



REPUBLIC OF UGANDA

MINISTRY OF WATER AND ENVIRONMENT

..... **WATER SUPPLY AND SEWERAGE
AUTHORITY**

**MANAGEMENT CONTRACT FOR
WATER SUPPLY AND SANITATION SERVICES**

.....**20**.....

Table of Contents

1.0	INTERPRETATIONS	3
2.0	THE CONTRACT DOCUMENTS.....	5
3.0	COMMENCEMENT OF CONTRACT	5
4.0	DURATION OF CONTRACT.....	5
5.0	NOTICES UNDER THIS CONTRACT.....	6
6.0	ASSIGNMENT OF THE CONTRACT	7
7.0	APPOINTMENT AND RESPONSIBILITY OF THE OPERATOR	7
8.0	DUTIES, OBLIGATIONS AND RIGHTS OF THE OPERATOR	8
9.0	DUTIES, RIGHTS AND OBLIGATIONS OF THE AUTHORITY	17
10.0	WAIVER.....	19
11.	AMENDMENT OR VARIATION.....	19
12.	TERMINATION	19
13.	DISPUTE RESOLUTION	20
	ANNEX 1.....	22
	FIRST SCHEDULE	23
	SECOND SCHEDULE	25
	THIRD SCHEDULE.....	28
	FOURTH SCHEDULE.....	29

THIS MANAGEMENT CONTRACT (hereafter called "the Contract") is made this.....day of, 20..... between **WATER SUPPLY AND SEWERAGE AUTHORITY** (the "Authority") of P.O. Boxon one part and..... (the "Operator") of P.O. Box on the other.

WHEREAS:

- A. The Minister of Water and Environment (the "Minister") has appointed the Authority to be a Water Supply and Sewerage Authority ("the Authority") for the area specified in Annex 2 to this Contract;
- B. The Minister has entered into a Performance Contract with the Authority pursuant to section 48 of the Water Act (Cap 152);
- C. Clause 4.3.5 of the Performance Contract set out in Annex 2 to this Contract requires the Authority to sub-contract the services stipulated in the said Performance Contract to, and enter into a Management Contract with, an independent operator;
- D. Clause 4.3.10 of the said Performance Contract holds the Authority liable for performance of any obligations sub-contracted by it and, therefore, the Authority is bound to ensure that the Operator complies with the standards set therein;
- E. The Operator understands and agrees to be bound, as an agent of the Authority, by the provisions stated in the said Performance Contract and any amendments and variations thereto, which Performance Contract forms part of this Contract;
- F. The Authority has through a competitive bidding process awarded a contract to the Operator to undertake the management of water supply and sanitation services as set out in the First and Second Schedules of Annex 2 to this Contract; and
- G. The Operator, having represented to the Authority that it has the required managerial, technical, scientific, engineering and operational skills and competencies in respect of water supply and sanitation services, has agreed to provide an effective and efficient management service (the "Service").

THE PARTIES AGREE AS FOLLOWS:

1.0 INTERPRETATIONS

1.1 In this Contract, unless the context otherwise requires:

- (a) **"Act"** means the Water Act (Cap 152);
- (b) **"Area"** means the area of operation of the Authority specified in the First Schedule of Annex 2 to this Contract;

- (c) **“Authority”** means the Water Supply and Sewerage Authority named in the First Schedule of Annex 2 to this Contract, its Water Supply and Sewerage Services Board duly constituted under the terms of the said Annex 2, or any of its authorized representatives;
- (d) **“Commencement Date”** means the date set out in Annex 1 to this Contract;
- (e) **“Escrow Account”** means any account established by the Authority pursuant to Clause 4.10.2 of Annex 2 to this Contract;
- (f) **“Generally Accepted Accounting Principles”** means the Generally Accepted Accounting Principles prescribed by the Institute of Certified Public Accountants of Uganda;
- (g) **“Letter of Acceptance”** means the written communication by the Authority to the Operator recording the acceptance by the Authority of the Operator's Proposal;
- (h) **“National Environment Management Authority”** means the National Environment Management Authority established by section 4 of the National Environment Management Act (Cap153);
- (i) **“Operator”** means the bidding firm or joint venture that submitted the Proposal or its authorized representative, and the person or persons that signed the Commitment Letter in the Proposal;
- (j) **“Pollution Licence”** means a pollution licence granted under section 58 of the National Environment Management Act (Cap 153);
- (k) **“Proposal”** means the proposal submitted by the Operator in response to the Request for Proposal that resulted in this Contract;
- (l) **“Regulations”** means (i) in the case of a Water Authority, the Water Supply Regulations, (ii) in the case of a Sewerage Authority the Sewerage Regulations, and (iii) in the case of a Water and Sewerage Authority, both of the said Regulations;
- (m) **“Standard Conditions”** means the following:
 - (i) This Contract document except Clause 4.2 and Annex 1 to this Contract;
 - (ii) Letter of Acceptance;
 - (iii) Minutes of Negotiation Meetings;
 - (iv) The Act;
 - (v) The Proposal and its qualification data; and
 - (vi) Notices, schedules and other correspondence issued as Standard Conditions.
- (n) **“Special Conditions”** means:
 - (i) Clause 4.2 of this Contract;
 - (ii) Annex 1 to this Contract; and
 - (iii) Notices, schedules and other correspondence issued as Special Conditions.

- (o) **“Water Supply and Sewerage Services Board”** means the Water Supply and Sewerage Services Board constituted under Clause 4.3.3 and Sixth Schedule of Annex 2 to this Contract.

1.2 In this Contract, unless the context otherwise requires:

- (a) Words and phrases bear the same meanings as in the Water Act and Performance Contract;
- (b) A reference to any legislation includes any subordinate legislation and its consolidations, amendments, re-enactments or replacements;
- (c) The singular includes the plural and vice versa;
- (d) The word “person” includes a firm, corporation, partnership, joint venture, unincorporated association and public authority;
- (e) A reference to a clause or schedule is to a clause of, or schedule to, this Contract unless otherwise stated;
- (f) A schedule forms part of this Contract;
- (g) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

1.3 Headings are for convenience only and do not affect interpretation.

1.3.1 In interpreting this Contract, a construction of words that would promote the purpose or object underlying the Contract must be preferred to a construction that would not promote that purpose or object.

1.4 This Contract shall be interpreted in accordance with the laws of the Republic of Uganda.

2.0 THE CONTRACT DOCUMENTS

Contract documents shall consist of:

- (a) Standard Conditions; and
- (b) Special Conditions (if any).

3.0 COMMENCEMENT OF CONTRACT

This Contract shall come into effect on the Commencement Date set out in Annex 1 to this Contract.

4.0 DURATION OF CONTRACT

4.1. Standard Conditions

This Contract shall come into effect on the Commencement Date set out in Annex 1 to this Contract and shall continue in force for the duration provided for under the said Annex 1. This Contract shall be governed by the Standard Conditions and be subject to twelve (12) monthly reviews from the Commencement Date against the standards set out in the Seventh Schedule of Annex 2 to this Contract.

4.2 Special Conditions

The parties also agree to be bound by the Special Conditions (if any) stipulated in Annex 1 to this Contract. Special Conditions stipulated in Annex 1 to this Contract shall override the relevant Standard Conditions.

5.0 NOTICES UNDER THIS CONTRACT

5.1 Any notice, instruction, direction, request or permission to be given or made under this Contract shall be in writing and signed by:

For the Authority:

The Town Clerk or, for areas below town council status, the equivalent administrative head as prescribed by the Local Governments Act (Cap 243) acting for and on behalf of the Water Supply and Sewerage Services Board.

For the Operator:

The Operator or any person authorized by and acting on behalf of the Operator.

5.2 Such notice, instruction, request or permission under sub-clause 5.1 shall be deemed to be duly given or made when it shall have been delivered by hand or mail at the address of the party concerned as specified below:

For the Authority

..... Water Supply and Sewerage Authority
P.O. Box

For the Operator

.....
P.O. Box

6.0 ASSIGNMENT OF THE CONTRACT

- 6.1 The Operator shall not assign the Contract or any part thereof, or any benefit or interest therein or there-under, without the written consent of the Authority, which consent shall not be unreasonably withheld.
- 6.2 The Authority shall, by notice to the Operator given at least thirty (30) days in advance, be entitled to assign its rights and obligations, in whole or part, to any other person, as defined in sub-clause 1.2 (d), which may become responsible for provision of water supply and sanitation services in the Area in accordance with the Act and Annex 2 to this Contract. Any such assignment by the Authority shall become effective on the thirtieth (30th) calendar day following the said notice or on such later date as may be specified in the notice.
- 6.3 No such assignment by the Authority in accordance with sub-clause 6.2 shall in any way invalidate this Contract in whole or in part, nor relieve the Authority or it's assignee of any of its obligations hereunder.
- 6.4 Notwithstanding anything to the contrary as may be stated in or reasonably inferred from the Contract, the Operator shall not be entitled to any payments or compensation, either by the Authority or by any assignee of the Authority consequent either directly or indirectly on the exercise by the Authority of its rights in accordance with sub-clause 6.2.

7.0 APPOINTMENT AND RESPONSIBILITY OF THE OPERATOR

- 7.1 The Authority hereby appoints the Operator to be the sole and exclusive manager of the water supply and sanitation facilities listed in the Fourth Schedule to this Contract in the area of operation set out in the First Schedule of Annex 2 to this Contract for the duration of this Contract.
- 7.2 The Operator shall, in such manner and at such times as it shall in its discretion see fit, use all their skills and knowledge to manage, administer, conduct, maintain and develop the water supply system and sanitation services in the Area efficiently, in the best interests of the Authority, in a professional manner and, in particular but without prejudice to the generality of the foregoing, shall carry out the duties and obligations and have the rights set forth in this Contract.
- 7.3 The Operator shall also be responsible for the efficient implementation of any business / development plan, which has now been or may hereafter be agreed between the Authority and the Operator.

8.0 DUTIES, OBLIGATIONS AND RIGHTS OF THE OPERATOR

Without detracting from any duties, obligations and rights imposed on or conferred upon (whether expressly or by implication) the Operator by this Contract or implied by law or commercial custom on managers of a business similar to the Service, it shall be the duty, obligation or right of the Operator:

8.1 TO SAFEGUARD, USE, MANAGE, MAINTAIN AND CONTROL ASSETS

- 8.1.1 The Authority reserves the rights in the assets set out in the Second Schedules of Annex 2 to this Contract.
- 8.1.2 The Operator shall have access to, the right to use, and the duty to safeguard, manage and control the assets referred to in sub-clause 8.1.1, for the purpose of discharging its duties and obligations or exercising its rights under this Contract, for the term of this Contract.
- 8.1.3 The Operator shall maintain in good working condition, throughout the term of this Contract, the assets referred to in sub-clause 8.1.1 and shall ensure that adequate control is maintained over assets owned by, or in the custody of the Operator and that the required preventive and regular maintenance under this Contract is undertaken.
- 8.1.4 The Operator shall not dispose of or create any interest in the assets referred to in sub-clause 8.1.1 except on the express written instruction of the Authority, which shall secure the relevant approvals prior to issuing its own instruction.
- 8.1.5 The Operator shall comply with any directions of the Authority to use or dispose of any asset or any money or other consideration to which the Authority becomes entitled as a result of disposing of any asset referred to in sub-clause 8.1.1.
- 8.1.6 The Operator shall jointly with the Town Clerk or the equivalent administrative head and the Chairman of the Water and Sewerage Services Board control the Operating Escrow Account of the Authority as set out in sub-clause 4.10.2 (b) of Annex 2 to this Contract.
- 8.1.7 The Operator shall deposit all monies collected under Clause 8.7 into the Operating Escrow Account as set out in sub-clause 4.10.2(b) of Annex 2 to this Contract.
- 8.1.8 All other assets renewed, acquired or constructed by the Operator under this Contract shall vest in the Authority and be held in trust and maintained by the Operator in good condition and working order throughout the term of this Contract.
- 8.1.9 The Operator shall also maintain and regularly update an assets register which details all assets held in trust by the Operator under this Contract

including additional assets and investments acquired or made by the Operator during the term of this Contract.

8.2 PROVIDE OPERATIONS AND MANAGEMENT SERVICES

8.2.1 The Operator shall discharge all the duties and obligations of a water supply and sanitation service provider within the Area for the term of this Contract.

8.2.2 In discharging the duties and obligations referred to in sub-clause 8.2.1, the Operator shall:

- (a) Exercise due diligence, efficiency and economy in accordance with generally accepted professional conduct and practice, and shall employ sound and management practices and appropriate technology in the best interests of the Authority;
- (b) Employ key personnel as identified in the Proposal, or personnel of at least the same skills and qualifications. Any change in the designated key personnel must be approved by the Authority. The Authority reserves the right to require the Operator to withdraw or replace any staff member who fails to meet the requirements;
- (c) Acquire, provide, manage and utilize, resources, facilities, staff and technologies necessary to the provision of the Service in the Area; and
- (d) Comply with:
 - (i) Any code of workmanship prescribed by the Minister under section 70 of the Act;
 - (ii) The service standards, performance targets and reporting format specified or referred to in the Second Schedule to this Contract;
 - (iii) Every provision of all laws relating to the duties and obligations referred to in sub-clause 8.2.1, to occupational health safety of employees, to the environment, to the collection and payment of taxes and to any other matter whatsoever;
 - (iv) The terms of any water or waste discharge permits granted to the Authority;
 - (v) Any notice, instruction or direction issued in accordance with Clause 5 and Clause 9.4; and
 - (vi) Comply with any community service obligations or pro-poor programmes required to be undertaken by the Authority in the Area including without limitation provision of water supply and sanitation services at subsidized rates or no cost to selected customers within the Area **PROVIDED THAT** the Operator shall be entitled to recover the

actual cost of providing such services in addition to the Management Fee stipulated under this Contract.

Failure by the Operator to comply with any of the foregoing provisions shall amount to a breach of this Contract subject to Clause 12 at the discretion of the Authority.

- 8.2.3 In discharging the duties and obligations referred to in sub-clause 8.2.1, the Operator may sub-contract any part of such duties to an independent operator with the express prior written approval of the Authority. The Operator shall provide the Authority with such information about the proposed sub-contractors as the Authority may require and shall execute a contract approved by the Authority.
- 8.2.4 The Operator shall remain liable under the Contract for the discharge of any duties and obligations sub-contracted under sub-clause 8.2.3.

8.3 PAYMENT OF TAXES, RATES, UTILITY EXPENSES E.T.C

- 8.3.1 The Operator shall pay utility expenses relating to the provision of the Service under this Contract including without limitation payment of electricity, telephone and other utility expenses as and when due and shall provide to the Authority copies of payment receipts, invoices and other supporting documentation in respect of payments made by the Operator under this Clause with the invoice for the management fee payable to the Operator by the Authority under Clause 8.8 of this Contract.
- 8.3.2 The Operator shall raise, collect, remit and pay all taxes, rates, charges, fees and penalties and provide all returns, files and documents required for it under applicable tax laws or other laws and discharge all obligations imposed on it by such laws. Copies of payment receipts, invoices and other supporting documentation in respect of payments made by the Operator under this Clause shall be provided to the Authority with the invoice for the management fee payable to the Operator under Clause 8.8 of this Contract.

8.4 TO UNDERTAKE MINOR/ROUTINE REPAIRS

- 8.4.1 The Operator shall be responsible for undertaking all minor and/or routine repairs to the water supply and sanitation system and facilities set out in the Fourth Schedule to this Contract including damage to the said system and facilities from any cause whatsoever.
- 8.4.2 For purposes of this Contract, "minor and/or routine repairs" means repairs other than major repairs and extensions referred to in Clause 8.5 of this Contract.
- 8.4.3 For the avoidance of doubt the Operator is not entitled to payment of any additional fee or reimbursement of any expenses incurred by it under sub-clause 8.4.1 and without limiting the generality of any of the foregoing, the

agreed monthly management fee under this Contract shall be inclusive of all costs and expenses relating to the execution of minor and/or routine repairs by the Operator under Clause 8.4.1 of this Contract.

8.5 TO UNDERTAKE MAJOR REPAIRS AND EXTENSIONS

- 8.5.1 The Operator shall also be responsible for initiating and undertaking major repairs and extensions to the water supply and sanitation system and facilities set out in the Fourth Schedule to this Contract.
- 8.5.2 For purposes of this Contract, the terms "Major Repairs" and "Extensions" shall refer to the repairs and extensions set out in the Third Schedule to this Contract.
- 8.5.3 In the event of major repairs under sub-clause 8.5.1 the Operator shall notify the Authority immediately in writing explaining the circumstances or events that have arisen, the recommended major repairs, the cost estimates and the necessary financing for materials, parts and labor.
- 8.5.4 In the event of extensions under sub-clause 8.5.1 the Operator shall submit a plan showing the objectives of the extensions, the design drawings, specifications and costs of materials and parts, and nature and cost of labor required.
- 8.5.5 Upon receiving satisfactory information as set out in sub-clauses 8.5.3 or 8.5.4, the Authority shall notify the Operator of its approval and then make an advance payment to the Operator for materials and parts and the Operator shall carry out the approved major repairs and extensions. The Operator shall subsequently claim from and be paid by the Authority for the labour provided by the Operator in carrying out the major repairs and extensions.
- 8.5.6 Any additional labour related payments due to the Operator under sub-clause 8.5.5 shall be shown as a separate and itemized expense in the Operator's invoice for the management fee rendered in respect of the month in which the said major repairs and/or extensions were completed by the Operator to the satisfaction of the Authority.

8.6 EMERGENCIES

The Operator shall, in consultation with the Authority, develop emergency procedures for the efficient management of emergencies affecting the water supply and sanitation facilities managed by the Operator under this Contract including the use of emergency toll free numbers, notification of emergencies and execution of emergency repairs etc in order to avoid and minimize disruption to the Service and other adverse impacts on consumers within the Area.

8.7 TO CHARGE AND COLLECT FOR SERVICES PROVIDED

The Operator shall charge and collect tariffs, fees, rates and charges for services provided under this Contract in accordance with a schedule published by the Authority under sub-clause 9.1.3 and in accordance with the Authority's Business Plan referred to in Clause 4.8 of Annex 2 to this Contract.

8.8 TO BE PAID A MANAGEMENT FEE

8.8.1 In consideration for providing the Service, the Operator shall be entitled to payment of a Management Fee and any labour related expenses under sub-clause 8.5.6 by the Authority on the basis set out in the First Schedule to this Contract and in the manner set out in this Clause.

8.8.2 Where the Operator fails to fulfill the continuity of service standards set out in Annex 2 to this Contract, for reasons other than those outside its control, the Operator shall, at the discretion of the Authority, forfeit a portion of the Management Fee specified in the First Schedule to this Contract. The portion of the Management Fee forfeited under this sub-clause shall be calculated pro-rata on the basis of the total number of hours of discontinued service as a proportion of the total hours of service expected for that month.

8.8.3 Where the Operator fails to provide the Authority with a Business Plan in accordance with Clause 8.10 of this Contract or to report to the Authority in accordance with Clause 8.10 of this Contract, the Authority shall, at its discretion, withhold payment of the Management Fee specified in the First Schedule to this Contract until such provisions are met.

8.8.4 The Operator shall compute the monthly Management Fee due under sub-clause 8.8.1 and shall submit an invoice for the appropriate Management Fee to the Authority by the 15th day of every month in respect of the Management Fee for the previous calendar month. The invoice shall show the detailed computation of the Management Fee and shall be in a format and have content acceptable to the Authority **PROVIDED THAT** the said invoice to be valid must be accompanied by the documentation indicated in the First Schedule to this Contract including without limitation receipts and other documentation for utility, tax and other payments made by the Operator under Clause 8.3 of this Contract for the month to which the said invoice relates.

The monthly invoice referred to in sub-clause 8.8.4 shall include under a separate and itemized component labour related expenses payable under sub-clause 8.5.6 of this Contract.

8.8.5 The Operator shall have a right to settlement of the invoice referred to in sub-clause 8.8.4 by the Authority within thirty (30) days from the receipt of such invoice by the Authority provided that:

- (a) The Operator shall have provided all explanations, corrections and information requested by the Authority regarding the invoice within three(3) working days of receiving them; and
 - (b) Any requests by the Authority for explanations, corrections and information shall have been made at least three (3) working days prior to the expiry of the period under this sub-clause.
- 8.8.6 Where the Authority fails to settle the amount due to the Operator in accordance with sub-clause 8.8.5, the Operator shall be entitled to interest earned on the invoice balance from the first day after the expiry of the period under sub-clause 8.8.5 to the date the Operator receives payment. Such interest shall be due and payable together with the outstanding invoice balance.
- 8.8.7 The provisions of sub-clause 8.8.6 shall apply for a maximum of thirty (30) days following which continued non-settlement of the Operator's invoice by the Authority shall amount to a breach of this Contract subject to clause 12. Nothing under this sub-clause shall preclude the Operator from seeking other remedies available under applicable laws.
- 8.8.8 Any interest due under sub-clause 8.8.7 shall be at a rate equivalent to the prevailing rate charged to preferred customers (also known as the prime rate) of the bank where the Escrow Account of the Authority is located.

8.9 TO MAINTAIN AND KEEP RECORDS

- 8.9.1 The Operator shall keep proper and adequate accounts and records of the transactions and affairs of the Service and shall keep records that are necessary to explain the financial operations and financial position of the Service.
- 8.9.2 The accounting period of the Operator shall coincide with the accounting period of the Authority.
- 8.9.3 The Operator shall develop and maintain an adequate budgeting and accounting system.
- 8.9.4 The Operator shall develop and maintain an adequate internal accounting control system.
- 8.9.5 Without detracting from sub-clause 8.9.1, the Operator shall keep the records referred to in the Seventh Schedule of Annex 2 to this Contract and shall retain those records for the period prescribed in the said Schedule.
- 8.9.6 Except as provided in sub-clauses 8.9.8 and Clause 8.12 of this Contract and the Third Schedule of Annex 2 to this Contract, all records are confidential to the Operator and the Authority.

8.9.7 Any customer or former customer of the Operator may apply to the Operator for a copy of all records held by the Operator concerning that customer, in such a form as may be prescribed by the Authority.

8.9.8 The Operator shall provide a customer or former customer under sub-clause 8.9.7 with a copy of the relevant records, but may impose a reasonable charge to cover the costs to the Operator of making the copy available in accordance with clause

8.10 TO REVIEW BUSINESS PLAN

8.10.1 The approved Business Plan set out in the First Schedule to this Contract shall be reviewed, updated and submitted to the Authority on an annual basis by the 15th April of each year.

8.10.2 Failure to submit a Business Plan in accordance with the provisions of this Clause shall amount to a breach of this Contract subject to Clause 12 at the discretion of the Authority and shall result in withholding of the Management Fee in accordance with sub-clause 8.8.3.

8.10.3 A Business Plan referred to under sub-clause 8.10.1 shall be in a form approved by the Authority and shall include:

- (a) The objectives of the plan;
- (b) The overall strategies and policies that the Operator is to follow to achieve the objectives in 8.10.3 (a);
- (c) The services that the Operator plans to provide and the standards that are planned to be maintained in providing those services;
- (d) Performance indicators and targets, both financial and operational;
- (e) Financial matters as set out in sub-clause 8.10.6;
- (f) Other information that the Operator may consider appropriate or that may be specified by the Authority.

8.10.4 A Business Plan shall be consistent with any National Water Action Plan established under Section 17 of the Act and with all the provisions of Annex 2 to this Contract.

8.10.5 The Management Fee set out in the Business Plan of the Operator submitted under this Clause shall not exceed the management fee indicated in the Proposal.

8.10.6 A Business Plan shall state, in relation to financial matters:

- (a) The financial target of the Operator;

- (b) The overall financial strategies including proposed tariffs, rates, fees and charges, investment and borrowing as well as proposed disposal of assets;
- (c) A forecast of revenue and expenditure, including a forecast of capital expenditure and borrowing; and
- (d) Details of the significant tariffs, fees rates and charges expected to be raised by the Operator and the basis on which these tariffs, rates and charges are to be raised.
- (e) Other financial information as the Operator may consider appropriate or as is specified by the Authority.

8.10.7 Submission of a Business Plan to the Authority under this clause shall in no way detract from the Operator's duties, obligations and rights under this Contract. A Business Plan shall not be binding on the Authority and shall only be for the convenience of the Authority in planning, managing and developing the Service in the Area.

8.10.8 If the Operator is of the opinion that matters have arisen that may prevent, or significantly affect the achievement of Business Plan objectives and targets, the Operator shall immediately notify [within fourteen (14) days of the occurrence of the event] the Authority of its opinion and the reasons thereof.

8.11 TO REPORT TO THE AUTHORITY

8.11.1 The Operator shall, in respect of each quarter of a financial year and no later than thirty (30) days after the end of such quarter, prepare and submit a report to the Authority containing:

- (a) Information about, and an analysis of, its operations for the quarter and cumulatively for the year to date; and
- (b) Financial statements in accordance with Generally Accepted Accounting Principles for the quarter and cumulatively for the year to date.

8.11.2 The report referred to under sub-clause 8.11.1 shall:

- (a) Be prepared in a form acceptable to the Authority;
- (b) Contain the information specified in the Second Schedule to this Contract and any other information determined by the Operator to be appropriate;
- (c) Contain the billings for the quarter showing distinctly the net billings, Value Added Tax, and gross billings;
- (d) Contain collections for the quarter showing distinctly the net billings, Value Added Tax and gross billings collected;
- (e) Contain the Value Added Tax due from and payable by the Authority on account of the billings and collections for the quarter;
- (f) Must be consistent with the data in the monthly reports to be submitted under sub-clause 8.11.4 (relevant for quarterly reports, in case of

contradictions, are the cumulated figures from the respective monthly reports); and

- (g) Contain any other information required by the Authority.

8.11.3 The financial statements referred to under sub-clause 8.11.2 (b) shall:

- (a) Contain information determined by the Authority to be appropriate;
- (b) Include an assessment of:
 - (i) The cost of carrying out the Authority's community service obligations under the Act; and
 - (ii) The cost of carrying out any other obligation that is imposed on the Operator under this Contract or the Water Act or Annex 2 to this Contract and that requires the Operator to act otherwise than in accordance with normal commercial practice;
- (c) Be prepared in a manner and form approved by the Authority; and
- (d) Present fairly the results of the financial transactions of the Operator during the financial period to which they relate and the financial position of the Operator as at the end of that period.

8.11.4 The Operator shall, in respect of each calendar month, and no later than five (5) days after the end of such month, prepare and submit a report to the Authority with a copy to the Director (DWD) that:

- (a) Is prepared in the actual standard format provided by the Authority;
- (b) Contains the information specified in the Second Schedule of this Contract and any other information determined by the Operator to be appropriate; and
- (c) Is consistent with the quarterly report to be submitted under sub-clause 8.11.1.

Monthly reports represent the break-down of the respective quarterly, cumulative quarterly and annual reports.

8.11.5 The Authority may require and the Operator, when notified, is obliged to appear in meetings of the Authority convened to discuss the affairs of the Authority. The Authority may request the Operator to make such presentations, reports, demonstrations or take such actions as the Authority may deem necessary with reasonable prior notice.

8.11.6 Failure of the Operator to comply with the provisions of this Clause shall amount to a breach of this Contract subject to Clause 12 at the discretion of the Authority, and shall result in withholding of the Management Fee in accordance with sub-clause 8.8.3.

8.12 TO ALLOW INSPECTION

The Operator shall allow the Authority and the Director or any person representing the Authority or the Director, access at any time to:

- (a) Any land owned or occupied by the Authority;
- (b) Any assets referred to in the Fourth Schedule to this Contract and any other assets renewed, acquired or constructed by the Authority;
- (c) Any assets owned by the Operator;
- (d) Inspect any land, works, buildings or any other assets;
- (e) Make any tests, take any measurements or take any samples;
- (f) Take any photographs or make any plans or drawings; and
- (g) Inspect and, if necessary, make any copies of any records or documents referred to in Clause 8.9 in order to ascertain whether the Operator is complying in every respect with this Contract, and the Water Act.

8.13 TO BE INDEMNIFIED

Provided that the Operator, its servants and employees shall use diligence and care in carrying out their duties hereunder, neither it nor any of its servants and employees shall be liable for any damage to persons or property arising out of any information, advice or service supplied to the Authority or act performed for the Authority or otherwise in the course of its duties hereunder. The Authority shall indemnify the Operator and every such person against all claims, demands, losses, liabilities, actions, lawsuits, costs and expenses arising directly or indirectly out of or in consequence thereof or in the implementation of this Contract. **PROVIDED THAT** the Authority may require the Operator to take out public liability insurance in the joint names of the Operator and the Authority in which event insurance premiums paid by the Operator under this Clause shall be treated and included as reimbursable expenses in the invoice of the Operator referred to in Clause 8.8.4 of the Contract.

9.0 DUTIES, RIGHTS AND OBLIGATIONS OF THE AUTHORITY

Without detracting from any duties, obligations and rights imposed on or conferred upon (whether expressly or by implication) the Authority by this Contract or implied by law or commercial custom on persons similar to the Authority, it shall be the duty, obligation or right of the Authority:

9.1 TO SET TARIFFS, FEES, RATES AND CHARGES

9.1.1 The Authority shall have the right to set the tariffs, fees, rates and charges to be charged and collected by the Operator under clause 8.7, subject to the provisions of Annex 2 to this Contract.

9.1.2 In exercising its rights under sub-clause 9.1.1, the Authority shall give due consideration to any proposals submitted by the Operator in its Business

Plans and seek any necessary explanations, advice and information from the Operator.

- 9.1.3 In exercising its rights under sub-clause 9.1.1, the Authority shall, from time to time, publish a schedule of approved tariffs, fees, rates and charges and related instructions and shall furnish the Operator with such schedule.

9.2 TO PAY A MANAGEMENT FEE

- 9.2.1 The Authority shall have the obligation to pay to the Operator a Management Fee and any labour related expenses duly computed and demanded by the Operator under Clause 8.8.

- 9.2.2. The Authority shall have the right to inspect the operations of the Operator as set out in Clause 8.12 to obtain such information as it requires to ascertain the Management Fee and labour related expenses payable under sub-clause 9.2.1.

- 9.2.3 The Authority shall remit to the Operator the amount demanded by the Operator and certified by the Authority in accordance with Clause 8.8.

9.3 TO AUDIT ACCOUNTS

- 9.3.1 The Authority shall have the right to appoint an auditor to examine the accounts, books and records of the Operator and to take such other actions as are necessary for the Authority to comply with Clause 4.12 of Annex 2 to this Contract.

- 9.3.2 The Authority shall pay the costs of any auditor engaged under sub-clause 9.3.1

9.4. NOT TO INTERFERE WITH OPERATIONS

The provisions in this Contract notwithstanding, the Authority shall not interfere with the day-to-day operations of the Operator. In particular, the Authority shall not:

- (a) Issue instructions to the Operator regarding operational decisions or actions except by way of the Authority's approved Business Plan or amended Business Plan in accordance with Clause 8.10 or by way of a schedule issued under Clause 9.1.;
- (b) Issue instructions to an Operator or attempt to influence an Operator's decision regarding the connection of a customer to the water supply system;

- (c) Issue instructions to the Operator or attempt to influence an Operator's decision regarding a disconnection made by the Operator or any lawful action taken by the Operator regarding non-payment by a customer;
- (d) Withhold payments due to the Operator on account of the Operator refusing or failing to comply with instructions issued in contravention of this clause; and
- (e) Contravention of this clause by the Authority shall constitute a breach of this Contract subject to termination of the Contract under Clause 12.

10.0 WAIVER

- 10.1 A failure, delay or indulgence on the part of either party in exercising any power or right under this Contract does not waive that power or right.
- 10.2 Any single exercise of a power or right under this Contract does not preclude any other or further exercise of it or the exercise of any other power or right under this Contract.

11. AMENDMENT OR VARIATION

This Contract may be amended or supplemented, at any time, in writing signed by both parties.

12. TERMINATION

- 12.1 This Contract shall be terminated by the Authority:
 - (a) At the expiration of the period specified under clause 4;
 - (b) Upon the termination of the Performance Contract by the Minister;
 - (c) By notice given to the Operator in accordance with clause 5, given at least ninety (90) days before the date on which the Contract is intended to be terminated;
 - (d) Forthwith and without notice, upon the Operator having an order made against it or passing a resolution for its winding-up or having a receiver appointed over all or a substantial part of its assets; or
 - (e) After fourteen (14) days of continued failure of the Operator to comply with a written notice concerning any provisions of this Contract or to perform to the standards required under this Contract.
- 12.2 This Contract shall be terminated by the Operator:
 - (a) At the expiration of the period specified under clause 4;

- (b) Upon the termination of the Performance Contract by the Minister;
 - (c) By notice given to the Authority in accordance with clause 5, given at least ninety (90) days before the date on which the Contract is intended to be terminated;
 - (d) Fourteen (14) days after failure of the Authority to pay the Operator its due Fee or part thereof in accordance with sub-clause 8.8.8; or
 - (e) Fourteen (14) days after failure of the Authority to comply with a written notice concerning any provision of clause 9.4.
- 12.3 Upon termination of this Contract under sub-clause 12.1 (c) and 12.2 (c), the terminating party shall pay to the other party and the other party shall be entitled to receive compensation from the terminating party. The Compensation shall amount to the average monthly Management Fee paid to the Operator calculated over the cumulative period from the Commencement Date to the month in which the Contract terminates but excluding the month in which the Contract terminates, multiplied by 6 or the number of whole months remaining to the expiry of the Contract under Clause 4, whichever is less. **PROVIDED THAT** no compensation shall be paid to the Operator under this Clause if termination of this Contract arises directly or indirectly from the failure by the Operator to perform any of its contractual duties and obligations regardless of whether or not a notice has for this purpose been given by the Authority under sub-clause 12.1(e) of this Contract.
- 12.4 Any compensation due under sub-clause 12.3 shall be remitted to the party entitled to receive such compensation no later than 90 days after the date on which the Contract terminates.

13. DISPUTE RESOLUTION

Any dispute arising out of or in connection with this Contract which cannot be amicably resolved by the Operator and the Authority within a period of seven (7) days following notification of the dispute by either party shall be resolved in accordance with the procedure set out in this Clause.

- 13.1 Initially any such dispute shall be communicated to the Director, Directorate of Water Development, who may appoint a mediator or mediators to mediate and settle the dispute. If mediation is successful and agreed by the parties, the mediator(s) shall record the terms of the mediated settlement which shall be signed by representatives of both the Operator and the Authority and a counterpart of the terms of the mediated settlement certified by the mediator(s) shall be sent to the Director. The terms of the mediated settlement shall be binding on both parties.
- 13.2. If the Director, Directorate of Water Development is unable to settle the dispute through mediation within a period of thirty (30) days from the date of such dispute being referred to the said Director and either party feels that mediation is unlikely to be successful, the dispute shall be referred to an

arbitrator appointed by agreement between the parties or, failing such agreement, by the Director.

- 13.3 Mediation, arbitration and other alternative dispute resolution procedures and proceedings under this Clause shall be conducted in accordance with and subject to the provisions of the Arbitration and Conciliation Act (Cap 4).

EXECUTED as a Contract on the date mentioned herein above **IN WITNESS WHEREOF** the **Authority** and the **Operator** have caused their Common Seals to be hereunto affixed.

SEALED with the Common Seal of the said **Water Supply and Sewerage Authority**

In the Presence of:

SEALED with the Common Seal of the said **Operator**.....

In the Presence of:

ANNEX 1

Special Conditions

Clause	Amendment
1.1 (d) and 4.1	The Commencement date for this Contract shall be20..... and it shall be valid for ___ years.
8.0	In addition to the service set out in Clause 8 of this Contract, the Operator shall provide the following additional services:
8.1.6	Special Conditions regarding operation of bank accounts as per donor/development partner requirements.
8.5.5	Operator to finance cost of parts and spares out of own monies and seek reimbursement from the Authority.
8.5	Design and Build Scheme – This Contract includes the design and construction of a new water supply scheme in accordance with a Design and Build Agreement attached to this Annex 1.

FIRST SCHEDULE

(Clause 8.8)

MANAGEMENT FEE, REIMBURSABLE EXPENSES AND BUSINESS PLAN

Principle

The Management Fee is an agreed percentage of the net revenue collected by the Operator and payable to the Operator by the Authority out of the Operating Escrow Account as outlined below. The Management Fee cannot exceed the amount thus calculated, and it is the sole responsibility of the Operator to make its own financial arrangements for the operation and maintenance of the water supply and sanitation services in the Area of operation of the Authority.

Calculation

The Operator shall compute the monthly Management Fee due under sub-clause 8.8.4 and shall submit an invoice for the appropriate Management Fee to the Authority by the 15th day of every month in respect of the Management Fee for the previous calendar month, in the following called "the Period".

The invoice shall show the detailed computation of the Management Fee and shall be in a format and have content acceptable to the Authority.

The Management Fee shall be calculated as a percentage of the money collected from customers during the Period and presented to the Authority as a proper VAT-Invoice.

The percentage to be applied is:

Year	Percentages
One	
Two	
Three	

Documentation

The Operator shall attach the following documentation to each monthly invoice, indicating the management fee and VAT (= the Operators output tax):

(a) Certified list of collections during the period showing for each collection:

Receipt number and date.

Number of the bill to which the collection refers.

Net Amount and separately Amount of VAT collected.

Customer reference number.

Total of all receipts of the Period.

(b) Copies (certified by all the three signatories of the Operating Escrow Account) of all utility and similar invoices/demand notes with their respective payment receipts clearly, showing current and arrears (if any) of all utility charges, salary pay slips etc for the month.

Labour Related Expenses

Labour Related expenses of the Operator in relation to approved major repairs and/or extensions or emergency repairs under Clause 8.5.5 of this Contract shall be itemized separately in the Operator's invoice. Such expenses must be supported by supporting documentation including time sheets that confirm that such expenses have been properly incurred and paid for by the Operator. Such expenses shall not be included in the Operator's invoice until the work in question has been completed to the satisfaction of the Authority.

Payment

The Authority shall pay to the Operator a Management Fee duly computed and demanded by the Operator under Clause 8.8.4.

The Authority shall have the right to inspect the operations of the Operator as set out in Clause 8.12 to obtain such information as it requires to ascertain the Management Fee payable under sub-clause 8.8.4.

The Authority shall remit to the Operator the amount demanded by the Operator and certified by the Authority, out of the Operating Escrow Account.

6. Business Plan

The Management Fee shall be calculated and computed in accordance with the rate(s) indicated in the Operator's approved Business Plan which forms part of this Schedule (see attached).

SECOND SCHEDULE

(Clauses 8.2)

PERFORMANCE INDICATORS, TARGETS AND REPORTING FORMAT

The following performance indicators and targets shall apply to the Area when assessing the performance of the Operator under this Contract.

2.1 Performance Indicators and Targets

Topics / Area	Indicator	Baseline	Target Year 1	Target Year 2	Target Year 3	Target Year 3	Target Year 5	Proposed Weight
Financial Efficiency	Increase in Water Sales	TBD	TBD	TBD	TBD	TBD	TBD	TBD
Technical Efficiency	NRW	TBD	TBD	TBD	TBD	TBD	TBD	TBD
Commercial Efficiency	Collection Efficiency	TBD	TBD	TBD	TBD	TBD	TBD	TBD
	Active Connections	TBD	TBD	TBD	TBD	TBD	TBD	TBD
Quality of Service / Environment	Compliance with drinking water quality standards	TBD	TBD	TBD	TBD	TBD	TBD	TBD
	Sanitation	TBD	TBD	TBD	TBD	TBD	TBD	TBD
Transparency / Good Water Governance	Percentage compliance with Annual Inspection / Audit compliance (*)							TBD

2.2. Reporting Format

The Operator shall prepare a report to the Authority and to be made available to the Director and the public summarizing the year's activities. The report shall include the following indicators and variables:

No.	Variable / Indicator	Unit
1	Physical Assets Data	
1.1	Installed Production Capacity	m3/day
1.2	Mains length	(km)
1.3	Number of Pumps of the system	No.
2	Water Volume Data	
2.1	Water supplied to the distribution network, during the month	m3
2.2	Water sold (billed) (Billed metered and unmetered consumption)	m3
2.3	Water produced	m3
3	Customer Data	
3.1	Total No. of connections	No.
3.2	Number of house connections	No.
3.3	Number of yard connections	No.
3.4	Number of stand pipes/kiosks	No.
3.5	Number of inst./commercial connections	No.
3.6	Number of Active Connections at the end of the month	No.
3.7	Number of metered connections	No.
3.8	Number of pending applications	No.
3.9	Total No. of Sewerage Connect.	No
3.10	Active Sewerage Connections	No
4	Operational Data	
4.1	Number of days when water was not available for distribution	day
4.2	Mains failures	No.
4.3	Down time due to power failure	hour
4.4	Power Consumption during month	kwh
4.5	Chemical Chlorine consumed during month	Kg
4.6	Chemical Alum consumed during month	Kg
4.7	Chemical Lime consumed during month	Kg
4.8	Fuel Consumption Transport during the month	Ltr
4.9	Fuel Consumption Machinery during month	Ltr
4.10	Service connection failures	No.
5	Financial Data	
5.1	Total running cost , (from breakdown below, 5.2 to 5.12)	000USh
5.2	Electrical energy costs during month	000USh
5.3	Spending for Chlorine during month	000USh
5.4	Spending for Alum consumed during month	000USh
5.5	Spending for Lime during month	000USh

5.6	Spending for Fuel Consumption Transport during month	000USh
5.7	Spending for Fuel Consumption Machinery during month	000USh
5.8	Staff cost during month	000USh
5.9	Spending for Routine Service during month	000USh
5.10	Spending for Repairs during month	000USh
5.11	Spending for Water Qual. Test during month	000USh
5.12	Other related operating costs during month.	000USh
5.13	Amount Billed during month incl. VAT	000USh
5.14	Amount Collected during month incl. VAT	000USh
5.15	Other Income during month	000USh
5.16	Capital Cost (Total Investment)	000USh
5.17	Investment financed from cash flow	000USh
5.18	Total Conditional Grant received in the month	000USh
5.19	Total Conditional Grant used in the month	000USh
5.20	Other funds received in the month	000USh
6	Personal	
6.1	Total full time staff (at the end of the month)	No.
7	Quality of Service	
7.1	Microbiological tests carried out	No.
7.2	Compliance of microbiological tests	No.
7.3	Physical-chemical tests carried out	No.
7.4	Compliance of physical-chemical tests	No.
7.5	Written customer complaints received during the month	No.
7.6	Written responses during the month (dealt with and rectified)	No.
8	New works and Expenses	
8.1	No. of New customer Meters Installed during month	No.
8.2	Cost of new customer Meters installed during the month	000USh
8.3	New Connections established during month	No.
8.4	Cost of new Connections during the month	000USh
8.5	Length of new Pipeline Extended during month	m
8.6	Cost of new Pipeline Extensions during the month	000USh
8.7	Spending for Bank Charges during the month	000USh
8.8	Other expenses (town specific, related to improved revenue base)	000USh
8.9	Number of new house connections	No.
8.10	Number of new yard taps	No.
8.11	Number of new stand pipes/kiosks	No.
8.12	Number of new inst./commercial connections	No.
9.	Balance on the Bank Statement	USh

THIRD SCHEDULE

(Clause 8.5)

MAJOR REPAIRS AND EXTENSIONS

3.1 Major Repairs

The following works shall be considered to be major repairs for purposes of Clauses 8.5 of this Contract.

- (a)
- (b)

3.2 Extensions

The following works constitute extensions for purposes of Clauses 8.5 of this Contract:

- (a)
- (b)

FOURTH SCHEDULE

(CLAUSE 7.1)

ASSETS EXCLUSIVELY MANAGED AND CONTROLLED BY THE OPERATOR

- 1. PUMPS**
- 2. TREATMENT PLANT**
- 3. COLLECTOR SUMPS**
- 4. TRANSMISSION SYSTEM**
- 5. STORAGE RESERVOIRS**
- 6. DISTRIBUTION SYSTEM**
- 7. METERS**
- 8. TOOLS AND EQUIPMENT**
- 9. BUILDINGS AND FURNITURE**
- 10. SEWERAGE SYSTEM**