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APPENDICES TO WATER LEASE (1)

Appendix 1

Special Conditions of Contract

**SPECIAL CONDITIONS OF CONTRACT
APPENDIX 1 TO THE GENERAL CONDITIONS
FOR A LEASE CONTRACT
FOR THE PROVISION OF
WATER SUPPLY
AND WASTEWATER SERVICES**

SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract shall supplement the General Conditions. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions. The corresponding section numbers of the General Conditions are indicated in parentheses.

1. Definitions (GC Section 1.1)

Adjudicator:

The Adjudicator is *[Name of Adjudicator]*.

Country of Origin:

The Country of Origin shall be determined pursuant to those eligible countries in accordance with *Guidelines-Procurement IBRD Loans and Bank Credits*, January 1995 as revised January and August 1996, September 1997 and January 1999.

Water authority details

[Name, address, telephone and facsimile numbers]

Operator's Representative:

The Operator's Representative is *[Insert name]*, as changed from time to time in accordance with GC Section 9.1.2.

[Name, address, telephone and facsimile numbers.]

2. Shareholder's Representative (GC Section 1.3.10(1))

The Shareholder's Representative shall be the Operator's Representative.

3. Survival of Obligations (GC Section 1.3.14)

Upon termination or expiration of the Contract, the following rights and obligations of the Parties survive:

- (a) Such rights and obligations as may have accrued or to which the Parties may be entitled on the date of termination, and any rights which a Party may have under Applicable Law;
- (b) The Operator's obligations with respect to Contract Records, Accounting and Auditing set out in GC Section 1.8;
- (c) The Operator's obligations with respect to Transition Assistance set out in GC Section 2.4.2;
- (d) The Parties' rights and obligations with respect to copyright and intellectual property rights set out in GC Section 7.1;
- (e) The Operator's obligations of confidentiality as set out in GC Section 7.2;
- (f) The Parties' rights and obligations with respect to defect liability set out in GC Section 10.1; and
- (g) The Parties' rights and obligations with respect to indemnification set out in GC Section 10.4.

4. Notice (GC Section 1.4(1))

The Water Authority's address for notice is:

[Name, address, telephone and facsimile numbers]

The Operator's address for notice is:

[Name, address, telephone and facsimile numbers]

5. Adjudicator's Fee (GC Section 1.6.1(4))

The Adjudicator will be paid an hourly fee of *[Insert hourly fee in the appropriate currency.]*

6. Appointing Authority for New Adjudicator (GC Section 1.6.1(5)) and Independent Assessor (GC Section 13.2.4)

The Appointing Authority is,

[]

7. Rules of Procedure for Arbitration Proceedings (GC Section 1.6.2(3))

All disputes arising in connection with the Contract shall be finally settled under the [Rules of Conciliation and Arbitration of the International Chamber of Commerce]¹ by one or more arbitrators appointed in accordance with the Rules.

8. Starting Date (GC Section 3.1.3)

The Starting Date shall be no later than 60 days after the Effective Date.

9. Performance Security (GC Section 6.3.1(2)(b))

The Operator shall provide a performance security in the following amount:

[] renewable in accordance with GC Section 6.3.1(4)

10. Operator's Payment Security (GC Section 6.3.2(2)(b))

The Operator shall provide an Operator's Payment Security in the amount of:

[] renewable in accordance with GC Section 6.3.2(4)

11. Restrictions on CSCU's Authority (GC Section 8.1(5))

The CSCU is required to obtain the approval of the Water Authority before exercising its authority in the following circumstances:

- (a) amending the Contract pursuant to GC Section 1.3.7;
- (b) commencing any action or proceeding for the Settlement of Disputes under GC Section 1.6;

¹ see [Arbitration clauses] for possible alternatives

- (c) enforcing the Performance Security or the Operator's Payment Security; and
- (d) exercising any of the Water Authority's rights to suspend or terminate the Contract under GC Article 12.

12. Operator's Superintendence – Language of Communication (GC Section 9.2(2))

The language of superintendence shall be [].

13. Defect Liability Period (GC Section 10.1(2))

The Defect Liability Period shall be:

For 12 months after the End Date as set out in the General Conditions.

14. Insurance (GC Section 10.5(1))

The Operator shall take out and maintain the following insurance policies in the specified sums and with the specified deductibles as set out below:

- (a) Cargo Insurance During Transport: Covering any loss or damage in connection with the Services with a minimum coverage of US\$[];
- (b) Installation All Risks Insurance: Covering any loss or damage in connection with the Services with a minimum coverage of [];
- (c) Third Party Liability Insurance: Covering bodily injury or death suffered by third parties, including the Operations Staff and the Operator's Management Personnel, and loss or damage to property occurring in connection with the Services with a minimum coverage of [];
- (d) Professional Liability Insurance: Covering any loss or damage resulting from professional negligence occurring in connection with the Services with a minimum coverage of [];
- (e) Automobile Liability Insurance: Covering use of all vehicles used by the Operator or its Subcontractors, whether or not owned by them, in connection with the Services with a minimum coverage of []; and
- (f) Worker's Compensation: In accordance with the Applicable Law.

Appendix 2 Compensation, Indexation and Adjustment Appendix

**COMPENSATION, INDEXATION AND ADJUSTMENT
APPENDIX 2 TO THE GENERAL CONDITIONS
FOR A LEASE CONTRACT
FOR THE PROVISION OF WATER SUPPLY
AND WASTEWATER SERVICES**

SAMPLE

COMPENSATION, INDEXATION AND ADJUSTMENT APPENDIX

1. CONSUMER TARIFFS

a. Consumer Tariffs

During the term of the Contract, all rates, fees, levies and other charges in respect of the provision of the Services to Customers shall be established by the Water Authority in accordance with the Applicable Law.

The quantum, structure and categories of Customers and any other matters related to the Consumer Tariffs shall be established by the Water Authority.

The Operator shall, in accordance with the Services Appendix, provide assistance to the Water Authority in the ongoing establishment of the Consumer Tariffs.

Consumer Tariffs may, at the discretion of the Water Authority and as approved under the Applicable Law, include,

- variable volume-based charges;
- except as set out in Section 1.1(5) of this Compensation, Indexation and Adjustment Appendix, fixed charges;
- equipment rental charges;
- disconnection and reconnection fees; and
- any other types of rates, charges or penalties permitted under the Applicable Law.

Consumer Tariffs shall not include the Connection Fees, as defined in the Services Appendix.

b. Operator's Collection of the Consumer Tariffs and Connection Fees

The Operator shall collect all amounts payable by Customers in accordance with the Consumer Tariffs as established from time to time (the "Revenues").

The Operator shall deposit all Revenues and Connection Fees into an account specifically designed for that purpose (the "Revenue Account").

The Operator shall not collect any amounts from Customers other than those included as,

the Water Authority's approved Consumer Tariffs; and

the Connection Fees,

without the prior written consent of the Water Authority.

The Operator may withdraw from the Revenue Account only,

the amounts that the Operator is permitted to withdraw in respect of the Operator's Rate (the "Operator's Withdrawal") in accordance with Article 2 of this Compensation, Indexation and Adjustment Appendix; and

the amounts collected in respect of the Connection Fees.

All remaining amounts shall remain in the account until properly distributed to the Water Authority.

2. OPERATOR'S RATE

a. Operator's Rate

The Operator's Rate shall equal the Operator's Fee set out in Section 2.1 of the Form of Contract and adjusted in accordance with Article 3 of this Compensation, Indexation and Adjustment Appendix.

The Operator may, no earlier than the first day of each Month, withdraw from the Revenue Account the Operator's Withdrawal. The Operator's Withdrawal shall be calculated in accordance with Attachment 1 to this Compensation, Indexation and Adjustment Appendix.

The Parties shall, based on the Operator's audited annual financial statements and the billing and collection statistics in the Annual Reports provided by the Operator, carry out an annual reconciliation of the Operator's Withdrawal to take into consideration any adjustments to the monthly billing and collections statistics used in the calculation of the Operator's Withdrawal.

For the purposes of clarification, amounts collected by the Operator in respect of the Water Authority Collections, as defined in [], shall not be included in the calculation of the Operator's Withdrawal.

3. ANNUAL ADJUSTMENTS TO THE OPERATOR'S RATE

a. The Operator's Rate

The Operator's Rate shall be adjusted annually in accordance with the adjustment formula set out in Attachment 2 to this Compensation, Indexation and Adjustment Appendix.

b. Calculation of the Adjustment

The Operator's Rate shall be adjusted at the end of each Contract Year according to the following calculation:

$$\text{Operator's Rate}_{(A)} = \text{Operator's Rate}_{(U)} \times \text{Indexation and Adjustment Formula}$$

Where,

“Operator's Rate_(A)” is the adjusted Operator's Rate;

“Operator's Rate_(U)” is the Operator's Rate which was in effect for the Contract Year immediately prior to the adjustment; and

“Indexation and Adjustment Formula” is the formula prescribed by Attachment 2 to this Compensation, Indexation and Adjustment Appendix.

c. Procedure for Calculating the Adjustment

No later than 15 days after the end of each Contract Year, except the last Contract Year, the Operator shall deliver to the Water Authority for review and approval the calculation of the Operator's Rate as adjusted in accordance with Attachment 2 to this Compensation, Indexation and Adjustment Appendix. The Operator shall provide all supporting documentation about the calculation of the adjustment to the Operator's Rate, including information and supporting

documentation about the price indexes, currency indexes and price variables that the Operator has used to calculate the adjusted Operator's Rate.

No later than 30 days after receiving the Operator's calculation of the adjusted Operator's Rate, the Water Authority shall advise the Operator whether or not it agrees with the Operator's calculation of the adjusted Operator's Rate.

If the Water Authority fails or refuses to respond to the Operator's calculation of the adjusted Operator's Rate in accordance with Section 3.3(2) of this Compensation, Indexation and Adjustment Appendix, the Operator shall notify the Water Authority in writing that it has not received a response to its calculation.

If the Water Authority fails to respond to the Operator's written notification pursuant to Section 3.3(3) of this Compensation, Indexation and Adjustment Appendix within 14 days after receipt by the Water Authority of the Operator's notification, the Operator's calculation of the adjusted Operator's Rate shall be deemed to be approved.

If the Water Authority disagrees with the Operator's calculation of the adjusted Operator's Rate, either the Water Authority or the Operator shall refer the matter to the Adjudicator for resolution.

The Adjudicator shall, no later than 15 days after a Party's referral to the Adjudicator pursuant to Section 3.3(5) of this Compensation, Indexation and Adjustment Appendix,

complete a comprehensive review of the Operator's calculation of the adjusted Operator's Rate; and

meet with the Operator and the Water Authority separately and together, and issue a final decision with respect to the adjustment of the Operator's Rate for the applicable Contract Year.

The Adjudicator's decision under Section 3.3(6) shall be final and shall not be subject to the dispute resolution process set out in GC Section 1.6.

d. Adjustments - General

Until such time as the adjustment to the Operator's Rate is approved pursuant to Section 3.3(2) of this Compensation, Indexation and Adjustment Appendix, is deemed to be approved pursuant to Section 3.3(4) of this Compensation, Indexation and Adjustment Appendix or a final decision is rendered by the Adjudicator pursuant to Section 3.3(6) of this Compensation, Indexation and Adjustment Appendix, the Operator's Rate in effect for the Contract Year prior to the adjustment for the purposes of this Contract shall be used by the Parties.

An adjustment to the Operator's Rate approved under this Compensation, Indexation and Adjustment Appendix shall take effect on the first day of the applicable Contract Year to which the adjusted Operator's Rate relate, and the Parties shall make the necessary retroactive corrections in respect of the Operator's Rate and Operator's Payment to reflect the adjustment as of the first day of the applicable Contract Year.

4. OPERATOR'S PAYMENT

a. Operator's Payment

The Operator shall pay a monthly fee to the Water Authority (the "Operator's Payment") calculated in accordance with the calculation set out in Attachment 3 to this Compensation, Indexation and Adjustment Appendix.

b. Adjustments to the Operator's Monthly Fixed Payment

The Operator's Monthly Fixed Payment, as defined in Attachment 3 to this Compensation, Indexation and Adjustment Appendix, shall be adjusted annually by multiplying the Operator's Monthly Fixed Payment by the change in the Consumer Price Index of [host country] as determined by the [Central Statistical Organization], at the end of the applicable Contract Year. The annual adjustment of the Operator's Monthly Fixed Payment shall be carried out according to the same procedure set out in Sections 3.3 and 3.4 of this Compensation, Indexation and Adjustment Appendix.

SAMPLE

**Attachment 1 to the
Compensation, Indexation and Adjustment Appendix**

SAMPLE

CALCULATION OF THE OPERATOR'S WITHDRAWAL

The calculation of the Operator's Withdrawal, on a monthly basis pursuant to Article 2 of the Compensation, Indexation and Adjustment Appendix, is as follows:

$$\text{Operator's Withdrawal} = \text{Operator's Rate} \times \text{Collected Amounts}$$

Where:

- “Operator's Rate” means the Operator's Rate adjusted in accordance with this Compensation, Indexation and Adjustment Appendix; and
 “Collected Amounts” is calculated as follows:

$$\text{Collected Amounts} = \text{Volume Billed (m}^3\text{)} \times \frac{\text{Collection Total}}{\text{Billing Total}}$$

Where:

“Volume Billed” is calculated as follows:

- (i) the total volume of water, expressed in cubic meters, for which the Operator has billed Customers the variable volume-based charges for water supply and wastewater service provided by the Operator, in the period starting on the first day of the applicable Contract Year and ending on the last day of the month in respect of which this calculation of the Collected Amounts applies, minus
- (ii) the total volume of water, expressed in cubic meters, for which the Operator has billed Customers the variable volume-based charges for water supply and wastewater service provided by the Operator, in the period starting on the first day of the applicable Contract Year and ending on the last day of the month immediately preceding the month in respect of which this calculation of Collected Amounts applies;

“Collection Total” is calculated as follows:

- (iii) the total amount of [currency] the Operator has collected from the Customers in respect of the variable volume-based charges for water supply and wastewater service provided by the Operator, in the period starting on the first day of the applicable Contract Year and ending on the last day of the month in respect of which this calculation of the Collected Amounts applies, minus
- (iv) the total amount of [currency] the Operator has collected from the Customers in respect of the variable volume-based charges for water supply and wastewater service provided by the Operator, in the period starting on the first day of the applicable Contract Year and ending on the last day of the month immediately preceding the month in respect

of which this calculation of the Collected Amounts applies; and

“Billing Total” is calculated as follows:

- (v) the total amount of [currency] the Operator has billed the Customers in respect of the variable volume-based charges for water supply and wastewater service provided by the Operator, in the period starting on the first day of the applicable Contract Year and ending on the last day of the month in respect of which this calculation of the Collected Amounts applies, minus
- (vi) the total amount of [currency] the Operator has billed the Customers in respect of the variable volume-based charges for water supply and wastewater service provided by the Operator, in the period starting on the first day of the applicable Contract Year and ending on the last day of the month immediately preceding the month in respect of which this calculation of the Collected Amounts applies.

SAMPLE

**Attachment 2 to the
Compensation, Indexation and Adjustment Appendix**

SAMPLE

INDEXATION AND ADJUSTMENT FORMULA²

The Indexation and Adjustment Formula applicable to the annual adjustment of the Operator's Rate pursuant to GC Section 6.1(2) and Section 3.3(1) of the Compensation, Indexation and Adjustment Appendix is as follows:

$$(a\Delta I + b_1\Delta FI_1\Delta FX_1 + b_2\Delta FI_2\Delta FX_2 + b_3\Delta FI_3\Delta FX_3 + c\Delta K + d\Delta J)$$

Where,

- “a” is the actual proportion of the Operator's Rate associated with the costs of local salaries and locally-sourced goods and services, excluding electrical power and chemical costs, at the end of the applicable Contract Year;
- “Δ” is the change in a factor over the applicable Contract Year;
- “I” is the Consumer Price Index of [host country] as determined by the Central Statistical Organization, [host country] at the end of the applicable Contract Year;
- “b₁”, “b₂”, “b₃” are the actual proportions of the Operator's Rate associated with the costs of foreign salaries and foreign sourced goods and services at the end of the applicable Contract Year;
- “FI₁”, “FI₂”, “FI₃” are the foreign retail price indexes as published by the relevant organisation in the applicable countries. Changes in these indexes shall be calculated according to the most recent publication of the applicable index by the relevant organization, as of the date of application of the Indexation and Adjustment Formula;
- “FX₁”, “FX₂”, “FX₃” are the actual foreign currency to Local Currency exchange rates for the applicable foreign currencies;
- “c” is the actual proportion of the Operator's Rate associated with the costs of chemicals at the end of the applicable Contract Year;
- “K” is the price of chemicals;
- “d” is the actual proportion of the Operator's Rate associated with the costs of electrical power at the end of the applicable Contract Year; and
- “J” is the price of electrical power.

² this formula separates the actual costs of chemicals and power – which will be major factors in the operating costs – from the costs of salaries and goods and materials (which are indexed linked) and takes into account reductions as well as increases in those costs. Thought needs to be given to whether retail price index in a country is appropriate index in relation to construction costs.

**Attachment 3 to the
Compensation, Indexation and Adjustment Appendix**

SAMPLE

CALCULATION OF THE OPERATOR'S PAYMENT

The calculation of the Operator's Payment, on a monthly basis pursuant to GC Section 6.2(1) and Article 4 of the Compensation, Indexation and Adjustment Appendix is as follows:

$$\text{Operator's Payment} = \text{Operator's Monthly Fixed Payment} + \text{Operator's Monthly Variable Payment}$$

Where:

“Operator's Monthly Fixed Payment” equals [currency X]; and

“Operator's Monthly Variable Payment” is calculated as follows:

$$\text{Operator's Variable Payment} = \text{Revenues} - (\text{Operator's Rate} \times \text{Xm}^3)$$

Where:

“Revenues” means the Revenues collected by the Operator for the applicable month;

“Operator's Rate” means the Operator's Rate adjusted in accordance with this Compensation, Indexation and Adjustment Appendix; and

“Xm³” is the number of cubic meters of water supplied by the Operator for which the Operator has collected the applicable Consumer Tariffs.

Urban Water Supply and Sanitation Project

**FORM OF CONTRACT
FOR A LEASE CONTRACT
FOR THE PROVISION OF
WATER SUPPLY AND WASTEWATER SERVICES**

[DATE]

LEASE CONTRACT
FORM OF CONTRACT

THIS CONTRACT is made and entered into this ____ day of _____,

B E T W E E N

WATER SUPPLY AND SANITATION LOCAL CORPORATION

(hereafter the “Water Authority”)

– and –

[Name of Operator Company goes here] incorporated under the laws of **[place of incorporation]** with its principal place of business at **[address of the Operator]**

(hereafter the “Operator”)

– and –

[Name of the Operator’s Parent Company, Shareholders or any other entities required by the Water Authority to be parties to the Contract]

WHEREAS:

1. The Water Authority owns the water supply and wastewater assets under the control of the Water Authority;
2. The Water Authority has received all requisite approvals necessary and has conformed with all requisite laws in accordance with the Applicable Law to permit the Water Authority to enter into the Contract;
3. The Water Authority has the jurisdiction to enter into the Contract pursuant to the Applicable Law;
4. The Water Authority wishes to increase and improve the effectiveness, viability and operational and financial efficiency of the Facilities, reduce unaccounted for water, and improve and expand water and wastewater services to Customers;
5. The Operator has represented to the Water Authority that it has the skills and ability to manage, operate, and maintain the Facilities in an effective manner with reduced costs and increased profitability in the water and wastewater system in the Service Area;
6. The Operator responded to the Prequalification Documents dated [] and Bidding Documents dated [] organized by the Water Authority and was selected as

the recommended Operator to enter into the Contract and to fulfil the Services set out in the Services Appendix;

7. The Operator has the corporate capacity and authority to enter into the Contract; and
8. The Operator's parent company or shareholders of a joint venture company, if applicable, has or have guaranteed the Contract as provided in the Contract;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Water Authority and the Operator agree as follows:

2. CONTRACT DOCUMENTS

a. Contract Documents

The lease contract between the Water Authority and the Operator (the "Contract") consists of the following documents (collectively, the "Contract Documents"), and each of the following shall be read and construed as an integral part of the Contract:

- Form of Contract;
- General Conditions of Contract; and
- Appendices to the General Conditions of Contract.

b. Order of Precedence

In the event of any ambiguity or conflict between the Contract Documents listed in Section 1.1 of this Form of Contract, the order of precedence shall be as follows,

- Form of Contract;
- Special Conditions of Contract (Appendix 1 to the General Conditions);
- General Conditions of Contract;
- Appendices 2 to 10 to the General Conditions; and
- Operator's Bid (Appendix 11 to the General Conditions).

Notwithstanding Section 1.2(1) of this Form of Contract and any other term or condition in the Contract Documents, if any statement or provision in the Operator's Bid is not consistent with or conflicts with any other term or condition in the remainder of the Contract Documents, the remainder of the Contract Documents shall govern.

c. Definitions

Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions of the Contract and Appendices to the General Conditions of the Contract.

3. OPERATOR'S COMPENSATION AND TERMS OF PAYMENT

a. Operator's Compensation

In consideration of the performance by the Operator of its obligations hereunder, the Water Authority hereby agrees to pay to the Operator compensation in accordance with the terms and conditions of the Contract. The Operator's Rate shall equal **[insert amount of Bid Price from the Operator's Bid]** [] per cubic meter on the Starting Date and shall be adjusted and calculated in accordance with the terms and conditions of the Contract.

b. Water Authority Compensation

In consideration of the performance by the Water Authority of its obligations hereunder, the Operator hereby agrees to pay the Water Authority compensation by way of the Operator's Payment in accordance with the terms and conditions of the Contract.

4. EFFECTIVE DATE AND STARTING DATE

Determination of Effective Date and Starting Date

The Effective Date and the Starting Date for the Contract shall be determined in accordance with the General Conditions of the Contract.

SAMPLE

IN WITNESS WHEREOF the Water Authority and the Operator have caused this Form of Contract to be duly executed by their duly authorized representatives.

EXECUTED as of the date first written above.

WATER AUTHORITY

By: _____

Name: _____

Title: _____

Witness: _____

[THE OPERATOR]

By: _____

Name: _____

Title: _____

Witness: _____

[PARENT(S) OF THE OPERATOR]

By: _____

Name: _____

Title: _____

Witness: _____

[SHAREHOLDERS OF THE OPERATOR]

By: _____

Name: _____

Title: _____

Witness: _____

