with any other dispute resolution pending in respect of any other Project Contract relating to substantially the same matter.

Section n.5 Performance During Dispute Resolution

Pending the submission of a dispute, controversy or claim to the Consultation Panel, the Panel of Experts and/or the Arbitration Panel and thereafter until the final decision of the Consultation Panel, the Panel of Experts and/or the Arbitration Panel, the Parties shall continue to perform all of their obligations under this Agreement, without prejudice to a final adjustment in accordance with such decision.

Section n.6 Survival

The provisions relating to indemnification contained in Section 18.2, confidentiality contained in Section 22.2 and the dispute resolution provisions contained in this Article 23 shall survive the termination of this Agreement.

Sample Contractual Clauses on Force Majeure

Option 1: Concession Contract:

Force Majeure Events

Force Majeure shall mean any event or circumstances, other than Materially Adverse State Action, which is beyond the control of the party seeking to rely on such Force Majeure, including natural disasters, war, hostilities, embargo, fire, national strikes, which could not reasonably have been foreseen by that party at the date of this Agreement, the consequences of which could not reasonably have been avoided by that party, and which prevents that party from carrying out any of its obligations under this Agreement.

For the avoidance of doubt, the [Concessionaire] shall not have the right to rely on, as Force Majeure, any strike which is limited to the employees of the Company or its subcontractors, or any delay or default of the Company's sub-contractors in the performance of their obligations.

Option 2: O&M Contract

Force Majeure and Supervening Events

The Parties shall be relieved from liability under this Agreement to the extent that by reason of Force Majeure or Supervening Events they are not able to perform their obligation under this Agreement provided that in the case of Force Majeure, the Operator shall only be relieved from liability to the extent that the DBFO Co is relieved from liability under the DBFO Contract and provided further that the Operator has taken such action in relation to the, Services as the DBFO Co is required to take under the DBFO Contract and in particular, but without limitation, to enable the DBFO to comply with its obligations under clause x of the DBFO Contract. The period for performance of any obligation so affected shall, subject to compliance with the remaining provisions of this Clause Y, be extended by the period for which such performance was prevented.

Option 3: Design Build Contract of a Toll Road

Definition of force majeure event

“Force Majeure Event” means any event which is defined as a force Majeure Event in the Franchise Agreement [The term “Force Majeure” shall mean any circumstance or act beyond the reasonable control of either party to this Agreement including, without limitation, an intervening act of God or public enemy, fire, flood, tidal wave, earthquake, epidemic, quarantine restriction, strike, labor dispute, freight embargo or judicial or administrative restraint, all or any of which causes material interruption, damage, or destruction and delays the performance of any obligation created by this Agreement beyond its scheduled time. or which materially interferes with the operation of the Project or any Facility or portion thereof.] and which:

- a Causes material physical damage to the toll Road (or any material part thereof), including the Fixed Operating Agreement and Operation and Maintenance Facilities or their essential functions, before or after completion of construction; or
- b Materially interrupts the full and regular operation of all or any material portion of the toll road, which includes a closure or suspension under Section X in excess of six months.

Sample Contractual Clauses on Assignability / Subcontracting

Option 1: Concession:

Assignment by the Grantor

The Grantor shall not assign or transfer all or any part of its rights or obligations under the Agreement without the prior written consent of the Company, it being understood that the Grantor is free to carry out its obligations under this Agreement through the Ministry.

Assignment by the [Company]

The Company shall not without the prior written consent of the Grantor, transfer all or any of its obligations under this Agreement. Nevertheless, for the purpose of arranging or rearranging the financing for the Project, the Company shall have the right to assign to the Lenders its rights and interests under or pursuant to this Agreement or any other project Document and to create a security interest for the benefit of the Lenders in such rights and interests. Save as aforesaid, the Company shall not create or allow to be created any other security interest, lien, or encumbrance in respect of its rights and interests without the prior written consent of the Grantor.

Option 2: O&M Contract

-Assignment, Sub-contracting

This Agreement shall be binding on and shall inure to the benefit of the DBFO Co and the Operator and their respective successors and permitted assigns.

The Operator shall not assign, novate, transfer or create or allow to subsist any Encumbrance, trust or interest in this Agreement, any part hereof or any benefit or interest herein without the prior written consent of the DBFO Co.

The Operator may not sub-contract the whole of the Services. Parts of the Services may be sub-contracted by the Operator in accordance with clause X of the DBFO Contract and with the prior written consent of the DBFO Co such consent not to be unreasonably withheld or delayed. In the event that the Operator wishes to sub-contract any material part of the Services (including but entirely without limitation, the maintenance of the equipment provided pursuant to the Measuring Equipment Contract), the DBFO Co may as a condition to its consent require to see a draft of the proposed sub-contract and/or a copy of the executed sub-contract other than, in either such case, the confidential financial terms thereof. The Operator shall not terminate the engagement of any sub-contractor appointed to perform any material part of the Services as aforesaid without the prior written consent of the DBFO Co which consent will not be unreasonably withheld or delayed provided any consent required from the Secretary of State pursuant to the DBFO Contract or from the Funders pursuant to the Funding Agreements has been obtained. In the case of the sub-contract with [construction company], the DBFO Co shall not be entitled to withhold its consent where any such consent as aforesaid from the Secretary of State or the Funders has been obtained. The DBFO Co may also require that the Operator and any such sub-contractor execute and deliver to the DBFO Co not later than 7 days after execution of the relevant sub-contract, a direct agreement in the form set out in Schedule X. Without prejudice to the generality of the foregoing, the Operator undertakes that it will, prior to or on the date of this Agreement execute and procure the execution by the following companies and deliver to the DBFO Co direct agreements in favor of the DBFO Co in the form set out in Schedule X:

Option 3: Operation and Maintenance contract on tollroad):

Assignment by Developer

Subject to Operator's written consent, not to be unreasonably withheld, Developer may at any time assign this contract or any rights under or interest in this contract, to a third party.

At assignment, Developer shall be released of any further obligation and liability hereunder and all references to Developer shall be automatically be deemed to refer to such third party.

Assignment by Operator

[Operator A] and [Operator B] shall assign this contract to the Operation Company to be created by [Operator A] and [Operator B]. Assignment shall be substantially consistent with the Assignment and Representation Form, attached as Appendix X to this Contract. At assignment, except as otherwise provided in this contract, [Operator A] and [Operator B] shall be released of any further obligations and liability, and any reference to Operator shall be automatically be deemed to refer to the Operation Company.

Assignment of this Contract to the Operation Company shall be subject to approval by Developer of the terms of the Technical Assistance Agreements (TAAs) to be executed between [Operator A] and the Operation company on one hand, and between [Operator B]and the operation Company on the other hand. The terms of the TAAs shall give satisfaction to Developer that the support provided by the respective shareholders of the Operation Company are sufficient and adequate to allow the Operation Company to perform the obligations of the Operator under this Contract.

Option 4: Design Build Contract of a Toll Road:

Subcontracts

- ① Each instrument evidencing any agreement of contractor with any Subcontractor shall provide that, pursuant to terms in form and substance satisfactory to Developer: (a) the rights of Contractor under such instrument are assigned to Developer and its successors and assigns contingent only upon written request from Developer or its successor or assign following default to by Contractor or termination or expiration this Contract; and (b) all warranties (express and implied) or such Subcontractor shall inure to the benefit of Developer and/or Caltrans and their respective successors and assigns.
- ② Notwithstanding any Subcontract with any Subcontractor, Contractor shall be fully responsible for all of the Work. Neither Developer nor Caltrans shall be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind them.
- ③ Contractor shall include in each Subcontract terms and conditions sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents.”
- ④ Contractor shall provide Developer with a list of its Subcontractors from time to time upon requires, shall allow Developer access to, and provide copies of all Subcontracts and records regarding Subcontracts (unparsed, where not Cost Reimbursable or Cost us to Developer, as may be requested.
- ⑤ The Design subcontract shall not be modified to terminated without Developers’prior written consent.

Option 5: From O&M Agreement:

Assignment

The Operator may not assign, transfer or otherwise part with possession of any interest in this Agreement without the prior written consent of the Company.

Sample Contractual Clauses on Confidentiality:

Option 1: Concession Contract:

Confidentiality Obligation:

Each of the parties, their employees, contractors, consultants and agents, shall hold in confidence all documents and other information whether technical or commercial supplied to it or on behalf of the other party relating to the financing, design, construction, insurance, operation, maintenance and management of the Motorway in the course of this Agreement, and shall not publish or otherwise disclose or use the same for its own purposes otherwise than as may be required by the law of [host country] or to perform its obligations under this Agreement. This Clause x shall not apply to information:

- ① already in the public domain otherwise than by breach of this Agreement;
- ② already in the possession of the receiving party before it was received from the other party in the course of this Agreement and which was not obtained under any obligation of confidentiality; or
- ③ obtained from a third party who is free to divulge the same and which was not obtained under any obligation of confidentiality.
- ④ Survival of Obligations:

The parties obligations under this Clause X shall survive termination of this Agreement.

Option 2: O&M Contract

Confidentiality

Each Party agrees, for itself and its respective directors, officers, employees, servants and agents, to keep confidential and not to disclose to any person (save as hereinafter provided) any of the terms of this Agreement or the DBFO Contract or any confidential or proprietary information (including documents, computer records, specifications, formulae, evaluations, methods, processes, technical descriptions, reports, and other data, records, drawings and information whether or not included in the Design Data or Traffic Data) (together the "Confidential Information") provided to or arising or acquired by it pursuant to the terms or performance of this Agreement (including without limitation any such documents or information supplied in the course of proceedings under the Disputes Resolution Procedure). The Operator shall keep confidential and not disclose to

any person (save as hereinafter provided) any of the terms of the DBFO Contract or the Facilities Agreement.

Option 3: O&M Agreement:

Confidentiality:

Both parties shall keep in confidence all drawings, records, data, books, reports, documents and information, whether technical or commercial, supplied to it by or on behalf of the other party relating to the operation or maintenance of the Tollroad and shall not disclose the same in any manner otherwise than for:

- a the purpose of seeking financial assistance for the company; or
- b for the construction of the Toll road or the maintenance and operation of the Toll road;
- c for the purpose of performing its obligations hereunder; or
- d as it may necessarily be required to disclose pursuant to the Law or orders or appropriate regulatory Authorities.

Option 4: O&M Agreement:

1. Intellectual property confidentiality:

1.1. All technical documentation, drawings, procedures, systems, licenses, etc. acquired or registered by Operator (other than those it acquires from or through Developer) or developed by or on behalf of Operator in relation to the Services are and shall remain the exclusive property of Operator.

1.2. Operator hereby grants to Developer a royalty-free and irrevocable right to use any of such items referred to in Section 10.1.1, for all purposes relating to the construction, operation, maintenance, improvement, and enhancement of the Toll Road and the FOE during the term of such registration and/or useful life.

2. Confidentiality information

Subject to this Section 10, Developer and its employees shall not at any time disclose to any person or otherwise make use of any commercially sensitive or confidential information, documents, or records of Operator, including:

- a The O&M Manuals; and
- b Any software or procedures for the operation of the Toll Road, or the FOE, developed or procured by Operator; except for such information as Developer is bound to disclose by Governmental Rule or in accordance with this Contract.

Sample Contractual Clauses on Records and Information

Option 1: Design Build Contract of a Toll Road

Maintenance of, access to, and audit of records

Contractor shall maintain at its Project Manager’s office a complete set of books and records prepared or employed by Contractor in its management, scheduling, cost accounting and otherwise with respect to the Toll Road. Contractor shall grant to Developer and/or the Financing Entities such audit rights and allow Developer such access to and the right to selectively copy such books and records as Developer and/or the Financing Entities may request in connection with the issuance of Change Orders, the resolutions of Disputes and such other matters as Developer and/or the Financing Entities reasonably deem necessary for purposes of verifying compliance with this Contract and applicable law.

- 1 Where the payment method for any Work is on a Cost Plus basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If audit indicates Contractor has been over credited under a previous progress report or progress payment that over credit will be credited against current progress reports or payments.
- 2 For cost and pricing data submitted in connection with pricing Charge Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, Developer and its representatives have the right to examine all books, records, documents and other data of Contractor related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost of pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

Option 2: Concession Contract:

Records

- 1 Required Records
 - 1.1 The DBFO Co shall maintain and update those records relating to the Project set out in Part I of Schedule X.
 - 1.2 The Secretary of State shall be entitled at his own cost within 180 days after the Commencement Date to deliver up to the DBFO Co the existing records of the Secretary of State in respect of the Project Facilities (or copies thereof). In such event, the DBFO Co shall retain such records in safe storage at its own cost and such records shall thereafter be treated for all purposes as though they were records referred to in Clause 23.1.1.

2 Retention of Records

2.1 All records referred to in Clause 23.1 shall be retained for no less than the period specified in respect of such records in Part 1 of Schedule 14 or, if no such period is specified, a period of 7 years after the end of the Contract Year to which such records relate.

2.2. Where the period for the retention of any records (as set out against the relevant class of records in Part 1 of Schedule 14) has expired, then the DBFO co. shall notify the Secretary of State as to what it intends to do with such records. If it intends to dispose of them or subsequently decides to dispose of them, the DBFO co. shall notify the Secretary of State, and if the Secretary of State shall within 40 days of such notice elect to receive those records or any part of them the DBFO Co, at its own cost, shall deliver up such records to the Secretary of State in the manner and at such location as the Secretary of State shall reasonably specify