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**PERFORMANCE-BASED MANAGEMENT CONTRACT FOR WATER
SUPPLY AND WASTEWATER SERVICES IN []**

BETWEEN

[WATER AUTHORITY]

AND

Dated _____

PROPOSED AGREEMENT FOR A MANAGEMENT CONTRACT

This CONTRACT (hereinafter, together with all Appendices attached hereto and forming an integral part hereof, called this “Contract”) is made the ___ day of [month], [], between, on the one hand, [] (hereinafter called the “Employer”) and, on the other hand, _____ (hereinafter called the “Operator”).

WHEREAS:

- (a) the Employer has requested the Operator to provide certain services as defined in this Contract;
- (b) the Operator, having represented to the Employer that it has the required professional skills, personnel and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract; and
- (d) the Operator’s Parent has executed the form of guarantee set out in Appendix J.

NOW THEREFORE the parties hereto hereby agree as follows:

1. General Conditions

1.1 Definitions

Unless the context otherwise requires, the following terms, whenever used in this Contract, including the recitals, have the following meanings:

- (a) “Affiliates” means an affiliated company within the meaning of [relevant legislation]
- (b) “Allowances” are all costs including child education, post differential, housing (for long-termers), local transport (for long-termers) etc., which may be necessary to secure the appropriate personnel for this management contract.
- (c) “Annual Development Plan” means the plan prepared by the Operator pursuant to Clause 3.2.2;
- (d) “Appendix” means an appendix to this Contract and Appendices shall be construed accordingly;
- (e) “Applicable Law” means the laws and any other instruments having the force of law in [], as they may be issued and in force from time to time;
- (b) “Board of Directors” means the board of directors of the Employer;
- (c) “Contract” means this Contract between the Employer and the Operator;
- (d) “Effective Date” means the date on which all the conditions precedent set out in Clause 2.1 hereof are met;
- (f) “Foreign currency” means any currency other than the currency that constitutes legal tender in [] ;
- (g) “Direct Payment” means a payment source other than the [] Grant;
- (h) “Long-Term Personnel” means Foreign Personnel working full-time in [] on this management contract for a period of over four months.
- (h) “National currency” means a currency that constitutes legal tender in [] ;
- (i) “Member” in case the Operator consists of a joint venture or more than one entity, means any and each of these entities, and “Members” shall be construed accordingly;
- (j) “Party” means the Employer or the Operator, as the case may be; and “Parties” shall be construed accordingly;
- (k) “Personnel” means persons hired by the Operator or by any Subcontractor as employees and assigned to the project or any part thereof; and “Foreign Personnel” means such persons who at the time of being so hired had their domicile outside [] ; and “National Personnel” means such persons who at the time of being so hired had their domicile in [] ;
- (l) “Project” means providing water, sewerage and certain sanitation services in [] ;

Water Management Agreement - Example 2

- (m) "Report" means the documents, plans, manuals, reports and other written materials prepared by the Operator in accordance with the requirements of Appendix B hereto;
- (n) "Services" means the work and services to be performed by the Operator pursuant to this Contract for the purposes of the Project, as described in Appendix A hereto;
- (o) "Short-term personnel" means personnel which travel away from their home office to work on this management contract for a period of less than [four] months.
- (o) "Starting Date" means the date referred to in Clause 2.3 hereof;
- (p) "Subcontractor" means any entity to which the Operator subcontracts any part of the Services in accordance with the provisions of this Contract; and
- (q) "Third Party" means any person or entity other than [], the Employer, the Operator, or a Subcontractor.

1.2 Relation between the Parties

The Operator, subject to this Contract, shall have complete charge and supervision of Personnel performing the Services and shall be fully responsible for the Services performed by it or on its behalf hereunder. The Employer will provide the relevant members of its current staff as counterparts to the Operator Personnel

1.3 Law governing this Contract

This Contract shall be governed by, and construed in accordance with, the Applicable Law.

1.4 Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.5 Headings

The headings shall not limit, alter or affect the meaning of this Contract.

1.6 Notices

- 1.6.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be delivered by registered mail, or facsimile to such Party at the following address:

For the Employer:

Attention: _____

Cable address: _____

Facsimile: _____

For the Operator:

Attention: _____

Cable address: _____

Facsimile: _____

- 1.6.2 Notice will be deemed to be effective as follows:

- (a) in the case of personal delivery or registered mail, on delivery;
- (b) in the case of facsimiles, the first business day following confirmed transmission.

Water Management Agreement - Example 2

1.6.3 A Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to this Clause.

1.7 Location

The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether in [] or elsewhere, as the Employer may approve.

1.8 Authority of Member in Charge

In case the Operator consists of an unincorporated joint venture or more than one entity, the Members hereby authorize _____ to act on their behalf in exercising all the Operator's rights and obligations toward the Employer under this Contract, including, without limitation, the receiving of instructions and payments from the Employer.

1.9 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed by the Parties under this Contract, may be taken or executed:

- (a) on behalf of the Employer by its Board of Directors or by the Employer's attorney;
- (b) on behalf of the Operator by _____ or the Operator's attorney.

[1.10 Taxes and duties¹

The Government of [] has granted any and all tax exemptions on payments made under the contract, to the Operator and the Personnel. These include exemption from (or that the Employer shall pay on behalf of the Operator and the Personnel) any taxes, duties, fees, levies and other impositions imposed, under the Applicable Law, on the Operator and the Personnel in respect of:

- (a) any payments whatsoever made to the Operator, Subcontractors and their Foreign Personnel in connection with the carrying out of the Services;
- (b) any equipment, materials and supplies brought into [] by the Operator or Subcontractors for the purpose of carrying out the Services and which, after having been brought into such territory, will be subsequently withdrawn by them;
- (c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Employer and which is treated as property of the Employer;
- (d) household goods, personal effects and one vehicle each on a one-time basis brought into [] by the Operator, any Subcontractors, or their Foreign Personnel for their personal use and which will subsequently be withdrawn therefrom by them upon their respective departure from [], provided that:
 - i. the Operator, Subcontractors and Foreign Personnel shall follow the usual customs procedures of [] in importing such property into []; and
 - ii. if the Operator, Subcontractors or Foreign Personnel do not withdraw but dispose of any such property in [] upon which customs duties and taxes have been exempted, the Operator, Subcontractors, or Foreign Personnel, as the case may be, (i) shall bear such customs duties and taxes in conformity with the regulations of [], or (ii) shall reimburse them to the Employer if they were paid by the Employer at the time the property in question was brought into [].
 - iii. this Contract.]

2. Commencement, Completion, Modification, and Termination of Contract

¹ Government may wish to grant tax exemptions/ breaks to an operator in order to make the project more attractive. This clause will need to be tailored to meet the specific circumstances of the project

2.1 Conditions precedent and Effective Date of this Contract

With the exception of Clauses [] which shall be immediately enforceable on signature of this Agreement², the provisions of this Agreement are conditional upon production of the following in a form satisfactory to the Parties:

- (a) written approval of the terms of this Agreement by the Government of [];
- (b) proof that the Operator's Parent has executed a guarantee in the form set out in Appendix J;
- (c) where applicable, the Operator has provided a guarantee in the form set out in Appendix I; and
- (d) Board minutes of the Parties authorising the Parties to execute this Contract.

2.2 Termination of Contract for failure to become effective

If any of the conditions precedent set out in Clause 2.1 have not been met within sixty (60) days of the date on which the Parties executed this Contract, either Party may, by not less than four (4) weeks written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

2.3 Commencement of Services

The Operator shall begin carrying out the Services not later than forty-five (45) days after the Effective Date or on such other date as the Parties may agree in writing (in either case the "Starting Date").³

2.4 Expiration of Contract

Unless terminated earlier pursuant to Clause 2.10 hereof, this Contract shall terminate on the fifth anniversary of the Starting Date, except if the Parties agree to extend the term of this Contract under a new source of funding.

2.5 Entire Contract

This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

2.6 Modification⁴

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services, may only be made by written agreement between the Parties. If during the term of this Contract other contractors are engaged for work with respect to the water and sewerage systems in [] by the Employer and their activities materially impact the incentive compensation payments pursuant to clause 6.3 (d), the Parties shall agree on adjustments to such incentive compensation payments.

2.7 Right to Bid on Subsequent Arrangements⁵

The Operator shall be eligible to bid on subsequent long-term arrangements such as leases, concessions, or other similar arrangements that result from or follow-on from this Contract provided that the Operator shall not be given any preferential treatment (including, but not limited to, the right of first refusal) in bidding on subsequent arrangements.

² care should be taken to state clearly that provisions relating to effectiveness, dispute resolution, notices and confidentiality etc. come into force immediately and that other provisions are conditional on the conditions precedent. If the contract stipulates that the contract is generally conditional on the conditions precedent then this could have the result of nothing, even the effectiveness provision, being in force and enforceable

³ are there any permits that will be required before the Operator commences performance? If so, it may be appropriate to make them conditions precedent to commencement

⁴ is there any third party whose consent will be required for modification of the contract

⁵ this is a provision that the Operator will want to see in a management contract if it is a short term arrangement intended as a bridge to more extensive private sector involvement

2.8 Force Majeure⁶

2.8.1 Definition

- (a) For the purpose of this Contract, “Force Majeure” means any event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances.⁷
- (b) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.8.2 – No Default

The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a default under this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, with the objective of carrying out the terms and conditions of this Contract.

2.8.3 – Measures to be taken

A Party affected by an event of Force Majeure shall:

- (a) take all reasonable measures to remove such Party’s inability to fulfill its obligations hereunder with a minimum of delay;
- (b) notify the other Party of such event as soon as possible, and in any event not later than five (5) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible; and
- (c) take all reasonable measures to minimize the consequences of any event of Force Majeure.

2.8.4 – Extension of time

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.8.5 – Payments

During the course of an event of Force Majeure affecting either Party, the Operator shall be paid all costs reasonably and necessarily incurred by the Operator for the purposes of ensuring that the Services may recommence following the conclusion of the event of Force Majeure. The Operator shall also be paid all costs reasonably and necessarily incurred during the time extension required by a Force Majeure.

2.8.6 – Consultation

Not later than thirty (30) days after the occurrence of an event of Force Majeure, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.9 Suspension

The Employer may, by serving a written notice on the Operator, suspend all certification of payments to the Operator hereunder if the Operator fails to perform any of its material obligations under this Contract, including the carrying out of the Services, provided that such notice (i) specifies the nature of the failure, and (ii) requires

⁶ where the services to be provide relate to a network rather than one particular plant, it is more likely that a force majeure event will result in partial rather than total obstruction of services – parties should what arrangements would be appropriate where the obstruction is sustained – termination may not be an appropriate solution in this case

⁷ this is a simple definition of force majeure and makes no distinction between political and natural events of force majeure. For more discussion and sample provisions, you can access the Force Majeure checklist on the Infrastructure and Law database.

the Operator to remedy such failure within a period not exceeding thirty (30) days after receipt by the Operator of such notice of suspension.

2.10 Termination

The occurrence of the events of default specified under Clauses 2.10.1 and 2.10.2 grant the relevant Party the right to terminate this Contract.

2.10.1 Default by the Operator

The following are events of default by the Operator:

- (a) the Operator fails to remedy a material failure in the performance of its obligations hereunder as specified in a notice of suspension pursuant to Clause 2.9 hereof, within thirty (30) days of receipt of such notice of suspension or within such further period as the Employer may have subsequently approved in writing; provided always that failure by the Operator to meet a composite performance factor of 2.5 pursuant to Appendix H shall be deemed to put the Operator on notice of possible termination and failure to meet a composite performance of 3.5 shall be automatic grounds for the Employer to terminate this Contract;
- (b) the Operator becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or takes advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Operator fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof; or
- (d) the Operator submits to the Employer a statement which has a material effect on the rights, obligations or interests of the Employer and which the Operator knows to be false.

After the occurrence of any of the events of default specified in paragraphs (a) through (d) above of this Clause, the Employer shall have the right to terminate this Contract, with immediate effect, by serving a written notice of termination on the Operator.

2.10.2 Default by the Employer

The following are acts of default by the Employer:

- (a) the Employer fails to certify the payment of any money due to the Operator pursuant to this Contract and not subject to dispute pursuant to Clause 9 hereof within forty-five (45) days after receiving written notice from the Operator that such payment is overdue;
- (b) the Employer is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Operator may have subsequently approved in writing) following the receipt by the Employer of the Operator's notice specifying such breach; or
- (c) failure by the Employer to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

After the occurrence of any of the events specified in paragraphs (a) through (c) above of this Clause, the Operator shall have the right to terminate this Contract, with immediate effect, by serving a written notice of termination on the Employer. The grant shall not be used to meet any claims in respect of loss or damage incurred by the Operator as a result of an act of Default by the Employer. Any such payments in respect of such claims shall be made by the Employer through Direct Payment.

2.10.3 Termination due to No-Fault Events

The following are 'No Fault' Events leading to termination:

- (a) An occurrence of an event of Force Majeure as a result of which, the Operator is unable to perform a substantial category of the Services for a period in excess of sixty (60) Days following the occurrence of the event of Force Majeure;
- (b) The conditions precedent set out in Clause 2.1 have not been met within sixty (60) days of the execution of this Contract and either Party exercises their rights under Clause 2.2 of this Contract.

2.10.4 – Cessation of rights and obligations

Upon termination of this Contract pursuant to Clauses 2.2 or 2.10 hereof, or upon expiration of this Contract pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued by such date, (ii) the obligation of confidentiality set forth in Clause 3.3 hereof, (iii) the Operator's obligation to permit inspection, copying and auditing of its accounts and records set forth in Clause 3.6 (ii) hereof, and (iv) any right which a Party may have under the Applicable Law.

2.10.5 – Cessation of Services⁸

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses 2.10.1 or 2.10.2 hereof, the Operator shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Operator and equipment and materials furnished by the Employer, the Operator shall proceed as provided, respectively, by Clauses 3.9 or 3.10 hereof.

2.10.6 – Payment upon termination

Upon termination of this Contract pursuant to Clauses 2.10.1, 2.10.2 or 2.10.3 hereof, the Employer shall make the following payments to the Operator:

- (a) remuneration pursuant to Clause 6 hereof for the Services satisfactorily performed prior to the date of termination;
- (b) reimbursable expenditure pursuant to Clause 6 hereof for expenditure actually incurred prior to the date of termination; and
- (c) except in the case of termination pursuant to paragraphs (a) through (d) of Clause 2.10.1 hereof, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract including the cost of the return travel of the Operator's Foreign Personnel and their eligible dependents shall be made by the Employer.

2.10.7 – Disputes About Events Of Termination

If either Party disputes whether an event specified in paragraphs (a) through (d) of Clause 2.10.1 or in Clause 2.10.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. Authority and Obligations of the Operator

3.1 General

3.1.1 – Authority of the Operator

- (a) For the duration of the term of this Contract the Employer hereby authorises the project manager (appointed by the Operator pursuant to Clause 4.6 hereof), where necessary, to do, on behalf of the Employer, all things which the project manager may deem to be expedient or necessary for the provision of Services.
- (b) When exercising the authority granted pursuant to Clause 3.1.1 (a) hereof, the project manager shall act at all times in accordance with his duties and obligations as a member of the Board of Directors.

⁸ parties often wish to include a detailed process of handover to a successor, to ensure smooth transfer from one Operator to another

Water Management Agreement - Example 2

[3.1.2 – Responsibility of the Operator⁹

Provided that the project manager is able to exercise the authority granted pursuant to Clause 3.1.1 (a) hereof the Operator shall use its best endeavors to provide or procure that the Services are provided to the Employer in accordance with the terms of this Contract.]

3.1.3 - Standard Of Performance

The Operator shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, having regard to generally accepted techniques and practices used in the water and sewerage industry and with professional engineering and consulting standards recognized by international professional bodies, and shall observe sound management, technical, and engineering practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The Operator will ensure that [] adheres to the terms of its licence.

3.1.4 – Law governing the Services

The Operator shall perform the Services in accordance with the Applicable Law, including [], and shall take all practicable steps to ensure that any Subcontractors, as well as the Personnel and agents of the Operator and any Subcontractors, comply with the Applicable Law.

3.2 Conflict of Interests

3.2.1 – Operator not to benefit from commissions, discounts.

The remuneration of the Operator pursuant to Clause 6 hereof shall constitute the Operator's sole remuneration in connection with this Contract or the Services and, subject to Clause 3.2.2 hereof, the Operator shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of its obligations hereunder, and the Operator shall use its best efforts to ensure that any Subcontractors, as well as the Personnel and agents of either of them, shall not receive any additional remuneration. The Operator shall use its best endeavors to include a clause substantially in the form of this Clause 3.2.1 in each agreement the Operator enters into with a Subcontractor.

3.2.2 – Procurement rules of funding agencies

- (a) The Operator, as part of the Services, has the responsibility on behalf of the Employer to procure goods, works and services. The Operator shall comply with any applicable procurement guidelines of [World Bank] (see Appendix K, Procurement Procedures) and shall at all times exercise such responsibility in the interests of the Employer. Any discounts or commissions obtained by the Operator in the exercise of such procurement responsibility shall be for the account of the Employer.
- (b) The Operator shall prepare a plan (the "Annual Development Plan") that includes all procurements, including technical consultancies, which the Operator anticipates will be necessary for the year. After the Employer has approved the Annual Development Plan, the identified expenditures are eligible for procurement by the Operator and shall be certified for payment by the Employer.
- (c) The Operator shall also specify in the Annual Development Plan the unit and cumulative annual value of additional procurements, that cannot be described or specified at the time of the writing of the Annual Development Plan, for which the Operator requests prior authorization. Approval of these values will be granted through the process of approving the Annual Development Plan as specified in Clause 3.8.

⁹ this is an unusual provision and the result of negotiations and the circumstances – it would be more usual to have an absolute obligation to perform the services in accordance with specific performance standards rather than a best endeavors obligation – which is vague. It is particularly difficult where there is a performance-base contract, as here. It may be appropriate to have a transition/ benchmarking period during which the Operator has a reduced performance obligation in the event that there is insufficiently reliable data of existing capacity and performance of the system – detailed sample wording is set out in the document “Benchmarking Period” to be found on the Infrastructure and Law website.

Water Management Agreement - Example 2

- (d) Separate monthly invoices for all procurements shall be presented to the Employer for approval consistent with the requirements of Clause 6.5(b) hereof, except payments in respect of procurements made pursuant to this Clause 3.2.2 (c).

3.2.3 – Operator And Affiliates Not To Be Otherwise Interested In Project

The Operator agrees that, during the term of this Contract and after its termination, the Operator and any entity affiliated with the Operator, as well as any Subcontractor and any entity affiliated with such Subcontractor, shall be disqualified from providing goods, works, or services (other than the Services and any continuation thereof) for the Project and any project resulting from or closely related to the Services, except as specifically provided for in this Contract, except with the prior consent of the Employer.

- (a) A consent given by the Employer shall be given only in a circumstance where the giving of consent will result in no material disadvantage to [the Employer] or its procurement processes.
- (b) The Employer may, in its sole discretion, impose conditions on a consent given Pursuant to Clause 3.2.2. Where such conditions require the appointment of an independent consultant to undertake services that would otherwise fall under the scope of the Operator's services, the independent consultant shall be selected by the [Ministry of] and the costs of such services shall be borne by the Operator.
- (c) The Employer may, in its sole discretion, appoint an independent assessor to advise on whether a consent should be given, and if so, what conditions should be imposed pursuant of 3.2.3 (a). In the event that an independent assessor is to be retained, the assessor shall be selected by the [Ministry of] and the costs of such services shall be borne by the Operator.

3.2.4 – Prohibition Of Conflicting Activities

Neither the Operator nor its Subcontractors (including their respective Personnel) shall engage, either directly or indirectly, in any business or professional activities in [] which conflicts, or may conflict, with the activities assigned to them under this Contract.

[3.3 Confidentiality

The Operator shall not, and shall ensure that that its Subcontractors (including their respective personnel) shall not, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, the Government of [], or the Employer to any third party without the prior written consent of the Employer provided that the Operator may disclose such information to a Governmental or other authority to the extent that such disclosure is required by Law and shall, in the event of such disclosure, immediately notify the Employer in writing.]¹⁰

3.4 Liability of the Operator

The Operator shall be liable to the Employer for the performance of the Services in accordance with the provisions of this Contract and for any loss suffered by the Employer as a result of a default of the Operator in such performance, subject to the following limitations:

- (a) The Operator shall not be liable for any damage or injury caused by or arising out of the act, neglect, default or omission of any persons other than the Operator and its Subcontractors (including their respective Personnel); and
- (b) The Operator shall not be liable for any loss or damage caused by or arising out of circumstances over which the Operator had no control.¹¹

3.5 Insurance to be taken out by the Operator¹²

¹⁰ it is preferable in the interests of transparency to have the terms of the agreement published – consideration should be given to what, if anything could be published and what would remain commercially sensitive

¹¹ this is a broad concept and the Government may wish to see much more specific carve outs of liability of the Operator

Water Management Agreement - Example 2

The Operator (i) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, (either at the Operator's or the Subcontractors' cost) insurance against the risks, and for the coverages, set forth below at terms and conditions approved by the Employer, and (ii) at the Employer's request, shall provide evidence to the Employer showing that such insurance has been taken out and maintained:

- (a) Third Party motor vehicle liability insurance in respect of motor vehicles operated in [] by the Operator or its Personnel or any Subcontractors or their Personnel, with a minimum coverage of US\$[1,000,000];
- (b) Third Party liability insurance, with a minimum coverage of US\$[1,000,000];
- (c) Professional liability insurance, with a minimum coverage of US\$[1,000,000];
- (d) Employer's liability and workers' compensation insurance in respect of the Personnel of the Operator and of any Subcontractor, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to the Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and
- (e) Insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Operator's property used in the performance of the Services, and (iii) any documents prepared by the Operator in the performance of the Services.

3.6 Accounting, inspection and auditing

The Operator (i) shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the bases thereof (including the bases of the Operator's representations referred to in Clause 6.3 hereof), and (ii) shall permit the Employer or its designated representatives periodically, and up to one year from the expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Employer.¹³

3.7 Operator's actions requiring Employer's prior approval

The Operator shall obtain the Employer's prior approval in writing before taking any of the following actions:

- (a) Appointing Personnel who, for exceptional reasons, must replace Personnel proposed by the Operator in its bid, or who supplement the Personnel proposed by the Operator in its bid;
- (b) Subcontracting for the performance of any part of the Services, notwithstanding that such subcontracting is on the basis that the Operator shall remain fully liable for the performance of the Services by the Subcontractor and its Personnel pursuant to this Contract. In this regard, approval of the Annual Development Plan pursuant to Clause 3.2.2 hereof will, to the extent that it specifies that Services or part of the Services are to be subcontracted, constitute the written approval for the Operator entering into such subcontracts.

In each Annual Development Plan, the Operator shall specify the prioritized Investment and Rehabilitation plan for the coming year and The Employer will render approval of this Plan. The Operator shall also specify in the Annual Development Plan the unit and cumulative annual value of additional procurements, not specified in the Annual Development Plan, for which the Operator requests prior authorization.

3.8 Reporting obligations and approval process

The Operator shall submit to the Employer twelve (12) copies in English of the draft Reports specified in Appendix B hereto, within the time periods set forth in said Appendix. Within 21 days of receiving any draft Report listed in Appendix B hereto, or the date on which the Employer receives any additional information it requested, the Employer must:

- (a) Give the Operator any written comments and questions it has on the draft Report; and

¹² availability of insurance will vary. Advice should be taken as to availability and appropriateness of insurance in the particular circumstances of the project. For a more detailed discussion about insurance, go to insurance checklist²⁷ on Infrastructure and Law website

¹³ It might also be appropriate to grant funding agency access where funding agency is involved

- (b) Indicate whether it approves of the draft Report.

If the Employer fails to approve draft Reports or refuses to provide written comments within 21 days, the Operator shall notify the Employer in writing that it has not received a response to its draft Report. If the Employer further fails to respond to the Operator's written notification within 14 days, the Operator's draft Report should be considered to be approved.

The Operator must give written responses to any questions raised by the Employer within 7 days of receiving those questions. Within 10 days of receiving the Employer's comments and questions, or approval of the draft Report, the Operator shall submit the final Report to the Employer, and the Employer shall notify the Operator of its approval or rejection of the final Report within 10 days of receiving it. If the Employer rejects the final Report, it must give the Operator its reasons for such rejection in writing.

3.9 Documents prepared by the Operator to be the property of the Employer

All plans, drawings, specifications, designs, reports and other documents prepared by the Operator in performing the Services shall become and remain the property of the Employer, and the Operator shall, not later than the date on which this Contract terminates or expires, deliver all such documents to the Employer, together with a detailed inventory thereof. The Operator may retain a copy of such documents, but shall not use them for purposes unrelated to this Contract without the prior written approval of the Employer.

3.10 Equipment and materials furnished by the Employer¹⁴

The assets of the water and sewerage systems in [] will remain under the ownership and control of the Employer. Equipment and materials made available to the Operator by the Employer, or purchased by the Operator with funds certified for payment by the Employer, shall be the property of the Employer and shall be marked accordingly. Upon termination or expiration of this Contract, the Operator shall make available to the Employer an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the Employer's instructions. While in possession of such equipment and materials, the Operator shall insure them at the expense of the Employer in an amount equal to their full replacement value. The cost of such insurance shall be treated as a procurement pursuant to Clause 3.2.2 hereof.

The Employer shall review all contracts to which the Employer is a party at the Starting Date, and having consulted with the Operator, the Employer will decide whether: (i) any such contracts should be terminated; or (ii) a request should be made to amend any such contracts.

4. Operator's Personnel

4.1 General¹⁵

[The Operator shall employ and provide such qualified and experienced Personnel as are required to carry out the Services. In addition, the Operator may provide bonus payments pursuant to Employer's procedures to the Employer's staff. Any such bonus payments shall be the Operator's responsibility, but will be payable at cost as a procurement pursuant to Clause 3.2.2 hereof.]

4.2 Description of Personnel

- (a) The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of each of the Operator's Personnel are described in Appendix C.

¹⁴ check that Employer has right to grant Operator access/ interests in the assets under local law

¹⁵ the relationship between the Employer's staff and the Operator is not clear – what authority does the Operator have over the staff? This is dealt with at 5.7 but is still unclear how it will work on a day to day basis. Often staff are seconded to the Operator for the term of the contract – this is important when dealing with incentive and discipline issues. Are there any trade unions, what are the workers rights? Are there restrictions on transfers – personnel issues should be considered early in a project's development

Water Management Agreement - Example 2

- (b) If required to comply with the provisions of Clause 3.1.1 hereof, adjustments with respect to the estimated periods of engagement of Personnel set forth in Appendix C may be made by the Operator by written notice to the Employer, provided that (i) such adjustments shall not alter the originally estimated period of engagement of any individual by more than 10% or one week, whichever is larger, and (ii) the aggregate of such adjustments shall not cause certified payments under this Contract to exceed the ceilings set forth in Clause 6.1(b) hereof. Any other such adjustments shall only be made with the Employer's written approval.
- (c) If additional work is required beyond the scope of the Services specified in Appendix A, the estimated periods of engagement of Personnel set forth in Appendix C may be increased by agreement in writing between the Employer and the Operator, provided that any such increase shall not, except as otherwise agreed, cause payments under this Contract to exceed the ceilings set forth in Clause 6.1(b) hereof.

4.3 Approval of Personnel

The Personnel and Subcontractors listed by title and name in Appendix C are hereby approved by the Employer. In respect of other full time Personnel that the Operator proposes to use in the carrying out of the Services, the Operator shall submit to the Employer for review and approval a copy of their biographical data. If the Employer does not object in writing (stating the reasons for the objection) within twenty-one (21) days from the date of receipt of such biographical data, such Personnel shall be deemed to have been approved by the Employer.

4.4 Working days, overtime and leave

- (a) Working days and holidays for Foreign Personnel are set forth in Appendix E hereto. To account for travel time, Foreign Personnel carrying out the Services in [] shall be deemed to have commenced and/or finished work in respect of the Services in accordance with the number of days specified in Appendix E hereto.
- (b) The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation except as specified in Appendix E hereto, and unless otherwise indicated, the Operator's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is included in the man-months of service set forth in Appendix E. Any taking of leave by Personnel shall be subject to the prior approval by the Operator who shall ensure that absence for leave purposes will not delay the progress and adequate supervision of the Services.
- (c) Actual presence of Personnel in the man-months of service set forth in Appendix E is subject to audit, and a corresponding certification of said audit will be included as a note in the Operator's Annual Report.

4.5 Removal and/or replacement of Personnel

- (a) Except as the Employer may otherwise agree, no changes shall be made in the Personnel. If, for any reason beyond the reasonable control of the Operator, or due to a change in the Description of Services set out in Appendix A, it becomes necessary to replace any of the Personnel, the Operator shall forthwith provide as a replacement a person of equivalent or better qualifications.
- (b) Without prejudice to its rights in relation to the Personnel, if the Employer (i) finds that any member of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (ii) has good cause to be dissatisfied with the performance of any member of the Personnel, then the Operator shall, at the Employer's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Employer.
- (c) Any of the Personnel provided as a replacement under Clauses (a) and (b) above, the rate of remuneration applicable to such person as well as any reimbursable expenditures (including expenditures due to the number of eligible dependents) the Operator may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Employer.
- (d) Except as the Employer may otherwise agree, (i) the Operator shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be

paid for any of the Personnel provided as a replacement of any Personnel shall not exceed the remuneration which would have been payable to the Personnel replaced.

4.6 Resident Project Manager

The Operator shall ensure that at all times during the Operator's performance of the Services, a resident project manager shall take charge of the performance of such Services.

5. Obligations of the Employer

5.1 Delegation Of Day-To-Day Management¹⁶

- (a) The Employer undertakes to appoint the resident project manager as managing director of the Employer, and vest him with responsibility for the day-to-day management of the Services. The Employer further undertakes that the Board of Directors will grant the managing director the authority to commit and approve expenditures to a level commensurate with the Operator's obligations to manage the Employer successfully and to implement the scope of activities agreed upon in the Annual Development Plan.
- (b) The managing director shall implement the strategies in the Annual Development Plan and manage the business operations of the Employer in order to achieve the goals set out in the Annual Development Plan.
- (c) The Employer undertakes to cooperate and not interfere with the Operator's Personnel in their execution of their duties or in the day-to-day management of the services. In this respect, the Employer will give timely consideration to the reports and proposals made to it by the Operator, and approval for such reports and proposals shall not be unreasonably withheld.

5.2 Assistance and exemptions

The Employer shall use its best efforts to:

- (a) assist the Operator, Subcontractors and Personnel obtain work permits and such other documents as shall be necessary to enable the Operator, Subcontractors or Personnel to commence the performance of and perform the Services;
- (b) arrange for the Personnel and, if appropriate, their eligible dependents to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits, and any other documents required for their stay in [];
- (c) facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Personnel and their eligible dependents;
- (d) issue to officials, agents and representatives of the Employer all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services;
- (e) assist the Operator and the Personnel and any Subcontractors employed by the Operator to register or obtain any permit to practice their given profession or to establish themselves either individually or as a corporate entity according to the Applicable Law; and
- (f) arrange so that the Operator, any Subcontractor and the Personnel of either of them are granted the privilege, pursuant to the Applicable Law, of bringing into [] reasonable amounts of foreign currency for the purposes of performing the Services or for the personal use of the Personnel and their dependents and of withdrawing any such amounts as may be earned therein by the Personnel in the execution of the Services.

5.3 Access to land and information¹⁷

¹⁶ this is an odd arrangement and is very project specific – it will be hard for the Employer to determine whether the Operator is doing a good job is the managing director is from the Operator – the managing director becomes servant to two masters

¹⁷ check that such rights can be granted to Operator. Also, what about rights to run water and sewage lines over third party land/ carry out repairs under highways etc?

Water Management Agreement - Example 2

- (a) The Employer warrants that the Operator shall have, free of charge, unimpeded access to all Government and State land in [] in respect of which access is required for the performance of the Services. The Employer will be responsible for any damage to such land or any property thereon resulting from such access and will indemnify the Operator and each of the Personnel in respect of liability for any such damage, unless such damage is caused by the default or negligence of the Operator or any Subcontractor or the Personnel of either of them.
- (b) The Employer shall give the Operator full access to all information, plans, policies, Board papers, reports and data necessary to permit the Operator to carry out the Services.

5.4 Change in the applicable law

If, after the date of this Contract, there is any change in the Applicable Law which increases or decreases the cost or reimbursable expenses incurred by the Operator in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Operator under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause 6.1(b) hereof. If the Parties are unable to reach agreement on the level of compensation, independent assessment should be sought through a mechanism to be agreed by the Parties.

5.5 Services, facilities, and property of the Employer

The Employer shall make available to the Operator and the Personnel, for the purposes of the Services and free of any charge, the services, facilities and property described in Appendix F at the times and in the manner specified in said Appendix F, provided that if such services, facilities and property shall not be made available to the Operator as and when so specified, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Operator for the performance of the Services, and (ii) the manner in which the Operator shall procure any such services, facilities and property from other sources.

5.6 Certification of Payments

In consideration of the Services performed by the Operator under this Contract, the Employer shall certify to DFID in writing (sending a copy of every such certification to the Operator) that payments should be made to the Operator in the manner set out in Clause 6 hereof.

5.7 Counterpart Staff

The Employer will put at the disposal of the Operator, under the time periods and conditions stipulated in Appendix F, and free of charge to the Operator, the staff that are employed by the Employer for the provision of water and sewerage services. Said staff will work under the exclusive direction of the Operator, but will retain their legal employment status as employees of the Employer. The Employer will, in accordance with the parameters agreed with the Operator and the Description of Services, exercise all of the rights and powers established in the Articles of Incorporation and Bylaws of [] and the Applicable Law to remove, promote/demote, and hire staff in accordance with the reasonable requests of the Operator.

6. Payments to the Operator

6.1 Cost estimates; Ceiling amount

An estimate of the cost of the Services payable in foreign currency is set forth in Appendix G.

Except as otherwise agreed under Clauses 2.6 and 6.5 hereof, certified payments under this Contract shall not exceed:

- (a) a ceiling of [] [*total fixed fee*] with the following payment ceilings and schedule:

[]

The above monthly payments are ceilings. Meaning, actual amount paid-out by the operator will be the actual amount reimbursed by the employer up to the monthly ceilings shown above. These monthly payments

Water Management Agreement - Example 2

will be prorated for beginning and ending short months if the Starting Date is in the middle of a month) for Services; and

- (b) [total incentive compensation] (the incentive compensation payment cannot exceed 25% of such amount for any year.

Note: There are four incentive payments: one payment at the end of each year 2-5) for incentive compensation payments pursuant to Clause 6.3(d) hereof in foreign currency.

6.2 Currency of Payment

Payments shall be made in [currency].

6.3 Payments

- (a) Subject to the ceilings specified in Clause 6.1(b) hereof, the Employer shall pay to the Operator in foreign currency (i) Remuneration as set forth in Clause 6.3(b) hereof; (ii) Reimbursable Expenditure as set forth in Clause 6.3(c) hereof (the sum of (i) and (ii) equate to the Fixed Fee Component); and (iii) Incentive Compensation as provided in Clause 6.3(d) hereof. Payments made in accordance with Clause 6.3(a) hereof in foreign currency shall be adjusted as follows: Remuneration paid in foreign currency pursuant to the rates set forth in Appendix G shall be adjusted every 12 months (and, the first time, with effect for the remuneration earned in the 13th calendar month after the date of the award of the Contract) by applying the following formula:

$$R_f = R_{fo} \times I_f / I_{fo}$$

where R_f is the adjusted remuneration, R_{fo} is the remuneration payable on the basis of the rates set forth in Appendix G for remuneration payable in foreign currency, I_f is the official index for salaries in the country of the foreign currency for the first month for which the adjustment is supposed to have effect and I_{fo} is the official index for salaries in the country of foreign currency for the month of the date of the Contract. Expenses and Remuneration in local currency will be adjusted in similar fashion using the official inflation index for [] in the first month for which the adjustment is supposed to have effect divided by the official inflation index for [] for the month of the date of the Contract.

- (b) Remuneration for the Personnel shall be determined on the basis of time actually spent by the Personnel in the performance of the Services from the Starting Date at the rates specified in respect of such Personnel in Appendix G, subject to the following:
- (i) it is understood (A) that the remuneration rates shall cover (1) such salaries and allowances¹⁸ as the Operator shall have agreed to pay to the Personnel as well as factors for social charges and overhead based on the Operator's average costs, as represented by the financial statements of the Operator's latest three fiscal years¹⁹, (2) the cost of backstopping by home office staff not included in the Personnel listed in Appendix C, and (3) the Operator's fee and (B) that bonuses or other means of profit sharing shall not be allowed as an element of overhead. The cost of backstopping by home office staff should not exceed 10% of total remuneration. The Operator's fee should not exceed 10% of total remuneration.
- (ii.) Remuneration for periods of not less than one month shall be calculated on a daily basis for actual time spent in the Operator's home office and directly attributable to the Services (one day being equivalent to 1/30th of a month) and on a calendar day basis for time spent away from home office (one day being equivalent to 1/30th of a month).
- (c) Reimbursable expenditures, as shown in Appendix G, shall consist of the following types of expenditures actually and reasonably incurred by the Operator in the performance of the Services:

¹⁸ Allowances are all costs including child education, post differential, housing (for long-termers), local transport (for long-termers) etc., which may be necessary to secure the appropriate personnel for this management contract.

¹⁹ In the event that the Operator is a newly established company, financial statements should be those of the Operator's parent company and the lead entity submitting the Bid.

Water Management Agreement - Example 2

- (i.) A per diem allowance for each of the Foreign Personnel for every day in which such Foreign Personnel shall be absent from his home office (the home office in [], in the case of long-term²⁰ Foreign Personnel, and the home-office in the Operator's home country, in the case of short-term²¹ Foreign Personnel) a for the purpose of the Services at the daily rate specified in Appendix G;
- (ii.) The following transportation costs:
 - (A) the cost of international transportation of the Foreign Personnel and, as specified below, eligible dependents of the Foreign Personnel, by the most appropriate means of transport and the most direct practical route to and from the Operator's home office; in the case of air travel, this shall be by fully refundable economy class;
 - (B) for any Foreign Personnel spending twelve (12) consecutive months or more in [], one extra round trip will be reimbursed for every twelve (12) months of assignment in []. Such Personnel will be entitled to such extra round trip only if upon their return to [], such Personnel are scheduled to serve for the purposes of the Project for a further period of not less than six (6) consecutive months;
 - (C) the cost of transportation to and from [] of eligible dependents who shall be the spouse and all unmarried dependent children under eighteen (18) years of age of those of the Foreign Personnel assigned to resident duty in [] for the purpose of the Services for periods of six (6) consecutive months or longer, provided that the stay of such dependents in [] shall have been for not less than six (6) consecutive months duration. If the assignment period for resident staff of the Foreign Personnel will be thirty (30) months or more, one extra economy class air trip for their eligible dependents for every twelve (12) month assignment will be reimbursed;
 - (D) for the air travel of each of the Foreign Personnel, and each eligible dependent, the cost of excess baggage up to twenty (20) kilograms per person, or the equivalent in cost of unaccompanied baggage or air freight; and
 - (E) miscellaneous travel expenses such as the cost of transportation to and from airports, airport taxes, passport, visas, travel permits, vaccinations, etc. at a fixed unit price specified in Appendix G per round trip;
- iii. the cost of communications (other than those arising in []) reasonably required by the Operator for the purpose of the Services;
- iv. the cost of printing, reproducing and shipping of the documents, reports, drawings, etc. specified in Appendix G hereof;
- v. the cost of acquisition, shipment and handling of equipment, instruments, materials and supplies required for the Services as specified in Appendix G hereof;
- vi. the cost of shipment of personal effects as specified in Appendix G;
- vii. the cost of programming and use of, and communication between, the computers for the purposes of the Services at the rate set forth in Appendix G;
- viii. the cost of training of the Employer's staff outside [], as specified in Appendix G, subject to prior approval of the Employer;
- ix. the foreign currency cost of any subcontract required for the Services and approved in writing by the Employer; and
- x. the cost of items not covered in the foregoing but which may be required by the Operator for completion of the Services, subject to the prior authorization in writing the Employer.
- (d) In addition, the Operator may qualify for Incentive Compensation as calculated pursuant to Appendix H.

6.4 Valuation of currencies

²⁰ Long-term personnel are Foreign Personnel which are in [] to work full-time on this management contract for a period of over four months.

²¹ Short-term personnel are personnel which travel away from their home office to work on this management contract for a period of less than four months.

Whenever it shall be necessary to determine the equivalent amount in one currency in terms of another for the purposes of this Contract, the conversion shall be made at the rate legally applicable in the jurisdiction in which the transaction was concluded and at the time the transaction was concluded.

6.5 Mode of billing and payment

Billings and payments in respect of the Services shall be made as follows:

- (a) On the Starting Date, the Employer shall certify, in accordance with Clause 5.6 hereof, the payment to the Operator of the advance payments of *[fixed fee for 5 yrs]* times five percent (5%) in foreign currency. The advance payments will be set off by the Employer, in all further certifications for payment issued by the Employer, in equal installments against the statements for the first 12 months of the Services until such advance payments have been fully set off. The advance payments will be certified by the Employer after provision by the Operator to the Employer of a bank guarantee by a bank acceptable to the Employer in an amount of foreign currency equal to the foreign currency portion of the advance payments. Such bank guarantee is (i) to remain effective until the advance payments have been set off as provided above, and (ii) to be in the form set forth in Appendix I hereto or in such other form as the Employer shall have approved in writing. Such bank guarantee may be reduced by the amount amortized against the first 12 monthly payments as desired.
- (b) As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, the Operator shall submit to the Employer, in duplicate, itemized statements, accompanied by copies of receipted invoices, vouchers and other appropriate supporting materials, of the amounts which are to be certified as payable pursuant to Clauses 6.3 hereof for such month. Each such separate statement shall distinguish that portion of the total eligible costs which pertains to remuneration from that portion which pertains to reimbursable expenditures.
- (c) The Employer shall certify the payment of the Operator's statements within thirty (30) days after the receipt by the Employer of such statements with supporting documentation. The Employer shall certify to DFID in writing (sending a copy of every such certification to the Operator) that payments should be made to the Operator in the manner set out in Clause 6 hereof. The certification of a payment may only be withheld in relation to such portion of a statement in relation to which there is no supporting documentation. Should any discrepancy be found to exist between actual payments certified and costs authorized to be incurred by the Operator, the Employer may add or subtract the difference from the certification issued in relation to any subsequent payments.
- (d) All payments certified by the Employer under this Clause shall be made only after all reports pursuant to Appendix B required prior to the statement shall have been submitted by the Operator and approved as satisfactory by the Employer. Reports shall be deemed completed and finally accepted by the Employer and shall be deemed approved by the Employer as satisfactory thirty (30) calendar days after receipt of the report unless the Employer, within such thirty (30) day period, gives written notice to the Operator specifying, in detail, deficiencies in the Services or the report. The Operator shall thereupon promptly make any necessary corrections, and upon completion of such corrections, the foregoing process shall be repeated. Any amount which the Employer has paid or caused to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of this Contract shall be reimbursed by the Operator to the Employer within thirty (30) days after receipt by the Operator or notice thereof. Any such claim by the Employer for reimbursement must be made within twelve (12) calendar months after receipt by the Employer of a report approved by the Employer in accordance with the above.
- (e) The Incentive Compensation, where due, shall be certified as payable pursuant to the Operator's statements in each twelfth calendar month following the completion of year 1 of this Contract and shall consist of four payments with the last payment pursuant to the invoice for the last calendar month (short month if applicable) of this Contract. The Operator shall include in such statements all information required to calculate the amount of any such payment and shall promptly supply any further information required by the Employer to determine the amount of such payment.
- (f) All payments certified by the Employer under this Contract shall be made to the account of the Operator with:

[Specify bank account]

7. Control

7.1 Independent Technical and Financial Auditors

Within four (4) months of the Effective Date of the Contract, the Employer shall nominate three (3) qualified independent technical and financial auditors whose function shall be to certify, within their professional capacity, that the Operator is maintaining files and accounts in the form, quality and quantity sufficient to achieve the objectives and scope of this Contract, and that the information provided by the Operator is an accurate reflection of the Operator's management of the Employer, and that the systems and procedures used to compile said information are reasonable and accurate. From the Employer's list of three nominated auditors, the Operator shall select an auditor.

The independent technical and financial auditor shall additionally, on an annual basis, review the Operator's Annual Report (which contains the Operator's self assessment of its performance in achieving performance targets and milestones under the Contract) and provide the Board of Directors a report certifying the Operator's performance in achieving the performance targets and milestones specified in Appendix H. This certification shall be used by the Employer as the basis for calculating the Operator's incentive compensation.

All costs associated with contracting independent technical and financial auditors shall be borne by the Employer.

[8. Fairness and Good Faith²²

8.1 Good faith

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

8.2 Operation of the Contract²³

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the term of this Contract, and the Parties hereby agree that it is in their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either Party, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but that any failure to agree on any action pursuant to this Clause shall not in itself give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.]

9. Settlement of Disputes²⁴

9.1 Amicable Settlement

²² here is an attempt to capture the concept of the parties acting in good faith under contract – the benefit of such a provision is questionable because – if it is a civil law jurisdiction then there is likely to be a similar concept enshrined in law anyway and therefore reference here to it will not add anything (and may cause confusion as to whether the parties were trying to include an obligation different from that in law), in a common law jurisdiction, there is no general principle allowing a contract to be avoided by reason of a party not acting in good faith (unless they are fraudulent or made a misrepresentation prior to contract signature)

²³ this could be quite dangerous – for similar reasons to those set out in footnote 22

²⁴ a relatively alternative standard dispute resolution clause – thought should also be given to whether mediation could be used. Care should be taken that local law recognizes the arbitral awards (to ensure that they can be enforced) – for a more detailed discussion, go to Arbitration checklist on Infrastructure and Law website

Water Management Agreement - Example 2

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof.

If the Parties cannot settle a dispute by way of negotiation within thirty (30) days of formal notification of such by either Party, the Parties shall refer the matter to their senior management. A discussion of the dispute by the senior management representatives of the Parties shall take place within further fifteen (15) days of the formal notification with the aim of resolving the dispute amicably as soon as possible.

9.2 Right To Arbitration

Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably within forty-five (45) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party to arbitration in accordance with the provisions of Clauses 9.3 through 9.7 hereof.

9.3 Selection Of Arbitrators

Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three arbitrators, in accordance with the following provisions:

- (a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to the International Chamber of Commerce ("ICC") for a list of not fewer than five nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, the ICC shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.
- (b) Where the Parties do not agree that the dispute concerns a technical matter, the Employer and the Operator shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by the ICC.
- (c) If, in a dispute subject to Clause 9.3(b) hereof, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the ICC to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.

9.4 Rules Of Procedure

Except as stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.

9.5 Substitute Arbitrators

If for any reason an arbitrator is unable to perform his function, a substitute shall be appointed in the same manner as the original arbitrator.

9.6 Nationality And Qualifications Of Arbitrators²⁵

²⁵ this focus on the nationality of the arbitrator is a matter of negotiation – often parties are not comfortable with an arbitrator from the other's country. Thought should also be given to minimum qualifications or specializations of candidates

Water Management Agreement - Example 2

The sole arbitrator or the third arbitrator appointed pursuant to paragraphs (a) through (c) of Clause 9.3 hereof shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Operator's home country or of []. For the purposes of this Clause, "home country" means any of:

- (a) the country of incorporation of the Operator; or
- (b) the country in which the Operator's or any of their Members' principal place of business is located; or
- (c) the country of nationality of a majority of the Operator's shareholders; or
- (d) the country of nationality of the Subcontractors concerned, where the dispute involves a subcontract.

9.7 Miscellaneous

In any arbitration proceeding hereunder:

- (a) proceedings shall, unless otherwise agreed by the Parties, be held in [] ;
- (b) the English language shall be the official language for all purposes; and
- (c) the decision of the sole arbitrator or of the majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written

1.1.1.1 FOR AND ON BEHALF OF

[] Water

1.1.1.2 FOR AND ON BEHALF OF

[Operators]

List of Appendices

Appendix A	Description of the Services
Appendix B	Reporting Requirements
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SAMPLE

Appendix A – Description of the Services²⁶

Note: The Government of [] retains the exclusive right to set tariffs, fees and any other customer charges paid for the water and sewerage services provided.

The Government of [] is seeking professional services of an Operator for the management of the potable water and sewerage systems currently operating in [], and as subsequently developed during the duration of the contract through the agreed investment programme, in order to achieve the Government's vision, mission, and strategic objectives for the water and sewerage sector in []:

Vision: An efficient, sustainable and financially viable water and sewerage sector delivering a high quality of service to customers.

Mission: To deliver safe, adequate and affordable water and ensure safe sewerage systems for improved public health and sustainable economic development.

Strategic Objectives:

- Provide water to customers at an adequate pressure and volume at all times so that customer demand is met and revenue targets can be achieved;
- Improve delivered water quality with a goal of achieving appropriate WHO standards over time so that public health is improved and customer acceptability enhanced;
- Efficiently produce, treat and distribute water to customers in order to contain costs and minimize the impact of tariffs on the poor;
- Make water services readily available to new customers in order to satisfy increasing demand and to reduce the impact of capital costs on tariffs, fees, and charges;
- Improve water supply services to the poor and to communities in Hinterland regions;
- Ensure the effective treatment and disposal of sewerage to support improved public health standards; and
- Achieve financial self-sufficiency so that long-term dependence on external fund sources is removed.

This section provides additional information describing the specific professional services to be provided by the Operator and to be addressed in the proposal documents. This scope of services applies to all water and sewerage facilities and systems under the auspices of [] Water. It is anticipated that for the first year of the Contract, the Operator will concentrate on the tasks required to complete the integration of the utility, develop benchmark data, and access financing against the Ten Year Development Plan specified in Appendix D. The Operator will be required to reach specific performance targets that are included in Appendix H.

The Operator shall provide:

- all personnel and associated wages, salaries and benefits;
- administrative services and facilities; and,
- other services as needed to manage, direct, and maintain the operations of the water and sewerage systems.

This includes abstractions, treatment, pumping, distribution, wastewater collection, pumping, treatment and disposal in order to complete the following Description of Services:

- (a) **To improve the efficiency, operation and long-range performance of the water and sewerage systems the Operator will:**

²⁶ this is a contract for 5 years – some of the activities listed may require a longer period to realise

- i. Examine each of the groundwater and surfacewater sources. Identify and carry out any work required including obtaining parts. Supervise and direct required protection measures.
- ii. Examine existing water treatment facilities and equipment, obtain needed spare parts, direct and supervise repairs, prepare maintenance and operational procedures and manuals, and direct subsequent maintenance.
- iii. Carry out sterilization procedures to ensure chlorine residuals throughout the distribution system.
- iv. Support the [] environmental officer in developing an Environmental Management Plan (EMP) and executing environmental management as related to the IADB loan in particular and the sector in general.
- v. Develop and implement a water quality monitoring programme;
- vi. Identify non-compliance with water and wastewater quality standards, prepare regular reports and recommend and implement improvement measures;
- vii. Develop, direct and supervise a leak detection programme including repair of leaks, replacement of pipe, and collection, compilation and analysis of repair statistics.
- viii. Develop, direct and supervise an operational and customer meter installation, calibration, repair and replacement programme to include the master meters at the wellheads and distribution meters.
- ix. Complete the ongoing mapping of the water and sewerage network showing all operational facilities, pipes, manholes, valves and hydrants, also including schematic zone plans and elevation drawings; develop and test a hydraulic model and train the Employer staff in its use. Provide any hardware and/or software for this model to the Employer.
- x. Install pressure monitors and controls at critical locations within the water distribution network, monitor and report levels of service and develop and implement improvement proposals.
- xi. Using the hydraulic model and levels of service information, identify and implement a programme of system strengthening to improve operational efficiency, secure supplies and improve customer service and reduce hydraulic losses.
- xii. Study the water production, conveyance and distribution systems and establish a water balance (audit), identifying the various components of supply and demand, quantifying losses from the systems and other elements of unaccounted for water. Repeat the water balance exercise at six-monthly intervals and identify changes and the effects of improvement strategies
- xiii. Review existing procedures for providing new water and wastewater connections including new connections to existing water mains and sewers, procedures for bringing new customers into the charging system and methods of financing the cost of providing mains and sewers required to service new developments. Implement revised procedures as necessary to improve levels of customer service and financial performance
- xiv. Identify the immediate needs for equipment repair, obtain parts and tools, direct and supervise the repairs and maintenance including, but not limited to all wells, storage tanks, pumps, generators, controls, water and sewage treatment equipment, and auxiliary equipment included in the water and sewerage systems.
- xv. Identify the need for and support facilities and equipment and administrative support; e.g., transportation, including specialized vehicles; communication systems, including telephones, two-way radios; facilities including office space, warehouse space, workshops, repair space and repair tools and equipment, meter testing and repair space and equipment.
- xvi. Develop and establish a preventive maintenance programme including task definition, skill level, manning level, frequency and task duration, and train the operators.
- xvii. Develop and maintain a job planning and control system for planned and emergency works

- xviii. Develop and establish a computerized materials and maintenance management system, obtain the hardware and software and train the employees.
- xix. Examine the existing inventory of spare parts, materials and equipment and the computerized inventory management system for storage and replacement, obtain any needed parts, materials and equipment, and identify and carry out needed enhancement to the computerized system.
- xx. Ensure implementation of the Investment Programme to be financed by Funding agencies, in coordination with the [] Board of Directors.
- xxi. Ensure implementation of water and sanitation projects directly funded by Government of [] .
- xxii. Set up operational manuals and health and safety procedures manuals.
- xxiii. Identify major problem areas that should be addressed in long-term strategic plans.
- xxiv. Review the findings and recommendations of the [Master Plan] and other pertinent studies and carry forward to the Annual Report.
- xxv. Develop an Annual Development Plan, including a prioritised Investment and Rehabilitation Plan, for approval by the Employer.
- xxvi. Review the suitability of the introduction of new technology including automatic control and telemetry and implement as appropriate.
- xxvii. Harmonize distribution management techniques with improved commercial practices to reduce current over-production and associated operational costs to provide an improving level of service in line with stated departmental targets and development plan.
- xxviii. Carry out early Distribution Management to achieve better equality of service to customers.

(b) To improve service to poor (peri-urban and rural-coastal) areas and the Hinterland region the Operator will:

- i. Examine current local and international programmes and best practices for improving service to poor (peri-urban, rural-coastal) areas and develop and implement a strategy for improving such services.
- ii. Support the establishment of a Hinterland Unit within the Employer, and support said Unit in analyzing and augmenting existing Needs Assessments and developing a Service Improvement Strategy and associated Action for integrated water supply and sewerage/on-site sanitation services in the Hinterland within 3 months of commencing operation.
- iii. Identify suitable partners to develop an integrated and participatory approach to water supply, hygiene and sanitation in the Hinterland.
- iv. Develop, supervise, and co-ordinate a service improvement programme for integrated water supply and sewerage/on-site sanitation services in the Hinterland, update this programme on an annual basis including the development of Performance Targets for the coming year, and provide half-yearly reports on the progress in accomplishing the goals outlined in the programme.
- v. Develop and establish systems, procedures, and practices in collaboration with partners to support an integrated and participatory approach to service provision and maintenance in the Hinterland, including the use of local labor to the extent possible.
- vi. Encourage all external Hinterland funding agencies to invest into the integrated Service Strategy.
- vii. Examine the current methods by which unserved poor (peri-urban and rural coastal) and Hinterland customers receive their water, and develop a strategy within for formalizing arrangements with small scale independent providers in order to regularize service to these customers.
- viii. Support the implementation of a regular community based monitoring and evaluation process for water supply and sanitation in The Hinterland.

- (c) **To improve the efficiency of revenue collection, customer service, and public relations functions, and implement the cost recovery policies of the Government of [], the Operator will:**
- i. Develop, supervise and direct a programme to identify unauthorized connections and convert these connections to legal service connections.
 - ii. Develop and implement a strategy to introduce metering for domestic and non-domestic customers.
 - iii. Develop, supervise and direct a programme to update the database of connections and to classify the use in accordance with current tariff definitions.
 - iv. Develop, supervise and direct the improvement or enhancement of computerized administrative systems for billing, collection, and to enforce collection of overdue accounts. If necessary, provide hardware and software and train the employees in its use.
 - v. Examine existing financial accounts for water and sewerage, and identify and carry out improvements needed based on international best practices relating to standard utility cost accounting systems.
 - vi. Measure and improve cost recovery and net income indicators for the former GSWC service area in accordance with the IADB loan provisions.
 - vii. Develop and establish a customer service system and train the employees involved in responding to customer complaints, inquiries and any other interface with the customer.
 - viii. Analyze customer complaints by type (no water, poor pressure, taste, odor, blocked sewers, flooding etc) and geographical location and prepare reports and recommend and implement improvement measures.
 - ix. Develop and establish a public information programme to educate the public as to:
 1. The importance of water supply and sewage collection and treatment to the population, public health, and the economy.
 2. The problems existing in the sector including contamination of source water, unauthorized connections, excessive leakage.
 3. The programmes underway to improve service.
 4. The costs of operating the systems and the methods of recovering the costs including the provisions of needed amounts for domestic use at minimum cost and the concept of everyone paying their “fair share.”
- (d) **To improve the effective management of human resources and improve the professional management of the water and sewerage systems the Operator will:**
- i. Undertake daily supervision of staff.
 - ii. Assess performance of staff and recommend appropriate merit recognition or disciplinary action.
 - iii. Recommend changes to standard terms and conditions. Develop and implement a management training programme that is demonstrably linked with the performance targets of the Management Contract and that includes the elements of management, human resources management, financial management, supervision, budgeting, planning, and controlling.
 - iv. Develop and implement a training programme to provide technical operations and maintenance training to water system operators and maintenance workers.
 - v. Develop and establish computerized administrative systems, including human resource systems and records; obtain the hardware and software; and train the employees.
 - vi. Develop and establish a comprehensive occupational health and safety programme, and provide safety training.
 - vii. Develop and establish an emergency operations plan, train the water/sewerage system employees and conduct mock drills as training for the implementation of the emergency actions.

- (e) **To ensure implementation of the investment component that will be carried out in parallel and financed by other funding agencies, (described in Appendix D – Ten Year Development Plan), the Operator will:**
- i. Ensure that the Project Management Unit of the Employer has the capacity to prioritise and deliver new projects required to satisfy the performance targets specified in Appendix H and the longer term goals of the sector as set out in the Licence.
 - ii. Prepare tender documents for the procurement of services including feasibility studies, design and execution of physical works included in GOG and agency -funded programmes.
 - iii. Administer the bidding processes, and prepare bid evaluation reports to be submitted to the Employer and to funding agencies.
 - ii. Identify rehabilitation and extension sub-projects.
 - iii. Supervise the construction of sub-projects and prepare requests for disbursement to be submitted to the Employer and to funding agencies.
 - iv. Consult and agree with the Employer on all stages of Capex procurement.
 - v. Carry out Environmental Impact Studies on new projects.
 - vi. Prepare an annual prioritised Investment and Rehabilitation Plan as part of the Annual Development Plan.
 - vii. Support the Employer in seeking and securing funding sources as needed to implement the Investment and Rehabilitation Plan.
- (f) **The Operator will support the ongoing integration of the former GS&WC and GuyWa, and the creation of [] as a distinct organizational entity. The organization chart of [] is included in this package.**

To provide for administrative control of the above Description of Services, the Operator will:

- Compile and maintain comprehensive monthly records and report to the appropriate authorities for facilities and systems operations, regulatory matters, laboratory analyses, maintenance plans and activities, related financial matters, permit and compliance results, equipment status, and other relevant information in accordance with applicable laws, regulations, permits, and guidelines.
- At least monthly, or as necessary, meet with the [] Board of Directors to review operating results for the most recently completed Accounting Period, Operating Plans for the balance of the year, and/or operations which may impact service delivery to the public. Conduct annual comprehensive plant and system inspections with the [] Board of Directors designated representative to evaluate and document conditions, safety or other concerns.

In managing the above operations, the Operator will be guided by the various standards, requirements, and guidance documents including, but not limited to, the following:

- Industry best practices as identified by recognized international standards;
- [] National Standards Bureau guidelines as developed and any interim [] standards;
- Design criteria and performance specifications for the various components and equipment throughout the utility as identified by manufacturers information; and
- Asset maintenance performance standards as identified by manufacturers information.

The Operator will take direction exclusively from the Board of Directors, provided that the Operator will have control of daily operation, direction and management of the Employer except as otherwise provided in this

Agreement. The Operator will have a position on the Board of Directors. The role of the [] Board of Directors will include rendering the following guidance and approvals:

- Reviewing and approving the Annual Report;
- Reviewing and approving the Annual Budget;
- Developing, reviewing, approving and guiding the Annual Development Plan;
- Developing, reviewing, approving and guiding The 10 Year Development Plan;
- Approving the Customer Relations Policies/Charter; and
- Ensuring fair policy and practice in respect of employees in accordance with Guyanese Law.

The Workplan and Staffing Plan that are proposed by the successful bidder will be binding.

SAMPLE

Appendix B – Reporting Requirements

The Operator shall prepare and file the following Reports with the [] Board of Directors:

- 1) After the first month after the Starting Date, the Operator shall file the following:
 - a) Human resources plan
 - b) Delegations (policies and procedures outlining the responsibilities and requirements for check signing)
 - c) Procurement plan and guidelines
 - d) Contingency management plans
 - e) Water/wastewater sampling programme
 - f) Leak detection programme
 - g) Health and safety plans and policies
 - h) Customer relations policies
 - i) Customer subscription contracts
- 2) After the 3rd month after the Starting Date, the Operator shall file the following:
 - a) Hinterland Service Improvement Strategy, and Action Plan based on existing Needs Assessments augmented by additional work where necessary.
- 3) After the 6th month after the Starting Date, the Operator shall file the following:
 - a) Strategy for improving service in poor (peri-urban and rural-coastal) areas
 - b) Management training programme and technical training programme
 - c) Preventive maintenance strategy
 - d) Operations and maintenance manuals
 - e) Industrial discharge management plan
 - f) Commercial management plan
 - g) Financial management plan
 - h) Public education and awareness strategy
- 4) After the 12th month after the Starting Date, the Operator shall file a Base Year Data Report, to include:
 - a) Asset inventory and condition survey
 - b) Map of the water and sewerage network
 - c) Water balance (audit)
 - d) Customer database
 - e) Analysis of customer complaints
 - f) Baseline data for all performance targets under the contract, and all targets listed in loan agreements with funding agencies.
- 5) After the 24th month after the Starting Date, the Operator shall file an update to the findings and recommendations of the [Master Plan].

Annual Reports shall be filed with the invoice when required in Clause 6.5(e) hereof, fully disclosing all progress towards and actions taken to meet all performance factors contained in Appendix H (for years 2-5) as well as other information required by the Description of Services. The Annual Report also shall include an update on the Water Balance (Audit) and on the Hinterland Service Improvement Strategy, including an agreed target for Coverage in the Hinterland for the subsequent year leading toward the achievement of 80% coverage in Year 5.

The Operator will also develop an **Annual Budget** on a line item basis to allow for a review and approval by the Employer. This Budget would identify required funding for operating expenditure, debt repayment, and essential repairs and rehabilitation. If there is any reason to believe that the Annual Budget would constrain the Operator's ability to achieve its required Performance Targets, this should be specified in the documentation.

Interim Reports shall be filed after the 6th, 18th, 30th, 42nd, and 54th month after the Starting Date disclosing all progress towards and actions taken to meet all performance factors contained in Appendix H within 15 days after the end of the month. The Interim Reports shall include updates on the Operator's progress in meetings the goals defined in the Hinterland Service Improvement Strategy.

An Annual Development Plan pursuant to Clause 3.2.2 hereof shall be prepared and filed 6, 12, 24, 36, and 48 months after the Starting Date. The Annual Development Plan shall include a prioritised Investment and Rehabilitation Plan and notice of any Technical Consultancies to be procured by the Operator.

The Operator shall submit to the Employer twelve (12) copies in English of the draft Reports specified in Appendix B hereto, within the time periods set forth in said Appendix. Within 21 days of receiving any draft Report listed in Appendix B hereto, or the date on which the Employer receives any additional information it requested, the Employer must:

- (a) Give the Operator any written comments and questions it has on the draft Report; and
- (b) Indicate whether it approves of the draft Report.

The Employer has the right to approve the following reports:

- The Annual Report;
- The Annual Budget;
- The Annual Development Plan;
- The 10 Year Development Plan; and
- The Customer Relations Policies/Charter

If the Employer fails to approve draft Reports or refuses to provide written comments within 21 days, the Operator shall notify the Employer in writing that it has not received a response to its draft Report. If the Employer further fails to respond to the Operator's written notification within 14 days, the Operator's draft Report should be considered to be approved.

The Operator must give written responses to any questions raised by the Employer within 7 days of receiving those questions. Within 10 days of receiving the Employer's comments and questions, or approval of the draft Report, the Operator shall submit the final Report to the Employer, and the Employer shall notify the Operator of its approval or rejection of the final Report within 10 days of receiving it. If the Employer rejects the final Report, it must give the Operator its reasons for such rejection in writing.

In addition to the above requirements, the Operator shall furnish all necessary data, reports, and other written information as required by the Ministry of [] in order to set or adjust tariffs or ensure compliance with applicable laws, regulations, statutes and licenses.

Appendix C –Personnel and Subcontractors

The Employer expects that the Operator will provide a small team of approximately five core experts that collectively have the skills and expertise listed in the Indicative Management Staff Expertise Chart included in this Appendix as well as the ability to work as a team with the management, staff and Board of the Employer to accomplish the specified Performance Targets. While the total number of Operator Personnel and their respective organizational roles are at the discretion of the Bidder, the Employer expects that, at a minimum, the Operator will propose candidates for:

- Resident Project Manager – to be named Managing Director of the Employer;
- Manager, Project Management Unit, or Executive Director of Corporate Planning, Research and Development; and
- Hinterland Manager.

Position	Total Experience (years)	In Similar Contracts	As Manager in relevant field
Resident Project Manager			
Manager, Project Management Unit*			
Hinterland Manager			
Other			

* or Executive Director, Corporate Planning, Research and Development

Indicative Management Staff Expertise

For the information of Bidders, the Employer estimates that the following fields of expertise will be required of the proposed Staff in order to ensure that the above tasks in the Description of Services are completed in an accurate and timely manner:

Field of Expertise (Not individuals)	Examples of Task Coverage (examples only, not an exhaustive list)
General Management	<ul style="list-style-type: none"> • Overall management of the project • Reporting and coordination with the Employer Board of Directors
General Accounting/ Finance	<ul style="list-style-type: none"> • Balance sheet • Profit and loss statements • Financial reporting
Cost Accounting/ Budgeting	<ul style="list-style-type: none"> • Profit and cost centers • Variable and fixed costs • Cost allocation • Plan vs. Actual variance analysis • Fixed assets register
Economic Analysis	<ul style="list-style-type: none"> • Expansion and replacement analysis • Cost savings and revenue improvement programmes
Participatory Development	<ul style="list-style-type: none"> • Develop and implement participatory approach to services in the Hinterland • Develop and implement Hinterland Strategy and Action Plan
Water Engineering	<ul style="list-style-type: none"> • Operations • Supply/demand management and control. • Pressure management leakage control and loss reduction. • Connections and mains for new development. • Development and application of regular and emergency operation plan • Maintenance plans • Organization of complaints system • Reduction of unauthorized water supply connections • Supply concepts

Wastewater Engineering	<ul style="list-style-type: none"> • Operations • Connections and sewers for new development • Development and application of regular and emergency operation plan • Maintenance plans • Organization of complaints system • Reduction of unauthorized sewerage dumping and stormwater connections • Non-piped sewerage
Integrated Rural Water Supply and Sanitation	<ul style="list-style-type: none"> • Support establishment and operationalization of Hinterland Unit • Development of Hinterland Strategy and Action Plan • Implementation of Hinterland Programme • Establish effective links with other organisations (Regional Development Councils, Ministry of Health, NGOs etc.) active in the Hinterland • Support community-based maintenance of water supplies
Capital Works Programme	<ul style="list-style-type: none"> • Identify improvement opportunities to be financed by capital investment • Prepare outline proposals, budget estimates and cost/benefit analyses • Priorities schemes • Contract Preparation and supervision of works
GIS and Systems Administration	<ul style="list-style-type: none"> • Operation and systems administration of all systems • Development and introduction of all needed software applications • Extension of computer network
Database Management	<ul style="list-style-type: none"> • Operation and systems administration of all existing database systems • Development and introduction of all needed software applications • Standardization of database systems
Customer Management	<ul style="list-style-type: none"> • New connections • Billing and revenue collection • Customer billing queries • Reduction of unauthorized water / wastewater connections
Public Information	<ul style="list-style-type: none"> • Customer service • Public relations • Awareness raising campaigns

Maintenance and Repair Management	<ul style="list-style-type: none"> • Develop and apply future models for maintenance and repair management, identify and implement “best practices” • Identification of needed rehabilitation and renewals
Mechanical Engineering	<ul style="list-style-type: none"> • Development and introduction of preventative maintenance plans • Rehabilitation of pumping stations and well-fields • Energy use optimization
Electrical Engineering	<ul style="list-style-type: none"> • Development and introduction of preventative maintenance plans • Rehabilitation of pumping stations and well-fields • Energy use optimization
Instrumentation	<ul style="list-style-type: none"> • Development and introduction of preventative maintenance plans • Introduction of appropriate monitoring and control systems
Water and Wastewater Quality Monitoring	<ul style="list-style-type: none"> • Regular monitoring of quality • Design of quality improvement programme
Materials Management	<ul style="list-style-type: none"> • Development and application of new procurement policy • Procurement and inventory management
Human Resources Development	<ul style="list-style-type: none"> • Development and implementation of on-the-job training programme • Change management / management of cultural integration • General and specific training programmes for computerization • Occupational health and safety • Pay, rewards and incentives

- [List under:
- C-1 Titles [and names, if already available], detailed job descriptions and minimum qualifications of Foreign Personnel to be assigned to work in [] and staff-months for each.
 - C-2 Same information as C-1 for National Personnel.
 - C-3 Same as C-1 for Personnel to be assigned work outside [] .
 - C-4 List of approved Subcontractors [if already available]; same information with respect to their Personnel as in C-1 through C-4.]

Operator:
Assignment:
Country:
Date:

Breakdown of Agreed Fixed Rates in Operator’s Contract

We hereby confirm that we have agreed to pay to the staff members listed, who will be involved in this assignment, the basic salaries and field allowances (if applicable) indicated below.

Name	Position	1		2	3	4	5	6	7	8
		Basic Per Month/Day/Hr	Salary Working	Social Charges (___% of 1)	Overhead (___% of 1)	Subtotal	Fee (___% of 1)	Overseas/field Allowance (___% of 1)	Agreed Rate Working Month/Day/Hr	Fixed Per
(Expressed in ----- [name of currency] -----)										

 Signature

 Date
 Name: _____
 Title: _____

Note: The Fee shall not exceed 10% of total fixed rate for each staff member.



Appendix D – Ten Year Development Plan

The Employer and the [Ministry of] have developed an initial Long Term Strategic Plan covering a 10 year period. The Plan is designed to achieve significant sectoral reform across a range of issues.

A subset of the Long Term Strategic Plan for the sector is the rolling 10 Year Development Plan of [] which includes a schedule of new investment and rehabilitation, as shown on the following pages and as detailed in the Data Room, that support the achievement of the Performance Targets included in this Management Contract.

The role of the Operator will include responsibility for an Annual Development Plan, including an update to the Investment and Rehabilitation Programme.

The Project Management Unit of the Employer will be responsible for implementation and delivery of the investments described in the Annual Development Plan. The Management Contractor will oversee the PMU and assist in general administration of the loan programmes, including preparation of financial reports, disbursement requests, submission of other reports, and participation in inspection and other funding agency visits.

The investments listed for the first two (2) years of the 10 Year Development Plan are fully funded by funding agencies. Investments for Years 3-5 of the 10 Year Development Plan have been discussed and agreed with the funding agency community.

During the first year of the Management Contract, it is expected that the Operator will devote considerable attention to the mobilization of the Investment Programme. The Operator should ensure that the appropriate project detail is developed, that funding agency procurement mechanisms are activated, that any potentially unfunded items are addressed, and that Annual Development Plans are developed that describe the Operator's intentions and activities in regard to the Investment Programme.

Appendix E – Days of Work for Personnel

[List here the Days of work for the Operator’s Personnel; travel time to and from [] for Foreign Personnel; entitlement, if any, to overtime pay, sick leave pay, vacation leave pay, etc.]

SAMPLE

Appendix F – Duties of the Employer

The Employer shall provide staff and equipment reasonably available and that is reasonably required for the Operator in order for the Operator to perform the Services.

SAMPLE

Appendix G – Cost Estimates

List hereunder cost estimates, separately represented for foreign and national currency:

- a. Monthly rates for:
 - i. Foreign Personnel
 - ii. National Personnel

- d. Reimbursable expenditures
 - i. Per diem allowances
 - ii. Air transport for Foreign Personnel
 - iii. Air transport for dependents
 - iv. Transport of personal effects
 - v. International communications
 - vi. printing of documents specified in Appendices A and B hereof
 - vii. Acquisition of specified equipment and materials to be imported by the Operator and to be paid for by the Employer (including transportation to [])
 - viii. Other foreign currency expenditures, like use of computers, foreign training of Employer's staff, various test, etc.

SAMPLE

Appendix H – Incentive Compensation Payments

The maximum amount that can be paid as Incentive Compensation for meeting the specified targets over the duration of the Contract has been fixed at _____. The maximum amount of Incentive Compensation that can be paid annually is equal to _____ (divided into four equal parts). The actual amount of the Incentive Compensation received by the Operator will depend on the extent of the achievement of performance targets specified in this Appendix and will be determined by the application of a performance factor (composite score) to the Maximum Annual Incentive Compensation amount of _____ (divided into four equal parts) at the end of years 2-5. Details of the performance obligations to earn the Incentive Compensation are included in this Appendix. Sample calculation of the performance factor (composite score) is included in section 6 of this Appendix. The Incentive Compensation scheduled based upon the Performance Factor (composite score) is also included in section 6.

Excellent performance (Criterion Value of 1), as defined by the level of targets included in Table H.1, is expected from the Operator.

Performance of the Operator will be measured against the specific Performance Targets and a weighted score of achievement called Composite Score calculated each year. A Composite Score of 2.5 or greater will place the Operator on notice of possible termination. Performance of 3.5 or greater will be cause for termination of the Contract. A Composite Score of 3.5 or greater will also result in no Incentive Compensation being paid to the Operator for that year.

SAMPLE

1.2 H.1 Performance Obligations of the Operator for the Duration of the Five Year Management Contract

Performance Criterion	Units/Definition	Yearly Targets				
		Year 1	Year 2	Year 3	Year 4	Year 5
Non-Revenue Water	<p>%</p> <p>(Volume of water supplied [MLD] - Volume of water billed [MLD] / Volume of water supplied [MLD]) 100</p> <p>Year Target = BM - [IF(BM - 25)]</p> <p>Target will be measured average of statistics for months 9,10 and 11</p>	BM with Q2 statistics	BM - (30% of [BM - 25]) IF=30%	BM - (60% of [BM - 25]) IF = 60%	BM - (80% of [BM - 25]) IF = 80%	25%

Performance Criterion	Units/Definition	Yearly Targets				
Continuity of Service	<p>Hours</p> <p>Number of hours per day that all connected customers receive a pressurized water supply at their premises.</p> <p>Pressurized water supply is defined as minimum 5.0 metres at customer premises.</p> <p>Subject to a minimum No of hours in all distribution zones.</p> <p>Year Target = $IF(24 - BM) + BM$</p> <p>Target will be measured average of statistics for months 9,10 and 11</p>	<p>BM with month 12 statistics</p>	<p>33% of $[24 - BM] + BM$</p> <p>or 12 hours, whichever is greater</p> <p>IF = 33%</p>	<p>66% of $[24 - BM] + BM$</p> <p>or 14 hours, whichever is greater</p> <p>IF = 66%</p>	<p>24 hours</p>	<p>24 hours</p>

Performance Criterion	Units/Definition	Yearly Targets				
Collection Efficiency	% (Total Annual Collection of Water & Sewerage Sales (G\$) divided by Total Annual Billed Water & Sewerage Sales (G\$)) 100. Year Target = $(90-BM)IF + BM$ Target will be measured average of statistics for year.	Establish BM mid Q2/Q3 to coincide with billing cycle	$(90-BM) 0.25 + BM$ IF = 0.25	$(90-BM)x 0.50 + BM$ IF = 0.50	$(90-BM)x 0.75 + BM$ IF = 0.75	90%
	% (Number of connected customers billed on a metered basis divided by the Total number of connected customers) 100. Year Target = Previous Target + $(85-BM)IF$ Target will be measured last day month 11	Establish BM with statistics of last day of month 6	$(BM + [85 - BM]) 0.25$ IF = 0.25	(Previous Year Target + $[85 - BM]) 0.50$ F = 0.50	(Previous Year Target + $[85 - BM]) 0.75$ IF = 0.75	85%

Performance Criterion	Units/Definition	Yearly Targets				
Disposal Efficiency	% (Total number of hours of sewerage pumping station downtime attributable to mechanical/electrical failure/Total number of hours)100 To be calculated for each Sewerage Pumping Station. Each must meet the Yearly Target. Target will be the measured average for the Year.	4%	3%	2%	2%	
Response Time to resolution of Customer Complaints	Days required to resolve customer complaints Target is Days required to resolve customer complaints/Total number of jobs Target will be measured average for year					

Performance Criterion	Units/Definition	Yearly Targets				
Billing - Routine billing - Requiring Field Work		N/A	1 Day	0.5 Day	0.5 Day	0.5 Day
			7 Days	5 Days	4 Days	3 Days
Leakage - Large leaks - Minor leaks	Large leak is defined as greater than 20 litres per minute	N/A	1 Day	1 Day	1 Day	1 Day
			5 Days	5 Days	4 Days	3Days
Sewerage		N/A	2 Days	1 Day	1 Day	1 Day
Hinterland complaints		N/A	7 Days	6 Days	5 Days	4Days

Performance Criterion	Units/Definition	Yearly Targets				
Service Coverage in the Hinterland	% Number of Hinterland settlements receiving safe water and with effectively trained maintenance procedures established as a percentage of total Hinterland Settlements A settlement is a community of 10 or more households living within a radius of 1km Target is the measured last day of month 11.	Establish BM with statistics of Month 12	BM + 0.3 (80-BM)	BM + 0.6 (80-BM)	BM + 0.8 (80-BM)	80%

Notes:

1. **IF = Improvement Factor**
2. **BM = Benchmark**
3. **Non-Revenue Water.**

At time of benchmarking the average consumption/month for domestic metered customers is to be calculated for customers who have received regular bills and compared to the assumed value of 15.5 cubic metres/household/month. The actual figure then is to be applied to the non-metered domestic customers to calculate the Volume Billed and applied to the NRW calculation. The domestic metered consumption per Household/Month to be re-calculated in month 11 of each Target Year.
4. **Continuity of Service.**
 - The 'Continuity of Service' to be calculated for each community/sub zone.
 - The Overall average of 'Continuity of Service' is calculated weighted by connections per community/sub zone.
 - When there are sub zones supplied in different periods, the indicator has to be assessed individually for each sub zones and the result is the weighted average using the number of service connections of each sub zone as a weighting factor. Calculated as Total number of hours above minimum pressure for the month divided by the Number of days in the month> to give an average number of hours per day by zone. Weighted Zone averages (by No of connections) to be carried forward to calculate overall Hours/Day average.
 - This Performance Target is subject to a minimum number of hours being achieved in all zones to ensure all communities/zones receive a basic minimum level of service. The minimum number or hours is shown in the table above.
 - Method of Measurement. By calibrated continuous pressure recorder at the boundary of the customer's premises. Minimum allowable pressure is 5.0 metres.
 - Location of measurement. Every community/sub zone at customer's premises located in the lowest pressure area of the zone.
5. **Collection Efficiency.** During the Benchmarking period and Target Measurement period, the arrears from earlier periods are to be excluded from the CE calculation.
6. **Metering Coverage.**
 - Total Number of Connections will increase (new connections) each target Year.

7. Disposal Efficiency.

- The purpose of this performance target is to prevent the overflow of sewage to the watercourses of [].
- The DE of all sewerage pumping stations is to be calculated – to meet the performance target all stations must achieve the target. Overall DE will be the highest DE of individual stations.
- Interruptions due to on-going repair or rehabilitation works shall not be accounted for by this indicator.
- Method of Measurement. By manual daily record of downtime details recorded in each pumping station logbook. This information to be carried forward on a daily basis to the central Operations database.

8. Response Time to Customer Complaints.

- Time taken to completely resolve complaints: Billing query completely answered, Leak permanently repaired, sewer blockage cleared etc.

9. Service Coverage in the Hinterland.

- Definition of Hinterland: [].
- Together with Response Time to Hinterland Complaints, this is the only performance target applicable to The Hinterland

1.4 H.2 Performance Obligations of the Operator for the Second Year

Performance Criterion	Criteria Weights	Criterion Values				
		1	2	3	4	5
Non-Revenue Water	20	Target	Target +3%	Target +6%	Target + 8%	Target +10%
Continuity of Service	8	Target	Target - 1hour	Target - 2 hours	Target - 3 hours	Target - 4 hours
Collection Efficiency	20	Target	Target - 1%	Target - 2%	Target - 3%	Target - 4%
Metering Coverage	12	Target	Target - 2%	Target - 3%	Target - 4%	Target - 5%
Disposal Efficiency	8	4%	5%	6%	7%	8%
Response Time to Customer Complaints						
▪ Routine Billing complaints	3	1 Day	1.15 Days	1.25 Days	1.35 Days	1.5 Days
▪ Billing complaints requiring investigation	2	7 Days	7.5 Days	8 Days	8.5 Days	9 Days
▪ Leakage complaints (Large leaks)	3	1 Day	1.25 Days	1.50 Days	1.75 Days	2 Days
▪ Leakage complaints (Minor leaks)	3	5 Days	5.5 Days	6 Days	6.5 Days	7 Days
▪ Sewage complaints	3	2 Days	2.25 Days	2.5 Days	2.75 Days	3 Days
▪ Hinterland complaints	3	7 Days	7.5 Days	8 Days	8.5 Days	9 Days
Service Coverage in the Hinterland	15	Target	Target - 2%	Target- 5%	Target - 7%	Target - 9%

Note: When adding percentages, the amount is aggregated in absolute. For example, if the target is 55%, and Criterion Value 2 is Target + 3%, Criterion Value 2 would be 58%.

For Criterion in which the value for Criterion 1 is higher than Criterion 5, a "1" will be awarded for equaling or exceeding the Criterion Value 1 target. A "5" will be awarded for an actual performance lower than or equal to the Criterion Value 5 amount. The opposite is true for Criterion in which the value for Criterion 1 is lower than Criterion 5.

1.5 H.3 Performance Obligations of the Operator for the Third Year

Performance Criterion	Criteria Weights	Criterion Values				
		1	2	3	4	5
Non-Revenue Water	20	Target	Target +3%	Target +6%	Target +8%	Target +10%
Continuity of Service	8	Target	Target minus 1 hour	Target minus 2 hours	Target minus 3 hours	Target minus 4 hours
Collection Efficiency	20	Target	Target minus 1%	Target minus 2%	Target minus 3%	Target minus 4%
Metering Coverage	12		Target minus 2%	Target minus 3%	Target minus 4%	Target minus 5%
Disposal Efficiency	8	3.0%	3.5%	4.0%	4.5%	5.0%
Response Time to Customer Complaints						
▪ Routine Billing complaints	3	0.5 Days	0.7 Days	0.8 Days	0.9 Days	1 Days
▪ Billing complaints requiring investigation	2	5 Days	5.5 Days	6 Days	6.5 Days	7 Days
▪ Leakage complaints (Large leaks)	3	1 Day	1.25 Days	1.50 Days	1.75 Days	2 Days
▪ Leakage complaints (Minor leaks)	3	5 Days	5.5 Days	6 Days	6.5 Days	7 Days
▪ Sewage complaints	3	1 Days	1.25 Days	1.5 Days	1.75 Days	2 Days
▪ Hinterland complaints	3	6 Days	6.5 Days	7 Days	7.5 Days	8 Days
Service Coverage in the Hinterland	15	Target	Target - 2%	Target- 5%	Target - 7%	Target - 9%

Note: When adding percentages, the amount is aggregated in absolute. For example, if the target is 55%, and Criterion Value 2 is Target + 3%, Criterion Value 2 would be 58%.

For Criterion in which the value for Criterion 1 is higher than Criterion 5, a "1" will be awarded for equaling or exceeding the Criterion Value 1 target. A "5" will be awarded for an actual performance lower than or equal to the Criterion Value 5 amount. The opposite is true for Criterion in which the value for Criterion 1 is lower than Criterion 5.

H.4 Performance Obligations of the Operator for the Fourth Year

Performance Criterion	Criteria Weights	Criterion Values				
		1	2	3	4	5
Non-Revenue Water	15	Target	Target +3%	Target +5%	Target +7%	Target +9%
Continuity of Service	15	24 Hours	23.5 Hours	23 Hours	22.5 Hours	22 Hours
Collection Efficiency	15	Target	Target minus 1%	Target minus 2%	Target minus 3%	Target minus 4%
Metering Coverage	10	Target	Target minus 2%	Target minus 3%	Target minus 4%	Target minus 5%
Disposal Efficiency	10	2%	2.5%	3%	3.5%	4%
Response Time to Customer Complaints						
▪ Routine Billing complaints	3	0.5 Days	0.7 Days	0.8 Days	0.9 Days	1 Days
▪ Billing complaints requiring investigation	2	4 Days	4.5 Days	5 Days	5.5 Days	6 Days
▪ Leakage complaints (Large leaks)	3	1 Day	1.25 Days	1.50 Days	1.75 Days	2 Days
▪ Leakage complaints (Minor leaks)	3	4 Days	4.5 Days	5 Days	5.5 Days	6 Days
▪ Sewage complaints	3	1 Days	1.25 Days	1.5 Days	1.75 Days	2 Days
▪ Hinterland complaints	3	5 Days	5.5 Days	6 Days	6.5 Days	7 Days
Service Coverage in the Hinterland	18	Target	Target - 2%	Target- 5%	Target - 7%	Target - 9%

Note: When adding percentages, the amount is aggregated in absolute. For example, if the target is 55%, and Criterion Value 2 is Target + 3%, Criterion Value 2 would be 58%.

For Criterion in which the value for Criterion 1 is higher than Criterion 5, a "1" will be awarded for equaling or exceeding the Criterion Value 1 target. A "5" will be awarded for an actual performance lower than or equal to the Criterion Value 5 amount. The opposite is true for Criterion in which the value for Criterion 1 is lower than Criterion 5.

H.5 Performance Obligations of the Operator for the Fifth Year

Performance Criterion	Criteria Weights	Criterion Values				
		1	2	3	4	5
Non-Revenue Water	15	25%	27%	30%	32%	34%
Continuity of Service	15	24 Hours	23.5 Hours	23 Hours	22.5 Hours	22 Hours
Collection Efficiency	15	90%	88%	87%	86%	85%
Metering Coverage	10	85%	83%	82%	80%	79%
Disposal Efficiency	10	2%	2.5%	3%	3.5%	4%
Response Time to Customer Complaints						
▪ Routine Billing complaints	3	0.5 Days	0.7 Days	0.8 Days	0.9 Days	1 Days
▪ Billing complaints requiring investigation	2	3 Days	3.5 Days	4 Days	4.5 Days	5 Days
▪ Leakage complaints (Large leaks)	3	1 Day	1.25 Days	1.50 Days	1.75 Days	2 Days
▪ Leakage complaints (Minor leaks)	3	3 Days	3.5 Days	4 Days	4.5 Days	5 Days
▪ Sewage complaints	3	1 Days	1.25 Days	1.5 Days	1.75 Days	2 Days
▪ Hinterland complaints	3	4 Days	4.5 Days	5 Days	5.5 Days	6 Days
Service Coverage in the Hinterland	18	Target	Target - 2%	Target- 5%	Target - 7%	Target - 9%

Note: When adding percentages, the amount is aggregated in absolute. For example, if the target is 55%, and Criterion Value 2 is Target + 3%, Criterion Value 2 would be 58%.

For Criterion in which the value for Criterion 1 is higher than Criterion 5, a "1" will be awarded for equaling or exceeding the Criterion Value 1 target. A "5" will be awarded for an actual performance lower than or equal to the Criterion Value 5 amount. The opposite is true for Criterion in which the value for Criterion 1 is lower than Criterion 5.

H.6 BRIEF DESCRIPTION OF THE CALCULATION PROCEDURE FOR PERFORMANCE FACTOR (Composite Score)

The proposed performance evaluation system for the Management Contract will consist of the following four parts:

- Part 1: Criterion Selection
- Part 2: Criterion Weight Selection
- Part 3: Criterion Value Selection
- Part 4: Decision on the Scoring System: Calculation of Composite Score

First three parts are defined, for years 2-5, in the contract, and the last part is executed at the end of the year.

1.5.1 Part 1: Selection of Performance Criteria

In this part, the criteria for evaluating performance of the Operator are specified. In order to select an appropriate set of criteria, one needs to ensure that they are “fair” to the Operator and “fair” to the Employer.

1.5.2 Part 2: Criterion Weight Selection

Whenever there is more than one target, the contract must assign each target a weighting (with the total weighting equal to 100%) that reflects the priorities of the Government. These weightings will provide the Operator with appropriate incentives such that he allocates his time and resources most effectively in order to achieve the stated priorities.

1.5.3 Part 3: Criterion Value Selection

The third part in the performance evaluation system relates to criteria value selection, i.e., the level of performance expected with respect to different indicators. In this case, the management contract uses a 5-point scale, where:

1	=	Excellent
2	=	Very Good
3	=	Good
4	=	Fair
5	=	Poor

Performance of the Operator will be measured against the specific performance targets and a weighted average score of achievement called the “Composite Score” will be calculated each year. A Composite Score of 2.5 or greater will place the Management Contractor on notice of possible termination. Performance of 3.5 or greater will be cause for termination of the Contract, and will result in no Incentive Compensation to the Operator.

1.5.4 Part 4: Performance Evaluation at the End of the Year

The fourth and final step is taken at the end of years 2-5, when we look at the achievements of the Operator and compare them with the criteria values and determine the composite score – reflecting overall performance of the Operator.

A **hypothetical** example of the above system, including the calculation of the composite score is given below:

1.5.5

Sample Management Contract Targets at the Beginning of the Year of Year x

Criterion	Units	Weight	Criterion Values				
			1	2	3	4	5
Reduction of unaccounted for water	%	.30	55	57	59	61	63
Collection efficiency	%	.40	35	37	39	41	43
Metering coverage	%	.30	30	28	26	24	22

The following table demonstrates the procedure for the calculation of the “Composite Performance Score,” if at the end of the year the achievements of the Operator are as follows:

- i) Reduction of unaccounted for water 57
- ii) Collection efficiency 36
- iii) Metering coverage 30

Calculation of Composite Performance Score

Criterion	Units	Weight	Achievement	Raw Score	Weighted Score
Reduction of unaccounted for water	%	.30	57	2	.6
Collection efficiency	%	.40	36	1.5	.6
Metering coverage	%	.30	30	1	.3
Composite Performance Score					1.5

H.7 The Method for Incentive Compensation Payments

The Operator will be paid Incentive Compensation based on the following formula:

$$\text{Annual Incentive Compensation Payment} = \frac{3.5 - \text{Composite Score}}{2.5} \times \text{Maximum Annual Incentive Compensation}$$

The method for calculating the Composite Score is given in section 6 of this Appendix.

The maximum annual Incentive Compensation is that fee that can be earned by the Operator by achieving all targets for Excellent performance specified Table H.1 of this Appendix.

SAMPLE

Appendix I – Form of Bank guarantee for Advance Payments

[.....date]

Dear Sirs,

Re: Name of Grant – Contract for [] Contract Number []

1. In consideration of [] hereby irrevocably give you our guarantee and undertake to pay you any amount or amounts not exceeding in total a maximum of [5% of Total Fixed Fee].....(Amount in words) on receipt of your first demand in writing which shall be accompanied by a certificate signed by GOG and countersigned by CAFSL that the Contractor has failed to perform all or part of the Contract or that the Contract has been frustrated or terminated prior to its fulfillment.
2. Any amount or amounts paid by the Bank under this guarantee shall be paid to [].
3. This guarantee shall become effective automatically on payment of the Advance Payment of (5% of Total Fixed Fee).....(Amount in words) by or on behalf of Government.
4. The Bank shall not hold or otherwise allow or permit the Advance Payment referred to in paragraph 1 above to be used as collateral directly or indirectly in respect of this Guarantee nor shall the Bank restrict the Contractor's right to draw on the Advance Payment or sum equal to the Advance Payment for the purposes of the Contract.
5. This Guarantee shall remain valid and in full effect from the date of the advance payment under this contract until(name of employer) has been set off by the employer in accordance with Clause 6.5 (a) of the contract.
6. The Bank shall not be discharged or released from this Guarantee by an arrangement made between or on behalf of the Government and the Contractor or by any alteration in the obligations imposed upon the Contractor by the Contract or by any forbearance granted by or on behalf of the Government to the Contractor as to payment, time, performance or otherwise and this notwithstanding that such arrangement, alteration or forbearance may have been made or granted without the Bank's knowledge or ascent.
8. This Guarantee shall be governed by and construed in accordance with the laws of [].

Yours faithfully,

.....
Signed for and on behalf of
[Name of Bank]

Date:

SAMPLE

Appendix J – Parent Company Guarantee

This Guarantee made as of the ___ day of ___, 200, by _____, a _____ corporation (“Guarantor”), having its principal place of business in _____, to and for the benefit of [] (the “Employer”).

WITNESSETH:

WHEREAS, _____, a _____ corporation, (the “Company”) having an office at _____, has entered into a Performance-Based Management Contract for Water Supply and Sewerage Services in [] (the “Contract”) with [] dated _____.

WHEREAS, Guarantor is willing to guarantee, as set forth below, the performance of the Company under the Contract; and

WHEREAS, [] would not enter into the Contract unless the Guarantor provided this Guarantee;

NOW, THEREFORE, as an inducement to [] to enter into this Contract, Guarantor agrees as follows:

1. Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Company of all of the Company’s obligations under the Contract in accordance with the terms and conditions therein.
2. This Guarantee shall be governed by the laws of [] exclusive of the choice of law rules thereof, and Guarantor hereby agrees to the service of process in [] for any claim or controversy arising out of this Guarantee or relating to any breach hereof.
3. This Guarantee shall be binding upon and enforceable against the Guarantor, its successors, assigns and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the properties of Guarantor), whether or not such obligations are expressly assumed by such successor, assignee or transferee and is for the benefit of [] Water, and any permitted successors and assigns under the Contract.
4. This Guarantee may be enforced by [] without first resorting to any action against the Company or exhausting any other remedies that [] may have.
5. Each and every Event of Default under the Contract shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by [] as each cause of action arises. Guarantor waives presentation to, demand of performance from, and protest to [] of the obligations of the Company under the Contract.
6. No failure or delay by [] in exercising any right, power or privilege hereunder or under the Contract shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release, or modification is sought to be enforced.
7. Guarantor may not assign its obligations hereunder, except to a successor by merger or consolidation or to any transferee of all or substantially all of the property of Guarantor. Notice of any such assignment shall be given in writing to [] within thirty (30) days of the effective date of any such merger, consolidation or transfer.

8. The respective obligations of Guarantor to [] set forth in this Guarantee shall be absolute and unconditional, shall not be subject to any requirement that [] first enforce any remedies it may have against the Company or any other Person, or any requirement to seek to recover from Company hereunder before proceeding against Guarantor hereunder, and shall not be subject to any claim of Guarantor against any other Person including in [], other than a claim that the matter giving rise to [] Water's claim is the subject of dispute resolution in good faith under the Contract or in the courts.
9. This Guarantee may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The invalidity or unenforceability of one or more provisions of this Guarantee shall not affect the validity or enforceability of the remaining portions of this Guarantee. This Guarantee is entered into by Guarantor solely and exclusively for the benefit of [] Water, and may be enforced against Guarantor by [] Water.
10. Any term used but not otherwise defined herein and defined in the Contract shall have the meaning attributed to it in the Contract.
11. Notices to be given pursuant to this Guarantee unless otherwise stated shall be in writing and shall be served personally or sent by certified mail, return receipt requested to:

Guarantor at: (Name)

If By Mail (Address)

If By Hand (Address)

[] at:

Or to such other address as shall be designated by such party in a written notice to the other party hereto. Any notice given pursuant to this Section if transmitted by certified mail shall be effective immediately upon receipt and if delivered by hand upon delivery.

IN WITNESS WHEREOF, Guarantor has executed this instrument the day and year first above written.

ATTEST:

ACCEPTED BY: _____

[²⁷ APPENDIX K – PROCUREMENT PROCEDURES

The Operator must adhere to the relevant procurement guidelines and loan requirements of the funding agencies providing resources for procurement of goods and services.]

SAMPLE

²⁷ appropriate where there are funding agencies involved