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THIS CONTRACT is made on the

BETWEEN

- (1) [] (registered number []) (the "**Supplier**" which expression shall include successors and permitted assigns); and
- (2) [] (registered number []) whose registered office is at [] (the "**Purchaser**" which expression shall include successors and permitted assigns).

WHEREAS

- (A) The Purchaser desires to appoint the Supplier to design, install, commission, operate and maintain a facility for the provision of [potable][treated] water located at [] (the "**Project**") on the terms and subject to the conditions of this Contract; and
- (B) The Supplier has expertise in the design, installation, commissioning, operation and maintenance of water facilities.

IT IS AGREED as follows

1. THE CONTRACT

1.1 Definitions

In the Contract (as defined below) the words and expressions defined below shall have the meanings assigned to them, except where the context requires otherwise:

"Affiliate" means in relation to a private company any subsidiary or parent undertaking of the Supplier or the Purchaser or any other subsidiary undertaking of that parent undertaking (as those terms are defined by [relevant legislation]); and in relation to any statutory body or any unincorporated association, any successor to which its powers and rights of authority are devolved.

"Applicable Laws" means any applicable national, municipal or state statute, ordinance or other law, regulation or by-law or any rule, code or direction including applicable technical, safety or environmental standards or any licence, consent, permit, authorisation or other approval including any conditions attached thereto or interpretation thereof of [COUNTRY] or of any public body or authority, local or national agency, department, inspector, ministry, official or public or statutory person (whether autonomous or not) or professional body which has appropriate jurisdiction.

"Availability" means when the Facility satisfies the availability criteria as set out in the Technical Specification [or where it is deemed available in accordance with Schedule 4].

"**Base Date**" means the date 28 days prior to the signature of this Contract.

"**Base Monthly Charge**" means the charge so defined in Schedule 4.

"**Charge**" means the Base Monthly Charge and the Variable Charge.

"**Completion Date**" means the date upon which the Facility is determined to have met the Performance Tests and is otherwise available for commercial operation as stated in the Performance Certificate, being the date upon which the Performance Tests were passed or were deemed to have been passed in accordance with Sub-Clause 8.3.

"**Conditions Precedent**" means those conditions listed in Sub-Clause 2.1.

"**Contract**" means these conditions of contract, the Technical Specification, the Schedules, and such further documents as may be expressly incorporated.

"**Contract Period**" means the period of the Contract as calculated in accordance with Clause 2 and Schedule 3, as may be extended in accordance with the provisions of this Contract.

"**Contract Year**" means each period of twelve (12) months commencing from the Completion Date or any anniversary thereof.

"**Cost**" means all expenditure properly incurred (or to be incurred) by the Supplier, whether on or off the Site, including overhead, [reasonable profit]¹, financing costs (including (without limitation) any principal, interest, lease payments, commission, fees or breakage costs incurred or sustained in unwinding any hedging arrangements) and similar charges.

"**Dangerous Substance**" means any natural or artificial substance (whether in the form of solid, liquid, gas or vapour, alone or in combination with any other substance) capable of causing harm to man or any other living organism, or capable of damaging the environment or public health or welfare, including but not limited to any controlled, special hazardous, toxic or dangerous waste.

"**day**" means a calendar day and "**year**" means 365 days.

"**Discharge Consent**" means the discharge consent held by the Purchaser and granted by [environmental agency/water authority] in respect of effluent and other discharges from the [Facility] to the main sewer.

["**Discharge Point**" means the discharge point as marked on the plan set out in Schedule 5.]

"**Effective Date**" means the date on which the Conditions Precedent are satisfied or waived pursuant to Clause 2.1.

"**Emergency**" means any situation which imposes an immediate threat of injury to any person or of material damage or material economic loss to the Facility or to any

¹ Purchaser may wish to resist purchaser being compensated for any profit element in case of Force Majeure, Change of Law etc

other property. [For the purposes of this definition "material" shall mean a loss of more than [] [CURRENCY] ([]).]

"Equipment" means all Plant and Materials, [including the Facility,] and all machinery, apparatus and other things required for the execution and completion of the Services and the remedying of any defects, which are and shall remain the property of the Supplier unless otherwise specifically provided under this Contract.

"Expiry Date" means the earlier of (i) the date ascertained pursuant to Schedule 3 and Clause 2 and (ii) the date of termination of this Contract.

"Facility" means the facility to be installed at the Site as described in the Technical Specification.

"Facility Documents" means all information to be submitted by the Supplier as described in the Technical Specification.

"Lenders" means the entities providing financing to the Supplier for the Facility.

"Force Majeure" has the meaning given in Clause 19.

"Guaranteed Level" means the quality [and quantity] of Raw Water to be provided to the Supplier by the Purchaser as set out in the Technical Specification. *[Note: Technical Specification should specify maximum and minimum.]*

"Installation Period" means the period from the Effective Date to the Completion Date. *[Note: this may relate to a phase of construction or mobilisation depending on whether this is construction/ installation of a permanent plant or installation of mobile plant.]*

"Intellectual Property" means all intellectual property or other proprietary rights of every kind, including without limitation all patents, registered designs, unregistered design rights, works subject to the laws of copyright, trade secrets, processes, trademarks and service marks whether registered or not, goodwill and know-how and any associated or similar rights (including, in all cases, applications and right to apply therefore and documentation thereof).

"Materials" means all things of all kinds (other than Plant) to be provided and incorporated in the Facility or used for the performance of the Services by the Supplier.

"Operating Period" means the period from the Completion Date to the Expiry Date.

"O&M Procedures Manual" means the operation and maintenance procedures manual prepared by the Supplier. *[Note: this may not be relevant in certain circumstances.]*

"Party" or **"Parties"** means the Purchaser and the Supplier, or one of them as the context indicates.

"Performance Certificate" means a certificate issued under Clause 8.

"Performance Tests" means the tests specified in the Technical Specification and designated as such, and any other such tests as may be agreed by the Purchaser and the Supplier, which are to be carried out before the Performance Certificate is issued by the Purchaser.

"Permits" means all licences, permits, approvals, consents and other forms of authorisations required to be obtained under any Applicable Laws by the Purchaser or the Supplier in connection with the operation of the Facility or the performance of the Services.

"Plant" means all machinery and apparatus intended to form or forming part of the Facility.

"Pollution Incident" has the meaning given in the Technical Specification.

"Programme" means the programme to be submitted for information by the Supplier as the same may be amended in accordance with Clause 4.5.

"Purchaser Permits" means [those permits, approvals and consents to be obtained by the Purchaser, as listed in Schedule 1, together with any other Permits required by any Applicable Law to be obtained in the Purchaser's name from time to time.]

"Purchaser Site Regulations" means the regulations imposed by the Purchaser on activities performed on the Site or on the Purchaser's premises as set out in Schedule 7, and any amendment thereof by way of a Variation. *[Note: there may be circumstances when Supplier Site Regulations are more appropriate.]*

"Purchaser's Risk" means those risks set out in Sub-Clause 17.4.

"Raw Water" means the water to be supplied by the Purchaser to the Supplier for processing by the Supplier in accordance with the Contract.

"Raw Water Treatment Point" means the connection between the Facility and the Purchaser's pipe carrying the Raw Water to the Facility, as indicated on the plan set out in Schedule 5.

"Reports" means the reports to be provided by the Supplier as set out in Schedule 2.

"Services" means the services to be provided by the Supplier pursuant to this Contract.

"Service Tax" means service tax chargeable in accordance with the provisions of the [relevant legislation] or any similar tax chargeable in any other jurisdiction or replacing such taxes.

"Site" means the places provided by the Purchaser at which the Facility is to be installed and the Services are to be executed as identified on the plan set out in Schedule 5 and any other places as may be specifically designated in the Contract as forming part of the Site.

"Special Conditions" mean the special conditions of contract set out in Schedule 3.

"Standards of a Reasonable and Prudent Supplier" means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor and operator complying with the Permits and all Applicable Laws and engaged in the same type of undertaking under the same or similar circumstances and conditions as contemplated by this Contract.

"Subcontractor" means any person named in the Contract as a subcontractor, manufacturer or supplier for a part of the Services or any person to whom a part of the Services has been subcontracted in accordance with Sub-Clause 4.2, and the legal successors in title to such person, but not any assignee of such person.

"Supplier Permits" means [the Permits required to be obtained by the Supplier as set out in the Technical Specification (Schedule 1)].

"Technical Specification" means the specification of the scope, standard, design criteria (if any) and programme of work as agreed by the Purchaser and the Supplier, as provided in Schedule 1 and any Variations thereto.

"Time for Completion" means the date by which the Facility is to have passed the Performance Tests as set out in Schedule 3 (or as extended under Sub-Clause 7.3), calculated from the Effective Date.

"Treated Water" means the filtered and purified water to be produced by the Supplier utilising the Facility and supplied to the Purchaser in accordance with the Contract.

"Treated Water Supply Point" means the connection between the Purchaser's premises and the Supplier's pipe, gully or sump carrying the treated water from the Facility to the Purchaser's premises, as indicated on the plan set out in Schedule 5.

"Utilities" means the utilities to be supplied by the Parties in accordance with the Technical Specification (Schedule 1).

"Variable Charge" means the charge so defined in Schedule 4.

"Variation" means any alteration and/or modification to the Technical Specification, which is instructed by the Purchaser or approved as a variation by the Purchaser, in accordance with Clause 15.

1.2 Headings and Marginal Notes

The headings and marginal notes are not part of this Contract, and shall not be taken into consideration in its interpretation.

1.3 Interpretation

Words importing persons or parties shall include firms and corporations and any organisation having legal capacity. Words importing the singular also include the

plural and vice versa where the context requires. Words importing one gender also include other genders.

1.4 Law and Language

The law of the Contract is the law of [COUNTRY].

The language for day to day communications shall be English.

1.5 Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Purchaser shall issue any necessary clarification or instruction to the Supplier, and the priority of the documents shall be as follows:

- (a) these conditions of contract, the Special Conditions (Schedule 3) and Schedule 4;
- (b) the Technical Specification;
- (c) the other Schedules; and
- (d) [].

1.6 Documents on Site

The Supplier shall keep on the Site [*Note: specify which part of the Site*] one complete set of the documents forming the Contract, the Facility Documents, Variations, and any communications given or issued under Sub-Clause 1.7. The Purchaser and all persons authorised by him shall have the right to use such documents at all reasonable times.

1.7 Communications

Wherever provision is made for the giving or issue of any notice, instruction, consent, approval, certificate or determination by any person, unless otherwise specified such communication shall be in writing and shall not be unreasonably withheld or delayed.

Wherever provision is made for a communication to be "written" or "in writing", this means any hand-written, type-written or printed communication, including transmission by fax.

All certificates, notices or written orders to be given to the Supplier by the Purchaser and all notices to be given to the Purchaser by the Supplier, shall either be delivered by hand against written acknowledgement of receipt or the agreed systems of electronic transmission. The addresses for the receipt of such communications shall be as stated in this Contract.

All notices or other communications under this Contract to any Party shall be deemed to be duly given or made when delivered (in the case of personal delivery or post) or when received in the case of facsimile (as confirmed by a transmission report). A

notice or other communication received on a non-working day or after business hours in the place of receipt shall be deemed to be served on the next following working day in such place.

1.8 Provision of Facility Documents

The Facility Documents shall be in the custody and care of the Supplier.

1.9 Compliance with Statutes, Regulations and Laws

- (a) The Supplier shall, in all matters arising in the performance of the Contract, comply with and give all notices under the provisions of any national or state statute, ordinance or other law, or any regulation of any legally constituted public authority having jurisdiction over the Services.
- (b) The Purchaser shall obtain all Purchaser Permits, in reasonable time taking account of the times for delivery of the Plant and Materials and for commencement and completion of the Services. The Supplier shall obtain all Supplier Permits. Each Party shall provide the other Party with full assistance and co-operation in obtaining and maintaining all of the Permits which the other Party is responsible for.
- (c) The Purchaser and the Supplier shall comply with the laws of [].

1.10 Severability

The invalidity, in whole or in part, of any of the provisions of this Contract will not affect the validity of the remainder of this Contract.

1.11 Whole Agreement and Amendment

This Contract contains the complete agreement between the Purchaser and the Supplier with respect to the matters contained herein and supersedes all other agreements, whether written or oral, with respect to the matters contained therein. No modification, amendment, or other change of this Contract will be binding on any Party unless consented to in writing by both Parties.

In entering into this Contract no party may rely on any representation, warranty, collateral contract or other assurance (except those set out in this Contract) made by or on behalf of any other Party before the signature of this Contract and each of the Parties waives all rights and remedies which, but for this Sub-Clause, might otherwise be available to it in respect of such representation, warranty, collateral contract or other assurance; provided that nothing in the Sub-Clause shall limit or exclude any liability for fraud.

1.12 Waiver

Failure by either Party to exercise any of its rights under this Contract shall not constitute a waiver of such rights. Neither Party shall be deemed to have waived any right resulting from any failure to perform by the other unless it has made such waiver specifically in writing or unless otherwise provided in this Contract.

1.13 Counterparts

This Contract may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Contract.

1.14 Costs of negotiation

Each of the Parties shall pay its own costs and expenses of and incidental to the negotiation, preparation and completion of this Contract.

1.15 Assignment

The Purchaser and Supplier shall not assign or otherwise transfer all or any of their rights or obligations under this Contract without the prior written consent of the other Party, provided that the Supplier may (without the consent of the Purchaser):

- (a) delegate and/or sub-contract any of its rights or obligations under this Contract but without relieving the Supplier of its obligations under the Contract; or
- (b) assign, transfer or create security over all or any benefit of this Contract for the purposes of obtaining financing;[or
- (c) assign or transfer all or any rights or obligations of this Contract to an Affiliate of the Supplier].

1.16 Exclusive Remedies

Subject to any express right the Purchaser may have under this Contract to terminate this Contract or any other express rights pursuant to the Contract, the Purchaser's sole remedy in respect of any failure by the Supplier to comply with Sub-Clause 7.2 shall be the right to liquidated damages pursuant to Sub-Clause 7.3².

2. COMMENCEMENT AND TERM

2.1 Conditions Precedent

- (a) With the exception of Clauses 1, 2, 20, 21, 22, 23 and 24 (the “**Excepted Clauses**”), which shall be immediately enforceable on signature of this Contract, the provisions of this Contract are conditional upon the following occurring or being waived by both Parties:
 - (i) all Purchaser Permits being obtained;
 - (ii) the Purchaser providing access to and possession of the Site in accordance with Sub-Clause 3.2;
 - (iii) [financial close.][*subject to financing*]

[Note: consider whether supplier permits should be a condition precedent.]

² This provision is important to ensure that there is no potential duplication between Purchaser seeking liquidated damages and then suing Supplier for breach of contract

2.2 Failure to Meet Conditions Precedent

In the event that any of the conditions precedent in Sub-Clause 2.1 have not been satisfied or waived by both Parties on or before the date six months after the date of signature of this Contract or such later date as the Parties may agree, this Contract shall automatically terminate and the Parties shall have no further liability to the other whatsoever.

2.3 Term

This Contract shall continue in full force and effect from the Effective Date until the Expiry Date.

2.4 Extension to Contract Period

Either Party may propose to the other Party to extend the Contract Period by giving notice to that effect to the other Party not less than [six] months prior to the date on which the Contract Period would otherwise end. In the event that a Party gives notice hereunder and the other Party agrees to such extension the terms of such extended period shall be as agreed between the Parties.

3. THE PURCHASER

3.1 General Obligations

The Purchaser shall, at no cost to the Supplier and in such a manner as will not prevent, interfere with or delay the Supplier carrying out its obligations under the Contract:

- (a) provide the Site in accordance with Sub-Clause 3.2;
- (b) pay the Supplier in accordance with Clause 15;
- (c) permit the Supplier to display on or at the Site and any part of the Purchaser's premises reasonably near to it, signs indicating the Services provided by the Supplier and the ownership arrangements for any Facility and take reasonable steps to ensure that no such sign is removed or altered;
- (d) [give such assistance (by way of provision of information, the signing of elections and notices or otherwise) as may be reasonably requested by the Supplier for the purpose of assisting with any claim for capital allowances which may be made in respect of the Facility or part thereof;]
- (e) provide continuous supplies of Utilities in accordance with the Technical Specification;
- (f) if requested by the Supplier, take reasonable steps to procure access by the Supplier to any legislative bodies having jurisdiction over the Services and/or the Facility and advise the Supplier of any planned discussions with any such bodies and, if requested by the Supplier, involve the Supplier in such discussions;

- (g) ensure the full co-operation of the Purchaser's employees, agents, suppliers and subcontractors in connection with the provision of the Service and prevent its employees, agents, suppliers and subcontractors from taking any steps which adversely affect the Supplier's ability to discharge its obligations under the Contract;
- (h) make available for the exclusive use of the Supplier, its employees, agents, suppliers and Subcontractors secure and convenient parking facilities and work and office space reasonably required by the Supplier and any other facilities required by the Supplier for its employees, agents, suppliers and Subcontractors, to a standard reasonably acceptable to the Supplier;
- (i) provide the supply of Raw Water in accordance with the Guaranteed Levels;
- (j) maintain the Discharge Consent in its name in respect of discharges from the Facility and promptly notify the Supplier of any communications between [water authority/environmental agency] and the Purchaser regarding the Purchaser meeting the discharge limits prescribed in the Discharge Consent and any other matters which the Supplier may regard as necessary in order to carry out its activities under this Contract; and
- (k) obtain and maintain the Purchaser Permits.

3.2 Access to and Possession of the Site

[Depending on financing] Either

- (a) [The Purchaser shall grant to the Supplier a lease over the Site in the form set out in Schedule 8 which]

or

[The Purchaser shall grant the Supplier rights of access to and vacant possession of the Site before the Effective Date. Such right and possession shall be exclusive to the Supplier and any Subcontractors until the Expiry Date, and]

shall be free of all and any tax, charge, lien, trust, lease, easement or any other mortgage, charge, assignment or limitation of use.

- (b) The Purchaser shall, from the commencement of work on Site until the Expiry Date, provide all necessary:
 - (i) fencing, lighting, guarding and watching;
 - (ii) safety measures as are not required to be provided by the Supplier as a part of the Services but which are required by Applicable Laws and/or which the Supplier may reasonably require in order to carry out its obligations; and
 - (iii) temporary roadways, footways, guards and fences which may be necessary for the accommodation and protection of owners and occupiers of adjacent land, the public and others,

and shall ensure that no person other than the Supplier's authorised personnel and Subcontractors shall operate or in any way disturb or interfere with the Facility or the Site provided that, in an Emergency, personnel of the Purchaser who have previously been approved for this purpose by the Supplier in writing may shut down the Facility.

- (c) The Purchase shall provide such access routes (including temporary rights of way) as are reasonably required by the Supplier at the Purchaser's cost and shall ensure that these are maintained free of obstructions.
- (d) If the Supplier suffers delay and/or incurs Cost from failure on the part of the Purchaser to grant right of access to or possession of the Site in accordance with Sub-Clauses 3.2(a) and (b), or appropriate unobstructed access route to the Site in accordance with Sub-Clause 3.2(c), the Supplier shall be entitled to:
 - (i) in the case of the Installation Period only, any extension of time under Sub-Clause 7.3; and
 - (ii) the amount of such Cost

and if the failure occurs during the Operating Period the Supplier shall also continue to receive the Base Monthly Charge plus the Cost, and reasonable loss of profit for the period that the Supplier suffers delay.

4. THE SUPPLIER

4.1 General Obligations

- (a) The Facility as installed by the Supplier shall be wholly in accordance with the Contract. The Services shall include any work, which is necessary to satisfy the Technical Specification, or arises from any obligation of the Supplier. The Supplier shall design and install the Facility, including providing Facility Documents, in accordance with this Contract.
- (b) The Supplier shall from the Completion Date:
 - (A) operate and maintain the Facility from and including the Raw Water Supply Entry Point to and including the Treated Water Supply Point,
 - (B) supply Treated Water and
 - (C) dispose of sludge from the Treated Water

in accordance with the terms of this Contract and perform the Services hereunder in good faith, in accordance with:

- (i) the Standards of a Reasonable and Prudent Supplier;
- (ii) the Technical Specification;
- (iii) all Applicable Laws, including, without limitation, all laws relating to labour or the environment;

- (iv) all relevant Permits from time to time in force including without limitation all relevant health and safety authorisations and environmental consents; and
 - (v) the Purchaser Site Regulations.
- (c) If the Supplier is aware of a conflict between the requirements set out in paragraph (b), it shall inform the Purchaser accordingly and the Parties shall discuss and agree upon the manner in which the Supplier should perform its obligations. Failing agreement the Purchaser shall direct the manner in which such conflict shall be resolved provided that the manner as directed by the Purchaser will not cause the Supplier, its employees, agents or Subcontractors to breach any mandatory or criminal law or to run any risk of criminal, penal or other non-monetary penalties or prosecution and that the Purchaser shall (save to the extent arising by virtue of any negligent act or omission of the Supplier or a breach of this Contract by the Supplier) indemnify the Supplier against all costs, claims, damages, expenses, fines, losses, liabilities and penalties incurred or sustained by the Supplier as a result of the performance of the Services by the Supplier in accordance with such direction.

4.2 Subcontractors

The Supplier may subcontract any part of the Services to be provided by it under this Contract without the prior written consent of the Purchaser. If the Supplier does subcontract any part of the Services, the Supplier shall not be relieved from any liability or obligation under this Contract and the Supplier shall continue to be responsible for the negligent acts, omissions or defaults of any of its Subcontractors as fully as if they were the negligent acts, omissions or defaults of the Supplier, its officers, employees or agents.

4.3 Site Data

The Purchaser shall have made available to the Supplier, prior to [date], all the data on hydrological and sub-surface conditions at the Site, and studies on environmental impact, which have been obtained by or on behalf of the Purchaser from investigations for the Services. The Supplier shall be responsible for interpreting such data, the Purchaser shall be responsible for the accuracy of such data.

4.4 Unforeseeable Sub-Surface Conditions

³If sub-surface conditions are encountered by the Supplier which were not set out in the data supplied by the Purchaser in accordance with Sub-Clause 4.3, the Supplier shall give notice to the Purchaser so that the Purchaser can inspect such conditions. If such conditions were not (by the Base Date) foreseeable from the data supplied by the Purchaser pursuant to Sub-Clause 4.3 by an experienced supplier, the Supplier shall be entitled, to the extent that such conditions delay the Time for Completion or result in additional Cost, to:

³ It may be appropriate for the Supplier to accept the risk for data/investigations of sub-surface conditions if the Supplier has sufficient access prior to contract to the Site

- (a) an extension of time under Sub-Clause 7.3; and
- (b) the amount of any additional Cost due to such conditions.

4.5 Programme

The Supplier shall submit to the Purchaser, for information, within 30 days of the Effective Date the Programme which shall contain the order in which the Supplier proposes to carry out the Services (including each stage of design, delivery to Site, installation, testing and commissioning of the Facility). The Supplier may amend such Programme from time to time and shall notify the Purchaser of any such amendment as soon as practicable.

4.6 Progress Reports

The Supplier shall provide during the Contract Period the reports set out in Schedule 2.

4.7 Fossils

All fossils, coins, articles of value or antiquity, and structures and other remains or things of geological or archaeological interest or other relevant obstructions such as unexploded munitions discovered on the Site shall (as between the Parties) be the property of the Purchaser. The Supplier shall take reasonable precautions to prevent his staff, labour or other persons from removing or damaging any such article or thing. The Supplier shall, immediately upon discovery of such article or thing, advise the Purchaser, who may issue instructions for dealing with it.

If the Supplier suffers delay and/or incurs Cost arising from or in connection with such article or thing or in following these instructions of the Purchaser and if such delay and/or Cost was not (by the Base Date) foreseeable by an experienced contractor from the information provided by the Purchaser in accordance with Sub-Clause 4.3, the Supplier shall be entitled to:

- (a) any extension of time under Sub-Clause 7.3; and
- (b) the amount of any additional Cost due to such conditions.

4.8 Release from Obligations

The Supplier shall be relieved of its obligation to perform the Services to the standard set out in Sub-Clause 4.1 to the extent delivery of Services is impeded, prevented or delayed by a Purchaser's Risk event, as set out in Sub-Clause 17.3.

5. DESIGN

5.1 General Obligations

Subject to the provisions of this Contract, the Supplier shall carry out, and be responsible for, the design of the Facility in accordance with the Technical Specification. The Supplier holds himself, his designers and design Subcontractors as having the experience and capability necessary for the design.

5.2 Facility Documents

The Supplier shall prepare Facility Documents in sufficient detail to satisfy all regulatory approvals. Errors, omissions, ambiguities, inconsistencies, inadequacies and other defects shall be rectified by the Supplier at his cost.

5.3 Technical Standards and Regulations

Subject to the provisions of this Contract, the design, the Facility Documents, the execution and the installed Facility shall comply with English specifications, technical standards, building, construction and environmental regulations, regulations applicable to the Facility, and the standards specified in the Technical Specification, or defined by relevant law. References in the Contract to such specifications, regulations, laws and other matters shall be understood to be references to the same applicable on the Base Date, unless stated otherwise. If substantially changed or new applicable national specifications, technical standards, regulations or laws come into force after the Base Date, the Supplier shall submit proposals for compliance to the Purchaser. In the event that such proposals constitute a Variation, a Variation shall be initiated in accordance with Clause 14.

6. PLANT, MATERIALS AND WORKMANSHIP

6.1 Manner of Execution

All Plant and Materials to be supplied shall be manufactured, and all work to be done shall be executed in accordance with the Technical Specification in a proper and workmanlike manner, with properly equipped facilities and non-hazardous materials, and in accordance with recognised good engineering practice.

6.2 Inspection

The Supplier will carry out inspections of the materials and workmanship and progress of Plant and Materials to be supplied under the Contract in accordance with the quality plan to be prepared by the Supplier.

7. COMMENCEMENT AND DELAYS

7.1 Commencement of Services

The Supplier shall commence the [design/procurement] and installation of the Facility as soon as is reasonably practicable after the Effective Date. The Supplier shall then proceed with the Services with due expedition and without delay.

7.2 Time for Completion

The Facility shall have passed the Performance Tests by the Time for Completion.

7.3 Extension of Time for Completion

The Supplier is entitled to an extension of the Time for Completion (and a corresponding extension of the Expiry Date) if he is or will be delayed either before or after the Time for Completion by any of the following causes:

- (a) a Variation (unless an adjustment to the Time for Completion is agreed under Sub-Clause 15.3);
- (b) a Force Majeure event (as defined in Sub-Clause 19.1);
- (c) a Release Event (as defined in Sub-Clause 17.3);
- (d) a cause of delay giving an entitlement to extension of time under a Sub-Clause of this Contract, unless the Supplier has not complied with such Sub-Clause;
- (e) [physical conditions or circumstances on the Site, which are adverse and were not (by the Base Date) drawn to the Supplier's attention or within its knowledge (as is evidenced by written records) or foreseeable from the data supplied to the Supplier by the Purchaser;]⁴
- (f) any breach of this Contract, delay, impediment or prevention by the Purchaser; or
- (g) an action by a legally constituted public authority which has delayed, impeded or prevented the Supplier from installing the Facility other than due to the negligence or wilful default of the Supplier.

If the Supplier intends to apply for an extension of the Time for Completion, the Supplier shall give notice to the Purchaser of such intention as soon as possible, together with any other notice required by the Contract and relevant to such cause. The Supplier shall keep such contemporary records as may be necessary to substantiate any application, either on the Site or at another location acceptable to the Purchaser, and such other records as may reasonably be requested by the Purchaser. The Supplier shall permit the Purchaser to inspect all such records, and shall provide the Purchaser with copies as required.

The Purchaser shall respond within 28 days of receiving a claim from the Supplier by either confirming the Supplier's entitlement, or denying the claim with detailed reasons. Any dispute may be referred for resolution in accordance with Clause 20.

7.4 Liquidated Damages for Delay

If the Supplier fails to comply with Sub-Clause 7.2 for reasons other than those set out in Clause 7.3 above, the Supplier shall pay to the Purchaser the sum set out in Schedule 3 as liquidated damages for such default (which sum shall be the only monies due from the Supplier for such delay) for every week which shall elapse between the relevant Time for Completion and the date stated in the Performance Certificate, provided that the total of all liquidated damages payable by the Supplier pursuant to this Sub-Clause 7.4 shall not exceed the sum set out in Schedule 3.

⁴ Usually a subject of negotiation as to whom bears this risk

8. PERFORMANCE TESTS AND CERTIFICATE

8.1 Supplier's Obligations

The Supplier shall carry out the Performance Tests in accordance with this Clause 8 and the Technical Specification (Schedule 1). The Supplier shall give to the Purchaser 7 days' notice of the date on which the Supplier will carry out the Performance Tests.

In considering the results of the Performance Tests, the Purchaser shall make allowances for the effect of any use of the Facility by the Purchaser on the performance or other characteristics of the Facility. As soon as the Facility has passed the Performance Tests, the Supplier shall provide the Purchaser with a certified report of the results of all such Performance Tests.

8.2 Retesting

If the Facility fails to pass the Performance Tests, the Supplier shall promptly and in any event within [14] days inform the Purchaser of the action it proposes to take to ensure that it does pass them when retested and such failed Tests shall then be promptly repeated under the same terms and conditions. Such failed Tests shall be repeated in accordance with this Clause 8 as many times as is required until the Facility passes the Performance Tests.

8.3 Performance Certificate

The Supplier may apply by notice to the Purchaser for a Performance Certificate not earlier than 14 days before the Facility is, in the Supplier's opinion, installed in accordance with this Contract. The Purchaser shall, within 28 days after the receipt of the Supplier's application:

- (a) issue the Performance Certificate to the Supplier, stating the date on which the Facility has passed the Performance Tests; or
- (b) reject the application, giving its reasons for believing that the Facility has not passed the Performance Tests and specifying the work required to be done by the Supplier to enable the Performance Certificate to be issued. The Supplier shall then complete such work before issuing a further notice under this Sub-Clause.

If the Purchaser fails either to issue the Performance Certificate or to reject the Supplier's application within the period of 28 days, and if the Facility has passed the Performance Tests, the Performance Certificate shall be deemed to have been issued on the last day of that period and the Completion Date shall be deemed to be the date of receipt of the application.

8.4 Interference with Performance Tests

If the Supplier is prevented from carrying out the Performance Tests by a cause for which the Purchaser (or another person employed by the Purchaser) is responsible, the Performance Certificate shall be deemed to have been issued on the date when the Performance Tests would otherwise have been completed. The Purchaser shall then

issue a Performance Certificate accordingly, and the Supplier shall carry out the Performance Tests as soon as practicable. If the Supplier incurs additional Cost as a result of this delay in carrying out the Performance Tests, the Supplier shall be entitled to such Cost plus reasonable profit.

9. METERING

9.1 Responsibility for Metering

The Supplier shall be responsible for all metering related to the Project as set out in the Technical Specification (Schedule 1). Such metering shall (where appropriate) monitor the quantity and quality of both Raw Water and Treated Water. *[Note: relevant meters to be set out in the Technical Specification. In some deals sampling may be appropriate.]*

9.2 Testing

The Supplier shall use its reasonable endeavours to arrange for the testing and calibration of all meters referred to in Sub-Clause 9.1 above on installation and thereafter on a regularly scheduled basis, being at least once every 12 months.

If at any time either Party has reasonable grounds to suspect that any meter or measuring equipment is not accurate in any respect, the discrepancy or suspected discrepancy shall be immediately reported to the other Party in writing along with any evidence in support of such claim and (i) the Supplier shall arrange for the testing of the relevant meter where the Supplier is the owner of such meter and (ii) the Purchaser shall arrange for testing in the case of meters owned by it or third parties at its own cost. *[Note: This Clause assumes that all relevant meters are in the Supplier's control. If not, this Sub-Clause and Sub-Clause 10.4 may need to be amended.]*

9.3 Error Adjustment

If any of the installed meters or other measuring equipment fails to register or, upon test, is found not to be within the accuracy standards established by the equipment supplier or if not available in the latest revision of the [STANDARDS] or other relevant standard, then for the purposes of this Contract a reasonable adjustment in accordance with generally accepted engineering practices shall be made correcting all measurements, which adjustments shall reflect, if determinable, the actual period during which any inaccurate measurements were made. If such period cannot be determined it shall be deemed to be such period as shall be equal to one-half of the time from the date of the last previous test of such meter or measuring equipment, provided that the period covered by any such correction shall not exceed six (6) months.

9.4 Testing Costs

The costs of all testing of the Supplier's meters pursuant to this Clause 9 shall be borne by the Supplier except in the case of testing carried out at the instigation of the Purchaser which shall be borne by the Supplier, if such testing reveals the relevant meters to be inaccurate by:

- (a) in the case of conductivity, more than []%; and
- (b) in the case of other elements, more than []%,

and by the Purchaser if within such accuracy standards. The costs of testing of all other meters shall be borne by the Purchaser.

10. REPORTS

The Supplier shall provide the Purchaser with such reports as are required pursuant to Schedule 2 and shall comply with all reporting requirements prescribed by Applicable Laws or any relevant Permit. In addition, the Supplier shall provide the Purchaser with prompt written notice of any litigation or claims, disputes or actions, threatened or filed, concerning the Facility or the Services.

11. TREATMENT OF RAW WATER

11.1 Treatment

Unless otherwise specified in this Contract, as from the Completion Date, the Supplier shall, in accordance with the Technical Specification, receive and treat all Raw Water delivered to the Facility.

Where Raw Water arriving at the Facility exceeds the applicable Guaranteed Level (Quantity), or falls outside the Guaranteed Level (Quality) the Supplier shall receive such Raw Water delivered to the Facility and shall make reasonable efforts in accordance with the Standards of a Reasonable and Prudent Supplier to treat it.

11.2 Pollution Incident

On any day when a Pollution Incident occurs, the Supplier shall make reasonable efforts to receive, treat and dispose of all Raw Water delivered to the Facilities and shall treat it in accordance with the Standards of a Reasonable and Prudent Supplier endeavouring to meet the Technical Specification and in a manner which will mitigate, so far as reasonably practicable, the extent to which the pollutant prevents the treatment of Raw Water in accordance with the Technical Specification. The Supplier shall be relieved in these circumstances from providing Treated Water that meets the Technical Specification save where the Pollution Incident arises as a result of the Supplier's negligence or failure to comply with this Contract. *[Note: definition of Pollution Incident should cover Purchaser and third party caused events.]*

11.3 Purchaser indemnity

To the extent permitted by law, the Purchaser shall indemnify on demand and hold harmless the Supplier, its subcontractors, agents and employees from and against all claims, damages, losses (including loss of Charge) and expenses arising out of or resulting from Raw Water exceeding the Guaranteed Level (Quantity) or falling outside the Guaranteed Level (Quality) or from any Pollution Incident (save where the Pollution Incident arises as a result of the Supplier's negligence or failure to comply with this Contract).

12. EMERGENCIES

12.1 Emergencies

Notwithstanding anything to the contrary herein, the Supplier may take any actions as the Supplier deems to be necessary (acting in accordance with the Standards of a Reasonable and Prudent Supplier) in the case of an Emergency affecting the Project or the operation of the Facility where the Supplier considers immediate action is required to safeguard lives or property (and provided that any communication with the news media made by the Supplier shall provide only enough information to satisfy immediate public concern).

12.2 Further Action

In the event of an Emergency, the Supplier shall forthwith notify the Purchaser of the Emergency, the expenditure made and the actions taken. The Purchaser shall be responsible for this expenditure provided the Supplier has complied with its obligations hereunder and unless and to the extent that the Emergency is caused by any negligent act or omission on the part of the Supplier or any of its Subcontractors. The Supplier shall take all reasonable steps to minimise the cost to the Purchaser of its actions, having regard to the circumstances and the need to act promptly. Following such notification, at the request of the Purchaser, the Parties shall discuss without delay the further actions which should be taken as a result of that Emergency and the estimated expenditure associated therewith.

12.3 Purchaser's Notice

If the Purchaser considers that an Emergency has arisen in relation to the Project, the Purchaser may give written notice to the Supplier specifying the nature of the Emergency which it has identified and the manner in which it requests such Emergency to be rectified. The Supplier shall, to the extent it is able to, rectify such Emergency with all due diligence. If the Supplier fails to comply with such notice promptly, the Purchaser shall be entitled to take such actions as may be necessary to remedy such breach by the Supplier.

12.4 Purchaser Indemnity for step-in

To the extent permitted by law, the Purchaser shall indemnify and hold harmless the Supplier, its Subcontractors, agents and employees from and against all claims, damages, losses and expenses arising as a result of the Purchaser or its sub-contractors, agents or employees taking action pursuant to Sub-Clause 12.3.

13. STAFF, LABOUR AND SITE

13.1 Engagement of Staff and Labour

The Supplier shall make its own arrangements for the engagement of all staff and labour, local or otherwise.⁵

13.2 Health and Safety

The Supplier shall comply with all applicable safety regulations in its design, access arrangements and operations on Site. Precautions shall be taken by the Supplier to ensure the health and safety of its staff and labour. The Supplier shall maintain reasonable records and make reports concerning health, safety and welfare of persons, and damage to property.

The Supplier shall appoint a member of its staff to be responsible for maintaining the safety, and protection against accidents, of personnel on the Site. This person shall be qualified for his work and shall have the authority to issue instructions and take protective measures to prevent accidents. The Supplier shall send to the Purchaser details of any accident as soon as possible after its occurrence.

13.3 Supplier's Personnel

The Supplier shall employ (or cause to be employed) only persons who are appropriately qualified, skilled and experienced in their respective trades or occupations. The Supplier shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its staff and labour, and to preserve peace and protection of persons and property in the neighbourhood of the Services against such conduct.

14. VARIATIONS

14.1 Right to Vary

Variations may be initiated by the Purchaser at any time after the Effective Date and before the Expiry Date, either by instruction or by a request for the Supplier to submit a proposal. If the Purchaser requests the Supplier to submit a proposal and subsequently elects not to proceed with the change, the Supplier shall be reimbursed by the Purchaser for the Cost incurred, including design services.

The Purchaser shall not be entitled to request a Variation which would reduce the scope of the Facility and/or the Services.

The Supplier shall not make any alteration and/or modification of the Services, unless and until the Purchaser instructs or approves a Variation.

⁵ This assumes situation where Supplier is not taking on staff from Purchaser. If this is not the case, need to consider labor laws to determine whether staff can be transferred to Supplier, on what terms etc.

14.2 Value Engineering

The Supplier may, at any time, submit to the Purchaser a written proposal which in the Supplier's opinion will reduce the cost of constructing, maintaining or operating the Facility, or improve the efficiency or value to the Purchaser of the completed Facility, or otherwise be of benefit to the Purchaser. Any such proposal shall be prepared at the cost of the Supplier and shall include the items listed in Sub-Clause 14.3.

14.3 Variation Procedure

If the Purchaser requests a proposal or instructs a variation, the Supplier shall submit, as soon as practicable:

- (a) a description of the proposed design, work and/or services to be performed and a programme for its execution;
- (b) the Supplier's proposal for any necessary modifications to the programme according to Sub-Clause 4.8; and
- (c) the Supplier's proposal for adjustment to the Charge, Time for Completion and/or modifications to the Contract.

The Purchaser shall, as soon as practicable after receipt of such proposals, respond with its approval, rejection or comments. If a Variation is to be carried out, the Parties must first agree adjustments to the Charge, Time for Completion and Expiry Date, modifications to the Contract and who is to obtain any necessary Permits and the relevant Party shall obtain such Permits.

Adjustment of the Charge shall include profit and cost of financing, and shall take account of the Supplier's submissions under Sub-Clause 14.2 and any rates set out in this Contract.

14.4 Right or Refusal

The Supplier shall have the right to refuse a Variation requested by the Purchaser if:

- (a) the Supplier reasonably considers that the Variation, if implemented, would have a material adverse effect on the Supplier's ability to provide the Services or perform its obligations under or in connection with this Contract;
- (b) the Variation would cause the Supplier to breach any Permits; or
- (c) the Variation would, if implemented, materially adversely affect the health and safety of any person or give rise to a breach of any Applicable Law.

14.5 Base Monthly Charge

If whilst implementing the Variation, the Variation affects the ability of the Supplier to provide the whole or part of the Services or fulfil its obligations under or in connection with this Contract the Supplier will be entitled to be paid the Base Monthly Charge.

15. CONTRACT PRICE AND PAYMENT

15.1 Payment Mechanism

- (a) The Supplier shall submit a monthly invoice for the Charge calculated pursuant to Schedule 4 and any additional amounts payable to it under this Contract and the due date for payment of such monthly invoice shall be the date falling seven (7) days after the date of the invoice. The final date for payment of the Charge shall be twenty-one (21) days from the date of the relevant invoice, except in the case of manifest error. The Base Monthly Charge shall be settled in accordance with Sub-Clause 15.2.
- (b) No later than five (5) days after the date on which any payment becomes due under this Contract, the Purchaser shall give notice to the Supplier specifying any amount of the payment made or proposed to be made and the basis on which that amount was calculated.
- (c) If the Purchaser considers that it is entitled to withhold any amount from any payment, it shall give the Supplier a notice of its intention to withhold payment not later than ten (10) days before the relevant final date for payment, specifying the amount proposed to be withheld and the ground or grounds for withholding payment. Any amount that the Purchaser does not notify as an amount so to be withheld shall be paid by the relevant final date for payment.
- (d) Where the period of payment would include a day which is a bank holiday in [COUNTRY], that day shall be excluded.
- (e) All amounts payable pursuant to this Contract shall be paid without set off unless otherwise agreed between the parties or determined pursuant to Clause 20.
- (f) All payments made under this Contract shall be made by transfer to such bank account as each Party shall notify to the other and shall be in the currency indicated in Schedule 4.
- (g) Any amount properly due to a Party pursuant to this Contract and remaining unpaid after the final date for payment shall bear interest (both before and after judgement), such interest to accrue from day to day at the rate of [4%] above the LIBOR three-month sterling rate from the date when payment was due until the amount due is actually received by the payee.

15.2 Regular Payment of Base Monthly Charge

To ensure the punctual payment of the Base Monthly Charge and timely performance of its obligations under this Contract, the Purchaser shall set up a payment mechanism to allow the automatic payment of the Base Monthly Charge on [] of each month into such bank account as the Supplier shall notify to the Purchaser. This mechanism shall remain in force throughout the Contract Period.

15.3 Taxes

The payments to be made to the Supplier are, subject to this Sub-Clause 15.3, inclusive of all taxes, duties, levies, charges and the like payable in connection with this Contract. All taxes on or calculated by reference to the Supplier's profits or deemed profits shall be borne by the Supplier.

Except where expressly stated to the contrary, any sum payable as consideration for a supply by the Supplier made under this Contract is exclusive of Service Tax, which shall, if applicable, be payable by the Purchaser to the Supplier in addition on the later of (i) seven (7) days after the issue of an appropriate Service Tax invoice and (ii) the day when payment of the relevant amount is due.

15.4 Suspension

Without prejudice to any rights or remedies that the Supplier may have under the Contract or at law, if the Purchaser fails to pay any amount stated in any monthly invoice by the relevant final date for payment (and the Parties have not agreed otherwise) and it has not given to the Supplier an effective notice of intention to withhold payment, the Supplier shall be entitled upon giving the Purchaser seven (7) days notice, to suspend the performance of any of its obligations under this Contract until such time as the due amount is paid in full. In giving such notice the Supplier shall specify the ground or grounds on which it intends to suspend performance.

16. TERMINATION

16.1 Default of Supplier

If the Supplier:

- (a) abandons or repudiates the Contract;
- (b) without reasonable excuse fails:
 - (i) to commence the Services promptly in accordance with Sub-Clause 7.1; or
 - (ii) to proceed with the Services in accordance with Clause 7;
- (c) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under any applicable law) has a similar effect to any of these acts or events;
- (d) if there is a material failure by the Supplier to perform any of its obligations hereunder (including without limitation operating the Facility in violation of any Permit), unless the Supplier has cured such breach during the notice period or has initiated and is pursuing diligently the cure of such breach and thereafter continues to pursue diligently such cure, provided that such cure is effected within ninety (90) days' from the receipt of such notice by the Supplier (or such shorter period of time as may be necessary to avoid any

enforcement action under a Permit including the imposition of governmental or regulatory penalties or loss of a Permit); or

- (e) assigns the Contract without the Purchaser's written consent except in accordance with Sub-Clause 1.16,

then the Purchaser may, after (except in the case of defaults referred to in Sub-Clauses 16.1(c) where termination may be with immediate effect), having given 90 days written notice to the Supplier, and, if the default has not been cured by the end of the 90 day period, issue a notice of the termination of the Supplier's employment under the Contract and expel the Supplier from the Site. The Supplier shall not be released from any of its obligations or liabilities under the Contract. The rights and authorities conferred on the Purchaser by the Contract shall not be affected.

If it is subsequently found that the Purchaser was not entitled to terminate under this Sub-Clause 16.1, the Contract shall be deemed to have been terminated under Sub-Clause 16.2.

16.2 Default of Purchaser

If the Purchaser:

- (a) fails to pay the Supplier in accordance with Sub-Clause 15.1;
- (b) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under any applicable law) has a similar effect to any of these acts or events;
- (c) consistently fails to meet the Purchaser's obligations or fails to perform a material Purchaser's obligation under the Contract;
- (d) assigns the Contract without the Supplier's written consent; or
- (e) a receiver or secured creditor take steps to sell the Site or to enforce a mortgage over the Site; or
- (f) if the Project is expropriated or involuntarily transferred to a governmental entity or if a similar action occurs with respect to all or a substantial part of the assets or rights of the Supplier or Purchaser in respect of the Project,

then the Supplier may after (except in the case of Sub-Clauses 16.2(b), (d) or (e) where notice of termination will have immediate effect) having given 45 days notice to the Purchaser and, if the default has not been cured by the end of the 45 day cure period, terminate this Contract on expiry of the termination notice.

16.3 Consequences of Termination

Following the Expiry Date or after termination under Sub-Clauses 16.1 or 16.2, the Supplier shall cease all further work, except for work as may be necessary and

instructed by the Purchaser for the purpose of leaving the Site in a clean and safe condition and repatriate all its staff and labour from the Site.

Upon receipt by the Supplier of the sums referred to in Sub-Clauses 16.3 and 16.4 and Schedule 4 Part 2 or following the Expiry Date:

- (a) the Supplier shall be entitled to remove the Equipment and shall leave the Facility at the date of termination in such a condition as it is reasonable to expect having regard to all the circumstances including (without limitation) its age, the length and degree of its use, the normal wear and tear occasioned by operation and, in the case of the Plant, the general state of such Plant at the time when the Supplier first began operating and maintaining it;
- (b) the Purchaser shall reimburse the Supplier all Cost incurred by the Supplier in connection with any legislative obligation on the Supplier to decommission and/ or make safe the Facility and/ or reinstate the Site or any part of it, unless such Cost is due to the negligence or default of the Supplier;
- (c) subject to paragraph (d) below, the Purchaser shall enjoy quiet possession of the Facility;
- (d) the Facility shall be at the Purchaser's risk and the Purchaser shall at its own cost be responsible for all insurances related to the Plant and the use of it and shall ensure that it is used and maintained in accordance with all statutory requirements and so as not to give rise to any danger to health, safety or the environment. The Purchaser shall indemnify the Supplier against any claims or awards that may be made against the Supplier and any Cost suffered or incurred by the Supplier in connection with the use and/ or condition of the Facility;
- (e) in the case of termination pursuant to Sub-Clause 16.1 [or the expiry of the Contract], the Supplier shall supply sufficient operating spares (excluding membranes and media) for the Facility to enable the Purchaser to operate the Facility for one year after the date of termination[/expiry]; and
- (f) save as set out in Sub-Clause 16.3(a) above, the Supplier shall have no liability for the condition of the Facility, its operation or otherwise in connection with the Facility after the termination of this Contract for whatever cause.

At any time following termination, the Supplier shall be entitled to enter upon the Site and remove any property of the Supplier (other than the Facility in the event that (i) all sums due under Sub-Clause 16.4 have been paid to the Supplier and (ii) the Purchaser is not in breach of any provision set out in Sub-Clause 16.3), and the Purchaser shall ensure that the Supplier is not hindered from so doing.

16.4 Payment on Termination

After termination under Clause 16 or Sub-Clause 19.4, the Purchaser shall pay the Supplier the relevant amounts calculated and certified in accordance with Schedule 4 Part 2.

17. RISK AND RESPONSIBILITY

17.1 Indemnity

- (a) The Supplier shall indemnify and hold harmless the Purchaser, his contractors, agents and employees from and against all claims, damages, losses and expenses arising out of or resulting from the Services, including professional services provided by the Supplier unless caused by an act, omission or default of the Purchaser or anyone directly or indirectly employed by the Purchaser or for whom the Purchaser is responsible.
- (b) These indemnification obligations shall be limited to claims, damages, losses and expenses which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Facility) and shall also be limited to the extent that such claims, damages, losses or expenses are caused in whole or in part by a negligent act or omission, breach of this Contract or a breach of a duty of care, imposed by law on the Supplier or anyone directly or indirectly employed by the Supplier.
- (c) The Supplier shall not be liable under this Sub-Clause 17.1 for, and the Purchaser shall indemnify, keep indemnified, defend and hold harmless the Supplier, the Supplier's Affiliates and their respective officers and employees against, any and all claims for loss, damage and expense of whatever kind and nature, including all related costs and expenses, in respect of personal injury to or death of third parties and in respect of loss of or damage to any third party property to the extent that the same arises out of any negligent act or omission or breach of this Contract or breach of a duty of care, imposed by law on the Purchaser or anyone directly or indirectly employed by the Purchaser, by the Purchaser, its contractors (other than the Supplier or any Subcontractor) or their respective officers, agents or employees.

17.2 Supplier's Title in the Equipment and Care of the Facility

- (a) The Supplier shall take full responsibility for the care of the Facility and shall at all times retain title in the Equipment. The Equipment shall not be considered a fixture and shall under no circumstances be considered to form part of the land or the Site or the Facility nor shall the Equipment become the property of the Purchaser or any third party unless otherwise specifically provided in this Contract.
- (b) The Purchaser shall take all steps reasonably requested by the Supplier to ensure that the Equipment shall not in law become annexed to any land. The Purchaser shall, upon reasonable notice from the Supplier take all reasonable steps to procure an acknowledgement in writing and in a form acceptable to the Supplier from any landlord, mortgagee or debenture holder of the Purchaser that the Equipment is not to be treated as the property of the Purchaser or of the entity making the acknowledgement and that neither the entity making the acknowledgement nor any person claiming through or in trust for them will seek to enforce against the Equipment, any debt due from or right of action accrued against the Purchaser in favour of the entity making the acknowledgement.

- (c) If any loss or damage happens to the Facility, arising from any cause other than the Release Events listed in Sub-Clause 17.3, from the Effective Date until the Expiry Date, the Supplier shall rectify such loss or damage, at its cost, so that the Facility conforms with the Contract.
- (d) The Purchaser acknowledges that the Supplier has the right to obtain financing for the Facility through a leasing structure or otherwise and that the Supplier may transfer title in the Equipment, or part thereof, to the Lenders in exchange for a lease over or similar interest in those assets. Where the Lenders take title in the Facility, or any part thereof, the Purchaser shall perform its obligations under this Contract in relation to the Equipment and the Facility for the benefit of the Supplier and the Lender.
- (e) The Purchaser shall indemnify and hold harmless the Supplier, its Subcontractors, agents and employees from and against all claims, damages, losses and expenses arising out of or resulting from any pre-existing environmental contamination by a Dangerous Substance which is:
 - (i) found at the Site;
 - (ii) forms part of the Facility; or
 - (iii) forms part of the Site or is found in any underground assets at the Site,
 and was found to have occurred prior to or on the Effective Date.

In the event of any environmental contamination by a Dangerous Substance which occurs after the Effective Date or any environmental contamination by Dangerous Substance which occurs as a result of a negligent act or omission of the Purchaser or third parties (excluding the Supplier's Subcontractors, agents or employees) after the Effective Date, the Purchaser shall continue to indemnify and hold harmless the Supplier, his contractors, agents and employees from and against all claims, damages, losses and expenses arising out of or resulting from such environmental contamination by a Dangerous Substance to the extent that such environmental contamination is not caused by the wilful default or negligent acts or omissions of the Supplier.

17.3 Release Events

The Release Events are:

- (a) a Pollution Incident unless caused by the negligence of or a breach of this Contract by the Supplier;
- (b) Raw Water which does not conform with the Guaranteed Levels (Quality) or exceeds the Guaranteed Levels (Quantity);
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds which causes damage to/ destroys a part or all of the Facility or restricts access to the Site or makes the Site unsafe;

- (d) any default or delay by a statutory authority, undertaker or utility in the issue or extension of a Permit or carrying out or provision of works or services that it is bound to carry out or provide or any failure or shortage of power, fuel or transport;
- (e) any act or omission of any political or governmental agency or body, any withdrawal of a Permit or the failure by a political, governmental or regulatory agency to renew a Permit;
- (f) an Emergency;
- (g) loss or damage due to the use or occupation by the Purchaser or a third party in the control of the Purchaser (including Utilities) of any part of the Site or the Facility, except as may be provided for in the Contract;
- (h) any operation of the forces of nature against which an experienced contractor or operator could not reasonably have been expected to take precautions;
- (i) changes in Applicable Law which came into force after the Base Date;
- (j) any act, omission or default by the Purchaser;
- (k) any failure of Utilities or failure by the Purchaser which causes the reduction or suspension of such services;
- (l) failure by the Purchaser to procure or maintain Permits in accordance with Clause 1.9;
- (m) environmental contamination by a Dangerous Substance (unless caused by the Supplier's negligent acts or omissions) which needs to be removed or treated;
- (n) any defect or flaw (including latent defect) in the condition of the Facility or Site (including underground assets such as the Purchaser's pipelines and tanks belonging to the water authority and sewerage undertaker) other than a defect resulting from a breach of the Supplier's obligations under this Contract which is in existence at the date of this Contract; and
- (o) suspension pursuant to Clause 15.4.

17.4 Consequences of Release Events

- (a) The Supplier shall give notice, to the Purchaser, of a Release Event upon it being foreseen by, or becoming known to, the Supplier.
- (b) If and to the extent that the Supplier is prevented or hindered from executing the Services as a result of a Release Event, for the period that the Release Event continues the Supplier shall be relieved of its obligations to provide the Services but shall endeavour to perform its obligations under the Contract as far as reasonably practicable, PROVIDED that if and to the extent that the Supplier incurs additional Cost in so doing, the Supplier shall be entitled to the amount of such Cost (the Supplier having taken reasonable steps to mitigate that Cost).

- (c) If and to the extent that the Supplier suffers a delay during the Installation Period as a result of the Release Event then it shall be entitled to a fair and reasonable extension for the Time for Completion in accordance with Sub-Clause 7.3.
- (d) If a Release Event results in a loss or damage to the Facility, then Supplier shall rectify such loss or damage to the extent required by the Purchaser, PROVIDED that any Cost of rectification (less any insurance proceeds received by the Supplier for the loss or damage) is borne by the Purchaser (the Supplier having taken reasonable steps to mitigate the Cost).
- (e) Release Events specified in:
 - (i) Sub-Clauses 17.3(g), (j), (l) and (o); and
 - (ii) Sub-Clauses 17.3(a), (b), (c), (d), (e), (f), (h), (i), (k), (m) and (n) to the extent that they are due, directly or indirectly, to the action or inaction of the Purchaser

are “**Purchaser Risks**”. If the Supplier suffers delay or the Services are interrupted as a result of a Purchaser Risk, and this results in a loss of profit by the Supplier, then the Supplier shall be entitled to be compensated for reasonable loss of profit at the rates per day set out in Schedule 4 Part 1 in addition to the Base Monthly Charge.

For all other Release Events, the Supplier shall not be entitled to a loss of profit element during the period of interruption in addition to the Base Monthly Charge. *[Note: this is drafted on the assumption that Base Monthly Charge will cover all fixed costs plus a profit element]*

- (f) For the purposes of Clause 16 (termination), any Release Events which are not Purchaser Risks shall be treated in the same way as termination for extended Force Majeure.
- (g) The Supplier shall be entitled to payment of the Base Monthly Charge during the period of interruption irrespective of whether the Release Event is a Purchaser Risk or not.

17.5 Patent Rights

[Note: Are Purchaser’s Patents being used? Is it likely the Purchaser will infringe any of Supplier’s patents? If so, a reciprocal indemnity is required]

The Supplier shall indemnify the Purchaser against all claims of infringement of any patent, registered design, copyright, trade mark or trade name, or other intellectual property right, if:

- (a) the claim or proceedings arise out of the design, installation or use of the Facility;

- (b) the infringement (or allegation of infringement) was not the result of part (or all) of the Facility being used by the Purchaser for a purpose other than that indicated by, or reasonably to be inferred from, the Contract;
- (c) the infringement (or allegation of infringement) was not the result of part (or all) of the Facility being used in association or combination with any thing not supplied by the Supplier, unless such association or combination was disclosed to the Supplier prior to the Base Date or is stated in the Contract; and
- (d) the infringement (or allegation of infringement) was not the unavoidable result of the Supplier's compliance with the Technical Specification.

The Supplier shall be promptly notified of any claim under this Sub-Clause made against the Purchaser.

17.6 Conduct of Claims

- (a) The Party seeking indemnification under this Clause 17 (the "**Indemnified Party**") shall notify the other Party (the "**Indemnifying Party**") in writing of any matter that may result in an indemnity payment under this Clause 17 promptly upon the discovery of such matter and, in the case of any action or claim which has been brought against an Indemnified Party in respect of any such matter, the Indemnifying Party shall be entitled at its expense to assume the defence thereof in place of the Indemnified Party. In such circumstances, the Indemnified Party shall provide the Indemnifying Party with such information and assistance as the Indemnifying Party shall reasonably request. If the Indemnifying Party assumes the defence of the relevant claim or action within a reasonable time after receiving notice, it shall not be liable for any settlement thereof or admission which is made without its consent.
- (b) The obligations of an Indemnifying Party shall not extend to:
 - (i) any legal expenses being costs, charges and expenses which may result from the employment by the Indemnified Party of its own legal advisers in connection with any action or claim against it after the defence of such action or claim has been assumed by the Indemnifying Party; or
 - (ii) any loss, damage or expense of whatever kind and nature (including all related costs and expenses) which may result from:
 - (A) the settlement or compromise by the Indemnified Party of any action or claim brought against the Indemnified Party made or effected; or
 - (B) the admission by the Indemnified Party of any claim or the taking by the Indemnified Party of any action (unless required by law or applicable legal process), which would prejudice the successful defence of the action or claim,

without, in any such case, the prior written consent of the Indemnifying Party (such consent not to be unreasonably withheld in a case where the Indemnifying Party has not, at the time such consent is sought, assumed the defence of the action or claim).

17.7 Limitation of Liability

The Supplier shall in no event be liable to the Purchaser, by way of indemnity or by reason of any breach of the Contract or in tort or otherwise, for loss of use of any part (or all) of the Services or for loss of production, loss of profit or loss of any contract or for any indirect special or consequential loss or damage which may be suffered by the Purchaser in connection with the Contract.

The liability of the Supplier to the Purchaser under the Contract shall not exceed the amount set out in Schedule 3 per incident and the amount set out in Schedule 3 in aggregate.

Nothing in this Contract shall in anyway limit the liability of either the Purchaser or the Supplier for death or personal injury to the extent that such death or personal injury is attributable to the negligence of either the Purchaser or the Supplier (as the case may be).

17.8 Survival on Termination

The provisions of Clauses 1.1, 1.4, 1.10, 17.7, 21, 22 and 23 shall survive the termination of this Contract.

18. INSURANCE

18.1 Insurance for Services and Equipment

The Supplier shall take out and maintain insurance against loss and damage in respect of the, Plant, Materials and Facility up to the limit specified in and in accordance with Schedule 6. This insurance shall cover loss or damage from any cause other than the Purchaser's Risks listed in Sub-Clause 17.4 in so far as such insurance is readily obtainable. Such insurance shall be for a limit of not less than the full replacement cost (including profit) of the Equipment and shall also cover the costs of demolition and removal of debris. Such insurance shall be in such a manner that the Supplier is covered from the date by which the evidence is to be submitted under Sub-Clause 18.4(a) until the date of issue of the Performance Certificate.

The Supplier shall insure each item of Equipment while it is being transported to the Site and throughout the period it is on or near the Site, from the date by which the evidence is to be submitted under Sub-Clause 18.4(a) until the Expiry Date.

18.2 Insurance against Injury to Persons and Damage to Property

The Supplier shall insure against liability to third parties for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.1) or to any person (except persons insured under Sub-Clause 18.3), which may arise out of the performance of the Contract and occurring before

the issue of the Performance Certificate. Such insurance shall be for a limit of not less than the amount specified in the Schedule 6.

[This may be provided by the Purchaser – to be discussed.]

18.3 Insurance for Workers

The Supplier shall effect and maintain insurance against losses and claims arising from the death or injury to any person employed by the Supplier or any Subcontractor, in such a manner that the Purchaser and the Purchaser's contractors, agents and employees are indemnified under the policy of insurance. For a Subcontractor's employees, such insurance may be effected by the Subcontractor, but the Supplier shall use its reasonable endeavours to comply with this Clause.

18.4 General Requirements for Insurances

The Supplier shall, within thirty (30) days from the Effective Date, submit to the Purchaser evidence that the insurances described in this Clause 18 have been effected.

The Supplier (and, if appropriate, the Purchaser) shall comply with the conditions stipulated in each of the insurance policies. The Supplier shall make no material alteration to the terms of any insurance without the prior approval of the Purchaser. If an insurer makes (or purports to make) any such alteration, the Supplier shall notify the Purchaser immediately upon becoming aware thereof.

If the Supplier fails to effect and keep in force any of the insurances required under the Contract, or fails to provide satisfactory evidence, policies and receipts in accordance with this Sub-Clause 18.4, the Purchaser may, without prejudice to any other right or remedy, effect insurance for the coverage relevant to such default, and pay the premiums due. Such payments, to the extent they are commercial and reasonable, shall be recoverable from the Supplier by the Purchaser, and may be deducted by the Purchaser from any monies due, or to become due, to the Supplier.

Subject to Sub-Clause 17.7, nothing in this Clause 18 limits the obligations, liabilities or responsibilities of the Supplier or the Purchaser, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Supplier and/or the Purchaser in accordance with their other obligations under this Contract.

Each Party shall promptly notify the other Party of any claim under any of the insurance policies referred to in this Clause 18, accompanied by full details of the incident giving rise to such claim. Each Party shall afford to the other Party all such assistance as may reasonably be required for the preparation and negotiation of insurance claims, save where such claim is against the Party required to give assistance.

19. FORCE MAJEURE

19.1 Definition of Force Majeure

In this Clause 19, "**Event of Force Majeure**" means an event beyond the control of the Purchaser and the Supplier, which prevents a Party from complying with any of its obligations under this Contract, including but not limited to:

- (a) act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods);
- (b) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition, or embargo;
- (c) rebellion, revolution, insurrection, or military or usurped power, or civil war;
- (d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
- (e) riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to employees of the Supplier or of his Subcontractors; or
- (f) acts or threats of terrorism.

19.2 Consequences of Force Majeure Event

- (a) Neither the Purchaser nor the Supplier shall be considered in default or in contractual breach to the extent that performance of obligations is prevented by an Event of Force Majeure event which arises after the Effective Date, excluding payment obligations.
- (b) The Party (the "**Affected Party**") prevented/ hindered from carrying out its obligations hereunder shall give notice to the other Party of an Event of Force Majeure upon it being foreseen by, or becoming known to, the Affected Party.
- (c) If and to the extent that the Supplier is prevented or hindered from executing the Services by the Event of Force Majeure, whilst the Supplier is so prevented and hindered the Supplier shall be relieved of its obligations to provide the Services but shall endeavour to continue to perform its obligations under the Contract so far as reasonably practicable, PROVIDED that if and to the extent that the Supplier incurs additional Cost in so doing, the Supplier shall be entitled to the amount of such Cost (the Supplier having taken reasonable steps to mitigate the Cost).
- (d) If and to the extent that the Supplier suffers a delay during the Installation Period as a result of the Event of Force Majeure then it shall be entitled to a fair and reasonable extension for the Time for Completion in accordance with Sub-Clause 7.3.

- (e) If an Event of Force Majeure results in a loss or damage to the Facility, then Supplier shall rectify such loss or damage to the extent required by the Purchaser, PROVIDED that any Cost of rectification (less any insurance proceeds received by the Supplier for the loss or damage) is borne by the Purchaser (the Supplier having taken reasonable steps to mitigate the Cost).
- (f) The Supplier shall be entitled to payment of the Base Monthly Charge during the period of interruption caused by the Event of Force Majeure.
- (g) The Contract Period shall be extended by a period of time equal to the period of interruption caused by an Event of Force Majeure.

19.3 Purchaser's Responsibility

Upon occurrence of Force Majeure event being foreseen by the Purchaser to constitute Force Majeure and which may affect performance of the Purchaser's obligations, he shall promptly notify the Supplier and shall endeavour to continue to perform its obligations as far as reasonably practicable. The Purchaser shall also promptly notify the Supplier of any proposals, with the objectives of completing the Services and mitigating any increased costs to the Purchaser and the Supplier.

19.4 Optional Termination, Payment and Release

Irrespective of any extension of time, if a Force Majeure event occurs and its effect continues for a period of 182 days, either the Purchaser or the Supplier may give to the other a notice of termination, which shall take effect 28 days after the giving of the notice. If, at the end of the 28-day period, the effect of the Force Majeure continues, the Contract shall terminate.

After termination under this Sub-Clause 19.4, the Supplier shall comply with Sub-Clause 16.3 and the Purchaser shall pay the Supplier an amount calculated and certified in accordance with Schedule 4 Part 2.

19.5 Release from Performance under the Law

If under the law of the Contract the Purchaser and the Supplier are released from further performance, the sum payable by the Purchaser to the Supplier shall be the same as would have been payable under Sub-Clause 19.4 if the Contract had been terminated under that Sub-Clause.

20. CLAIMS AND DISPUTES

20.1 Procedure for Claims

The Supplier shall advise the Purchaser of any additional payment which it intends to claim under this Contract or otherwise, as soon as possible and in any event within 28 days of the start of the event giving rise to the claim.

The Supplier shall keep such contemporary records as may be necessary to substantiate any claim. Without admitting the Purchaser's liability, the Purchaser shall, on receipt of such notice, inspect such records and may instruct the Supplier to

keep further contemporary records. The Supplier shall permit the Purchaser to inspect all such records, and shall (if instructed) submit copies to the Purchaser.

Within 28 days of such notice, or such other time as may be agreed by the Purchaser, the Supplier shall send to the Purchaser an account, giving detailed particulars of the amount and basis of the claim. Where the event giving rise to the claim has a continuing effect, such account shall be considered as interim. The Supplier shall then, at such intervals as the Purchaser may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further particulars. Where interim accounts are sent to the Purchaser, the Supplier shall send a final account within 28 days of the end of the effects resulting from the event.

The Purchaser shall immediately pay any amounts and confirm any extension of time or other remedy which it agrees to be due to the Supplier.

20.2 Negotiations

Without prejudice to the Parties' rights under Sub-Clause 20.3 below, the Parties will attempt in good faith to resolve any dispute or claim arising out of or in relation to this Contract through negotiations between a director of each of the Parties with authority to settle the relevant dispute. If the dispute has not been settled amicably within fourteen (14) days from the date on which either Party has served written notice on the other of the dispute then the remaining provisions of this Clause 20 shall apply.

20.3 Arbitration

In the event of a dispute between the Purchaser and the Supplier (other than a matter to be resolved pursuant to Clause [20.4) concerning the interpretation of any provision of this Agreement or the performance of any of the terms of this Agreement, such matter or matters in dispute shall be finally settled: -

- a. under the Rules of [Conciliation and Arbitration of the International Chamber of Commerce/ LCIA, UNCITRAL];
- b. by three arbitrators, one appointed by each Party, and the third, who shall be the chairman, selected by the two appointed arbitrators and failing agreement by the [Chairman of the International Chamber of Commerce/ other Arbitral Body];
- c. The language of the arbitration shall be [language]; and
- d. the place of the arbitration shall be [LOCATION].

20.4 Performance to Continue During Dispute

Performance of this Agreement shall continue during arbitration proceedings or any other dispute resolution mechanism pursuant to Clause 20. No payment due or payable by the Supplier or the Purchaser shall be withheld on account of a pending reference to arbitration or other dispute resolution mechanism except to the extent that such payment is the subject of such dispute.

21. CONFIDENTIALITY

21.1 Confidential Information

Subject to Sub-Clause 21.2 below, the Parties shall keep confidential all matters relating to the Services, the Project, the Facility and this Contract and will not make any disclosure, and shall use reasonable endeavours to ensure that their employees, Subcontractors and agents do not make any disclosure to any person of any information, data, experience and know-how, documents, secrets, dealings, transactions or affairs of or relating to the Parties, the Project, the Facility or this Contract (the "**Confidential Information**").

21.2 Exceptions

The confidentiality obligation shall not apply to the following:

- (a) any matter which the Supplier can demonstrate is already generally available and in the public domain other than through unauthorised disclosure by the Supplier; or
- (b) any disclosure which may reasonably be required for the performance of the Supplier's obligations under this Contract or the compliance by the Supplier with any statutory obligations or for the purposes of legal proceedings.

21.3 Announcements

The Parties warrant to and undertakes with each other that they shall not, and shall procure that their employees, agents and subcontractors shall not, issue or make any public announcement or statement regarding the Project, the signature, performance or termination of this Contract or the Supplier's employment thereunder unless, prior thereto, the other Party has been furnished with a copy thereof and has approved the same.

21.4 Survival of Confidentiality Obligations

The provisions and obligations set out in this Clause 21 shall survive and remain in force for three (3) years upon and following the termination of this Contract.

22. INTELLECTUAL PROPERTY

22.1 Purchaser's Intellectual Property

- (a) The Purchaser shall, to the extent it is legally able to do so, grant the Supplier during the term of this Contract a royalty free, non-exclusive and transferable licence to use Intellectual Property which is owned by or licensed to the Purchaser by third parties (the "**Purchaser Intellectual Property**") only to the extent necessary to enable the Supplier to perform its obligations under this Contract. Such licences shall not carry the right to grant sub-licences.

- (b) The Purchaser shall indemnify the Supplier in full in respect of all loss, damage and expense of whatever kind and nature arising out of the use by the Supplier of any Purchaser Intellectual Property in accordance with its terms which infringes the rights of any third party.

22.2 Third Party Intellectual Property

The Supplier shall use reasonable efforts:

- (a) to ensure that Intellectual Property owned or developed by third parties and utilised by the Supplier in connection with the performance of its obligations under this Contract is licensed to the Supplier on reasonable terms for the purposes of the operation and maintenance or repair of the Facility and otherwise for the purposes of the Project but for no other purpose; and
- (b) to ensure that no Intellectual Property of a third party is otherwise used in the performance of the Supplier's obligations under this Contract without the prior written approval of the Purchaser.

22.3 Supplier Intellectual Property

The Parties agree that all Intellectual Property in data, databases, reports, records, drawings, specifications, software (excluding any third party software), design, inventions, documentation (including documentation relating to any design) and/or other material produced in connection with this Contract shall vest in and be the property or be deemed to vest in and be the property of the Supplier.

23. REPRESENTATIONS AND WARRANTIES

23.1 Purchaser

The Purchaser represents, warrants and undertakes to the Supplier that as at the date of this Contract and the Effective Date:

- (a) it is a corporation organised and existing under the laws of [COUNTRY];
- (b) it has full power and authority to enter into and perform its obligations under this Contract;
- (c) [it is the freeholder or leaseholder of the Site][it has full title and ownership of the Site and the necessary power to dispose thereof as required in this Contract];
- (d) all relevant facts, circumstances or contracts have been disclosed to the Supplier, in particular those in relation to environmental matters;
- (e) it has taken all necessary action for the authorisation of its entry into this Contract and the performance of its obligations under this Contract;
- (f) it has complied with all applicable procurement rules and restrictions;

- (g) this Contract will be enforceable in accordance with its terms under the Applicable Law without any requirement for further action to be taken by any party; and
- (h) by entering into this Contract it will not contravene any Applicable laws.

23.2 Supplier

The Supplier represents, warrants and undertakes to the Purchaser that as at the date of this Contract and the Effective Date:

- (a) it is a corporation duly established under the laws of [];
- (b) it has full power and authority to enter into this Contract; and
- (c) it has taken all necessary action for the authorisation of its entry into this Contract and the performance of its obligations under this Contract.

24. FINANCING

24.1 Lenders' Security

The Purchaser agrees, if requested by the Supplier, to enter into an agreement (in a form reasonably acceptable to the Purchaser) with the Lenders, pursuant to which the Purchaser will acknowledge the creation of security over the Supplier's rights under this Contract and agree that upon breach of this Contract by the Supplier or the insolvency of the Supplier the Lenders shall:

- (a) have the right within a time to be specified in that agreement to cure such breach of this Contract; and
- (b) have the right to assume all the rights and obligations of the Supplier under this Contract.

24.2 Purchaser's Co-operation with Financing

The Purchaser shall, as and when requested to do so by the Supplier at any time after the execution of this Contract, prepare and provide such information in connection with this Contract and/or the Services as may be reasonably required for the purposes of any potential Lender to the Supplier under a proposed loan or other financing agreement. The Purchaser shall co-operate with the Supplier in good faith in order to satisfy on a mutually agreeable basis the requirements of the Supplier's financing arrangements, including where appropriate the making of amendments to the terms of this Contract as may be reasonably required and agreed.

IN WITNESS WHEREOF the Parties have executed this Contract on the date which appears on page 1.

SIGNED by [] for and on)
behalf of **[SUPPLIER]**)
in the presence of)

SIGNED by [])
for and on behalf of)
[PURCHASER])
in the presence of)

SAMPLE

SCHEDULE 1
TECHNICAL SPECIFICATION

[To be provided]

[Specification to include description of:

1. The Facility
2. Guaranteed Levels:

Quantity (including maximum flow)
Quality
3. Pollution Incident
4. Performance Tests
5. Availability
6. Utilities (to be provided by Purchaser)
7. Facility Documents
8. Purchaser Permits

[Note: If discharging waste, Technical Specification should also provide for compliance with Discharge Consent.]

[Note: Are Purchaser's Requirements relevant?]

SCHEDULE 2

REPORTS

The Supplier shall provide to the Purchaser the following reports:

1. Within 14 days of the end of the quarter during the Operating Period to which it relates (the "**Relevant Quarter**"), a quarterly report, in a form to be agreed.
2. Within 28 days of the end of each Contract Year to which it relates (the "**Relevant Year**"), in a form to be agreed.
3. As soon as practicable after the occurrence, a report of:
 - (a) any breakdown in the operation of the Facility;
 - (b) any incidence of death or injury to any person on the Site or, if such person is performing services related to this Contract, off the Site;
 - (c) the breach of any relevant environmental limit; and
 - (d) any Emergency.

SCHEDULE 3
SPECIAL CONDITIONS

Time for Completion: the date falling [] months from the Completion Date.

Expiry Date: the []th anniversary of the Completion Date

Liquidated damages: [] per day

[] maximum aggregated liquidated damages

Limitation of liability: [] per incident

[] in aggregate

SAMPLE

SCHEDULE 4

FEES AND CONSEQUENCES OF TERMINATION

PART 1

Charge

Base Monthly Charge: [] plus [Service Tax]

Variable Charge: [] per m³ of treated water supplied by Supplier from the Facility

(a) On or after the Completion Date, the Supplier shall issue an invoice for the first payment of the Base Monthly Charge for the month in which the Completion Date has fallen and for the month following the month in which the Completion Date has fallen. In respect of all subsequent monthly invoices the Supplier shall issue an invoice on or after the first day of each month for:

(i) the Base Monthly Charge in respect of the month following the month in which the invoice is issued; and

(ii) the Variable Charge for the month preceding the month in which the invoice is issued.

(b) The Base Monthly Charge shall be adjusted in accordance with the following formula applied annually on the anniversary of the Base Date:

[Adjustment formula including indexation, increases in volume, exchange risk, actual operation cost]

The Purchaser shall pay the Base Monthly Charge throughout the Operating Period irrespective whether the Facility is Available or not.

(c) The Supplier shall vary the Variable Charge, accordingly, if the Raw Water falls outside the band that is plus or minus [] % of the design level as detailed in the Technical Specification.

[Adjustment formula including indexation, increases in volume, exchange risk, actual operation cost]

(d) In the case of interruptions to the Facility caused by a Purchaser Risk, reasonable loss of profit payable in accordance with clause 17.4(e) shall be calculated per day of interruption as:

Reasonable loss of profit per day = ([]m³ - actual m³ taken) x Variable Charge per day

PART 2

Payment on of Termination

All payments due under this Part 2 shall be paid within 30 days of the date of termination and the debtor shall otherwise comply with the provisions of Clause 17. Where relevant, title in the Facility and Materials purchased by the Purchaser under the terms of this Part 2 shall be delivered on the date when payment is made in full.

This Part 2 shall apply to termination before the Expiry Date, whether it occurs before or after the issue of the Performance Certificate.

On termination of the Contract the Purchaser shall compensate the Supplier as follows:

Category of termination	Amount Payable
Termination for Supplier default	<p>[]% of aggregate of the Base Monthly Charge for the period from the date of termination of the Contract until the Expiry Date as set out in Schedule 3</p> <p>less the reasonable Cost of rectification of the Facility, if any, which the Purchaser is required to carry out to bring the Facility up to the standard set out in clause 16.3(a) which is due to the Supplier having failed to meet its obligations under clause 16.3 (a)</p>
Expiry of the Contract	<p>Nil and the residual value of the Facility and any spares</p>
Extended Force Majeure (including the Release Events which are not Purchaser Risks)	<p>[]% of aggregate of the Base Monthly Charge for the period from the date of termination of the Contract until the Expiry Date as set out in Schedule 3 plus</p> <p>other unavoidable Costs (including breakage costs for financing)</p> <p>minus any insurance proceeds received by the Supplier for the Force Majeure event,</p> <p>subject to a duty on the Supplier to use reasonable endeavours to minimise Costs</p> <p><i>[Note: payment for termination for extended FM should include a profit element.]</i></p>
Termination for Purchaser Default	<p>[]% of aggregate of the Base Monthly Charge for the period from the date of termination of the Contract until the Expiry Date as set out in Schedule 3; plus</p>

an amount comprising costs of work carried out by Supplier, breakage Costs (including market value of Materials purchased by Purchaser), repatriation Costs, subject to a duty of mitigation of the Supplier to minimise Costs; plus

reasonable loss of profit calculated as the aggregate Variable Charge based on a projected take of [] m³ per day:

- (i) in the case of termination of the Contract prior to the fifth anniversary of the Effective Date, for the period from the date of termination to the fifth anniversary of the Effective Date; and
- (ii) in the case of termination of the Contract after the fifth anniversary of the Effective Date, for the period from the date of termination to the Expiry Date up to a maximum of [].

SCHEDULE 5
PLAN OF SITE

SAMPLE

SCHEDULE 6

INSURANCE

SAMPLE

SCHEDULE 7
PURCHASER'S SITE REGULATIONS

SAMPLE

SCHEDULE 8
[LICENCE/LEASE]

SAMPLE

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**NEW BUILD ONLY - WATER
FOR SMALLSCALE WATER TREATMENT PLANTS**

DATED ,

[SUPPLIER]

AND

[PURCHASER]

[]
BULK SUPPLY CONTRACT

SAMPLE

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