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[Water and Sanitation – Management Contract 1]
MANAGEMENT CONTRACT FOR URBAN WATER

Between

[]

and

[●]

and

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MANAGEMENT CONTRACT

This Contract (hereinafter referred to as the "**Management Contract**") is made the [] 2005.

BETWEEN:

1. [], having its principal place of business at [], and represented herein by [.....], duly authorized for the purpose of this Management Contract (the "**Grantor**");

AND

2. [*Name of the Company*], established under the laws of [], having its principal place of business at [], and represented by M [], duly authorized for the purpose of this Management Contract (the "**Successful Bidder**"); and
3. [*Name of the Company*], a limited liability company established under the laws of the [.....], having its principal place of business at [], and represented by M [], duly authorized for the purpose of this Management Contract (the "**Operator**").

The Grantor, the Successful Bidder and the Operator being called individually as "**Party**" and collectively as the "**Parties**".

WHEREAS:

- (A) [] ("**Government**"), has the following main objectives for the urban water sector in :
 - (a) to expand the reliable supply of safe water in the urban areas;
 - (b) to ensure that low income consumers have access to potable water at affordable prices;
 - (c) to ensure sustainability of the sector through cost recovery;
 - (d) to ensure an adequate and steady flow of investment funds, with an emphasis on low cost and concession financing; and
 - (e) to support the introduction of the private sector into management and operation of the sector under this Management Contract.

Further to A (e) above, the Grantor named the Successful Bidder, after the Tender.

The Successful Bidder incorporated the Operator, in accordance with the laws of [] with the sole purpose of fulfilling its obligations and exercising its rights under this Management Contract.

- (B) It is the intention of the Grantor to eventually move from this Management Contract to an

Affermage Contract for the urban water sector.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties AGREE AS FOLLOWS:

SAMPLE

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In addition to the terms defined elsewhere in this Management Contract, whenever used in this Management Contract (including Schedules hereto), unless the context otherwise requires, the following terms shall have the following meanings:

"Administrator" means an independent company or non governmental organization employed to administer the Staff Retrenchment Program.

"Affermage Contract" means a form of a long-term contract which the Grantor intends to enter into on or prior to the termination of this Management Contract.

"Applicable Law" means laws and any other legal instruments having the force of law in []. For the avoidance of doubt, Applicable Law shall include any applicable statute, ordinance, decree, regulation or by-law or any rule, circular, directive or any licence, consent, permit, authorization, concession or other approval issued by any Government authority which has appropriate jurisdiction.

"Average Base Fee": means the Base Fee divided by the number of months in the Management Contract Period.

"Base Fee" means the fee referred to in Section 6.1 and Schedule 5 Part A.

"Bid Security" means the [] ([]) United States Dollars security submitted by the Successful Bidder together with its Tender.

"Bid Price" means the aggregate amount of the Base Fee for the Management Contract Period inserted in the Successful Bidder's bid during the Tender.

"Capital Investment Program" means the program determined and carried out by the Government through the Grantor, forming part of the Project designed to support:

- (i) increasing the amount of Treated Water for sale;
- (ii) extending service to low income areas;
- (iii) rehabilitating the existing network to reduce non-revenue water; and
- (iv) dam safety upgrades, procurement and installation of meters, provision of engineering services, vehicles and equipment for the Grantor's regional and district offices.

"Certificate of Effectiveness" means the certificate to be issued by the Grantor certifying the satisfaction of all conditions precedent to this Management Contract.

"Commencement Date" means the date determined in accordance with Section 2.1.4.

"Consumer Charter" means the charter adopted by the Grantor containing detailed rules relating to the treatment of Customers as required by PURC Regulations.

"Customer" means any person or legal entity within the Service Area who has signed an agreement with the Grantor or the Operator acting in the name and on behalf of the Grantor for providing Services and/or to whom the Operator provides Services.

Water Management Agreement - Example 1

"Debt Rationalization Date" means the date of completion of the debt rationalization of the Grantor.

"Drinking Water Safety Plan" means the Drinking Water Safety Plan as described in the World Health Organization Guidelines 3rd Edition, Volume 1, 2004.

"Electricity Costs" means the amount to be paid by the Operator to [electric company] pursuant to Section 6.5.

"Expert" means a suitably qualified person to perform activities pursuant to Section 11.2 and the terms of employment of which have been mutually agreed between the Parties.

"Existing Facilities" means all the facilities, whether immovable or movable, including the Systems and any vehicles, equipment, supplies and other property, owned or used by the Grantor on the date of signature of this Management Contract to carry out the provision of urban water services in the Service Area, including residential property for Seconded Staff.

"External Auditors" means the independent external auditors appointed and paid by the Grantor to carry out audits of the Operator's accounts and records pursuant to Section 3.3.1.

"Facilities" means Existing Facilities and New Facilities.

"Financial Auditor" means the independent accountant appointed by the Grantor to carry out the financial portion of the Technical and Financial Audits.

"Force Majeure" means the events specified in Section 10.2.

"Grantor's Existing Loans" means the Grantor's existing loans and credit after the Debt Rationalization Date.

"Grantor Event of Default" means event of default of the Grantor as defined in Section 9.2.2.

"Grantor Headquarters Operating Cost" means an amount of [] annually to be adjusted every twelve (12) months to keep pace with inflation according to the consumer price index available from [] provided that the first of such adjustments will take effect thirteen (13) months after the Commencement Date.

"Incentive Compensation" means compensation referred to in Section 6.1.1 and Schedule 5 Part B.

"Low Income Household Policies" means the Social Policy and Strategy for Water Regulation published by the PURC in February 2005, as may be updated from time to time.

"Management Contract Period" has the meaning assigned to it in Section 2.2.

"Materially Adverse State Action" means the events specified in Section 10.1.1.

"New Facilities" means facilities, whether immovable or movable, including vehicles, equipment, supplies and other property, constructed or purchased by the Grantor or the Operator during the Management Contract Period for the provision, by the Operator, of Services in the Service Area.

"Operator Account" means the account of the Operator for receipt of payments referred to in Section 6.1.5. (a) which shall be notified to the Grantor by the Operator from time to time.

Water Management Agreement - Example 1

"Operator Working Capital" means an amount of two hundred and fifty thousand (250,000) United States Dollars to be deposited once by the Operator for the entire Management Contract Period into the Revenue Collection Account for use as working capital of the Operator.

"Operator Event of Default" means an event of default of the Operator as defined in Section 9.2.1.

"Operator Removable New Facilities" means New Facilities constructed or purchased using the Operator's own funds and which are not buried, cemented or bolted in place, or otherwise permanently affixed or installed.

"Operator Staff" has the meaning assigned to it in Section 7.3.

"Payment Schedule" means the payment schedule defined in Schedule 11.

"Penalty Reduction" has the meaning assigned to it in Schedule 5.

"Performance Security" means the performance security to be provided by the Operator pursuant to Section 6.2 in the form of Schedule 8.

"Potable Water" means water either treated or in its natural state complying with the requirements of Applicable Law.

"PURC" means the commission constituted under the Public Utilities Regulatory Commission Act, 1997 (Act 538).

"PURC Regulations" means regulations made under the Public Utilities Regulatory Commission Act, 1997 (Act 538).

"PURC Regulatory Social Policy" means the PURC policy document setting out PURC objectives in fulfilling its duty to protect consumers.

"Priority Customers" means, among Customers, the medical or health centers, hospitals and first cycle/basic schools owned by the ROG and such non-profit religious entities as identified by the Grantor from time to time.

"PMU" means the dedicated project management unit of the Grantor through which the Project will be implemented.

"Prudent Industry Practice": means the practices, methods and acts engaged in or approved by a significant portion of the international water management industry for similar services as the Services that, from time to time, in the exercise of a reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with Applicable Laws and the requirements of reliability, safety, environmental protection, economy and expedition.

"Raw Water" means any untreated water.

"Recitals" means recitals of this Management Contract.

"Region" means each of the administrative regions of the GWCL and includes one or more Systems.

"Repair, Replacement and Rehabilitation Fund" means a five million (5,000,000) United States Dollars fund financed by the Grantor through the Project Funds, operated solely by the Operator and used for minor works that will be identified during the Management Contract Period, including but not limited to:

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- (i) urgent System repairs costing in aggregate above ten thousand (10,000) United States Dollars;
- (ii) distribution network (i.e., less than or equal to 100 mm/4 inch diameter pipe) repair, replacement or extension;
- (iii) non-office equipment required on an urgent basis costing more than five thousand (5,000) United States Dollars; and
- (iv) plumbing improvements and repairs in public sector entities.

"Resident Project Manager" means an officer of the Operator appointed pursuant to Section 7.3.4 which job description and minimum qualifications are described in Schedule 7.

"Revenue Collection Account" means an account which shall be a Facility of the Grantor but which shall be established in the name of and controlled solely by the Operator pursuant to Section 6.3.

"Seconded Staff" has the meaning assigned to it in Section 7.2.1 and Schedule 6.

"Schedules" means schedules of this Management Contract.

"Sections" means sections of this Management Contract.

"Secondment Contract" means a form of secondment contract among the Grantor, the Operator and Seconded Staff.

"Services" means the services provided by the Operator in the Service Area as described in Schedule 2.

"Service Area" means the geographical area covered by the System specified in Schedule 1 and the Customers served by such System, as such Service Area may be expanded from time to time pursuant to the terms of this Management Contract.

"Service Standards" means those standards listed in the Schedule 4.

"Sewage" means waste water from the sewerage network being operated by the Grantor.

"Snag Item" means any defect or condition of the Facilities identified by the Operator before the Commencement Date or during the Initial Review that in the view of the Operator, as confirmed by the Technical Auditor, prevents the System from meeting Service Standards.

"Suggested Capital Investment Report" means the report referred to in Section 3.5.

"Staff Retrenchment Steering Committee" means the committee set up to carry out the retrenchment component of the Project and to decide on:

- (i) the individuals that will be retrenched;
- (ii) standard formulas for the retrenchment compensation packages; and
- (iii) the terms of reference of the Administrator.

"Staff Retrenchment Program" means the program adopted and implemented by the Grantor in order to reduce the number of employees of the Grantor to levels consistent with a more efficient operation.

"System" means any system listed in Schedule 1 and includes, for each, the treatment

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plant, storage, transmission and distribution network connected to it.

"Taxes" means any taxation under Applicable Law, including any duties, compulsory loans or withholdings whatsoever imposed, authorized or charged by any ROG authority which has appropriate jurisdiction.

"Technical Auditor" means the independent engineering firm appointed by the Grantor to carry out the technical portion of the Technical and Financial Audits.

"Technical and Financial Audits" means technical and financial audits to measure Operator's performance and payable from the Project Funds during the Management Contract Period.

"Tender" means the competitive international tender procedure for a management contract for provision of Services in the urban water sector in the ROG pursuant to which the Grantor has named the Successful Bidder.

"Treated Water" means any Raw Water that has been treated and processed by the Operator through the Facilities in accordance with this Management Contract.

"United States Dollar" means the lawful currency of United States of America.

"World Bank Procurement Guidelines" means the Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004).

1.2 Interpretation

- 1.2.1 The Recitals and the Schedules to this Management Contract shall form an integral part hereof and are intended to be correlative, complementary and mutually explanatory. This Management Contract shall be read as a whole. In event of discrepancy and/or contradiction between the Management Contract and its Schedules, the Management Contract shall prevail.
- 1.2.2 References to Schedules shall be references to Schedules to this Management Contract unless otherwise agreed by the Parties. The following Schedules which are incorporated by reference into this Management Contract shall be referred to as follows:
- (a) Schedule 1: Service Area;
 - (b) Schedule 2: Services;
 - (c) Schedule 3: Periodic Reporting Requirements; Schedule 4: Service Standards;
 - (d) Schedule 5: Payments to the Operator; Schedule 6: Seconded Staff;
 - (e) Schedule 7: Resident Project Manager; Schedule 8: Form of Performance Security;
 - (f) Schedule 9: Authorized Representative;
 - (g) Schedule 10: Adjustments of Base Fee; and
 - (h) Schedule 11: Payment Schedule.
- 1.2.3 The headings of Sections of this Management Contract and the Table of Contents are inserted for convenience and reference purposes only and shall not in any way limit, alter or affect the interpretation of this Management Contract.
- 1.2.4 In this Management Contract, words denoting the singular include the plural and vice-versa, words denoting persons include companies, corporations, partnerships or other legal persons and references to any Party or person include references to its respective successors and permitted assigns.

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- 1.2.5 The words "include", "includes", and "including" shall at all times be construed as if followed by the words "without limitation".

2 COMMENCEMENT, DURATION

2.1 Commencement

2.1.1 This Management Contract shall become effective (the "**Effective Date**") from the date when the following conditions precedent are fulfilled (except for Sections 2.1.1, 11 and 12 which shall become effective as from the date of signature of this Management Contract):

- (a) formation of the Operator and execution by the Operator of this Management Contract;
- (b) delivery to the Grantor by the legal adviser of the Operator of a legal opinion, confirming, *inter alia*, that:
 - (i) the Operator is duly incorporated and existing under Applicable Law;
 - (ii) there are no proceedings pending, or to the best of its knowledge, threatened for the liquidation of the Operator;
 - (iii) the Operator is duly authorized to execute this Management Contract; and
 - (iv) the Management Contract represents the valid and binding obligations of the Operator;
- (c) delivery to the Grantor by the legal adviser of the Successful Bidder of a legal opinion, confirming, *inter alia*, that:
 - (i) the Successful Bidder is duly incorporated and existing under the laws of its jurisdiction of incorporation;
 - (ii) there are no proceedings pending, or to the best of its knowledge, threatened for the liquidation of the Successful Bidder;
 - (iii) the Successful Bidder is duly authorized to execute this Management Contract; and
 - (iv) the Management Contract represents the valid and binding obligations of the Successful Bidder;
- (d) delivery to the Operator by the legal adviser of the Grantor of a legal opinion confirming *inter alia*:
 - (i) due execution, validity and enforceability of this Management Contract against the Grantor;
 - (ii) that the Grantor has ownership, control and/or lawful right to transfer to the Operator use of the Existing Facilities and free access within the Service Area.
- (e) delivery to the Grantor by the Operator of the Performance Security;
- (f) establishment of the Revenue Collection Account in a commercial bank in [] and deposit of the Operator Working Capital in the Revenue Collection Account;
- (g) appointment of the Expert by the Parties;
- (h) agreement on the Payment Schedule by the Parties;

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- (i) delivery to the Operator by the Grantor of the list of the vendors accounts payable as of the date of the signature of this Management Contract; and
- (j) entry into Secondment Contracts with the Seconded Staff.

(a) 2.1.2 The Operator, the Successful Bidder and the Grantor shall use their best efforts and endeavors to procure the satisfaction of the conditions precedent specified in Section 2.1.1 as soon as practicable and in any event no later than (b) sixty (60) days after the date of the signature of this Management Contract.

(c) 2.1.3 Within seven (7) days of the satisfaction of the conditions precedent (d) specified in Section 2.1.1, the Grantor shall issue the Certificate of Effectiveness to the Operator and return the Bid Security to the Successful Bidder on the date of the issuance of such Certificate.

2.1.4 The Operator shall take over all the Systems and commence the provision of the Services within sixty (60) days from the issuance of the Certificate of Effectiveness (the "**Commencement Date**").

2.1.5 If the conditions specified in Section 2.1.1 are not fulfilled or waived by mutual agreement of the Parties within sixty (60) days of the date of the signature of this Management Contract, each Party shall have the right to terminate this Management Contract immediately and no Party hereto shall be liable to the other Parties for any damages or losses in respect thereof, except that (i) if the Successful Bidder or the Operator has intentionally failed to fulfill any of these conditions, the Successful Bidder shall forfeit the Bid Security and /or (ii) if the Grantor has intentionally failed to fulfill any of these conditions, the Operator and/or the Successful Bidder shall be entitled to compensation for any related damages.

2.2 Management Contract Period

Unless terminated earlier pursuant to Section 9 or 10 below, this Management Contract shall remain in full force and effect during a period of five (5) years starting from the Commencement Date (the "**Management Contract Period**").

3 OPERATOR'S AND SUCCESSFUL BIDDER'S RIGHTS AND OBLIGATIONS

3.1 Principal Obligations of the Operator

3.1.1 The Operator shall have the right and obligation to provide the Services in the Service Area on an exclusive basis during the Management Contract Period. Should the Grantor desire to expand the Service Area, the Grantor and the Operator shall

meet and negotiate in good faith with a view to agreeing on the provision of Services by the Operator to such expanded Service Area and the payment to the Operator therefor.

3.1.2 The Operator is entitled to:

- (a) conclude contracts with Customers for the supply of Potable Water in the name and on behalf of the Grantor;
- (b) issue bills on delivery of Potable Water and discharge of Sewage;
- (c) receive payments from the Customers; and
- (d) disconnect Customers, except Priority Customers, for non payment and/or for other grounds in accordance with Applicable Law.

Water Management Agreement - Example 1

- 3.1.3 The Operator shall perform the Services in accordance with Applicable Law (including environmental legislation and PURC Regulations), Prudent Industry Practice, the Consumer Charter, the Service Standards, the Low Income Household Policies and the PURC Regulatory Social Policy.

The Operator shall have care and custody of Facilities during the term of this Management Contract.

- 3.1.4 Subject to Section 3.1.3 above, the Operator shall have discretion in determining the means and methods to be used to perform the Services.

3.2 Reporting and Review

The Operator shall be responsible for submitting periodic reports to the Grantor, as set forth in Schedule 3.

3.3 Accounting, Audit

- 3.3.1 The Operator shall maintain accurate and systematic accounts and records in respect of the Services in such form and detail enabling clear identification of all relevant charges and costs incurred by the Operator and the basis thereof as well as proper and timely Technical and Financial Audits. Such accounts shall be audited by External Auditors.

- 3.3.2 Financial accounts shall be in accordance with internationally accepted accounting principles.

- 3.3.3 The Operator shall permit the Grantor or its designated representative to semi-annually inspect such accounts and records and shall permit Technical Auditors and Financial Auditors to carry out Technical and Financial Audits on an annual basis.

- 3.3.4 The costs of the Technical and Financial Audits shall be payable from Project Funds as long as the Project is effective. After such date, Technical and Financial Audits shall be payable from the Revenue Collection Account.

3.4 Existing Facilities and Initial Review

The use of Existing Facilities is granted to the Operator "as is" with no warranty as to state of repair. Within six (6) months after the Commencement Date, the Operator will conduct a review of the Existing Facilities (the "**Initial Review**") to determine if such Existing Facilities need to be repaired, replaced or rehabilitated and the eventual presence of Snag Items.

3.5 Suggested Capital Investment Report

- 3.5.1 The Operator shall prepare the first Suggested Capital Investment Report following the Initial Review described in Section 3.4 above and shall submit such Report to the Grantor. In performing the Capital Investment Program, the Grantor reserves the right to accept or reject any suggestion made by the Operator in the Suggested Capital Investment Report.

- 3.5.2 Subsequent Suggested Capital Investment Reports shall be prepared by the Operator and submitted to the Grantor at least three (3) months prior to the end of each calendar year.

- 3.5.3 The Operator shall describe its planned use of the Repair, Replacement and Rehabilitation Fund in each Suggested Capital Investment Report submitted by the Operator notwithstanding that the use of the Repair, Replacement and Rehabilitation

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Fund is not subject to approval by the Grantor.

- 3.5.4 Any procurement which shall entail the use of the Repair, Replacement and Rehabilitation Fund shall follow the World Bank Procurement Guidelines.

3.6 Public Sector Billing

- 3.6.1 The Operator shall prepare, within six (6) months from the Commencement Date a twelve (12) months baseline consumption for public sector entities in each System. The Grantor will use its best efforts to ensure that the Operator has access to all necessary public sector establishments and their installations.

- 3.6.2 The baseline consumption for public sector entities shall be certified by the Technical Auditor.

- 3.6.3 The Operator shall be paid by the Grantor an Incentive Compensation pursuant to Section 6.1.1 and Schedule 5 Part B for reductions of the baseline consumption.

3.7 Rights of the Operator in respect to the Affermage Contract

Notwithstanding Section 3.9 below and subject to satisfactory performance of the Management Contract, the Operator will be eligible to bid for the Affermage Contract, but shall not have any right of first refusal.

3.8 Liability of the Successful Bidder and formation of the Operator

- 3.8.1 The Successful Bidder shall be jointly and severally liable with the Operator for the obligations and liabilities of the Operator under this Management Contract including *inter alia* with regards to the Performance Security pursuant to Section 6.2 and insurance pursuant to Section 6.6.

- 3.8.2 The Parties acknowledge that at the date of the signature of this Management Contract by the Grantor and the Successful Bidder, the Operator has not yet been formed and as such, has not yet executed this Management Contract. No later than the Effective Date, the Successful Bidder shall form the Operator and shall cause the Operator to execute this Management Contract.

- 3.8.3 During the Management Contract Period, the Operator shall remain a wholly-owned subsidiary of the Successful Bidder.

3.9 Conflict of Interests

- 3.9.1 The Operator's remuneration pursuant to Section 6.1 shall constitute the Operator's sole remuneration in connection with this Management Contract and the Operator shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Management Contract or in the discharge of its obligations under this Management Contract; and the Operator shall use its best efforts to ensure that the Operator Staff, any sub-contractors, and representatives of either of them similarly shall not receive any such additional remuneration.

- 3.9.2 The Operator agrees that, during the term of this Management Contract and after its termination, the Operator and its affiliates, as well as any sub-contractor and any of its affiliates, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or directly related to the Services.

- 3.9.3 Neither the Operator nor its sub-contractors nor the Operator Staff shall engage during

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the term of this Management Contract, either directly or indirectly in any business or professional activities in the ROG which would conflict with the activities assigned to them under this Management Contract.

- 3.9.4 Notwithstanding Sections 3.9.1 to 3.9.3, the Operator will be eligible to bid for metering contracts related to the Services, but shall not have any right of first refusal.

4 GRANTOR'S RIGHTS AND OBLIGATIONS

4.1 Access to land

The Grantor hereby grants free of charge to the Operator, as from the Commencement Date, access to all land within the Service Area in respect of which access is required for the performance of the Services by the Operator. For the avoidance of doubt, the term "Operator" as used herein shall include dully authorized officers, employees, Operator's representatives and sub-contractors.

4.2 Right to Use Facilities

The Grantor hereby grants free of charge to the Operator, as from the Commencement Date, the right to use the Facilities. For the avoidance of doubt, the term "Operator" as used herein shall include dully authorized officers, employees, Operator representatives and sub-contractors.

4.3 Payments by the Grantor

The Grantor shall make payments to the Operator in accordance with the terms of this Management Contract.

4.4 Support by the Grantor

- 4.4.1 The Grantor shall assist the Operator in its relationship with the ROG authorities including but not limited to obtaining any authorizations as may be required and tax exemptions.

- 4.4.2 The Grantor shall use its best efforts to secure adequate finance pursuant to the Project as defined herein to fund any Capital Investment Program and shall keep the Operator informed of the progress of such applications and negotiations.

4.5 Supervision by the Grantor

- 4.5.1 The Grantor shall supervise the Operator in the performance of its obligations under this Management Contract.
- 4.5.2 The Grantor shall review and approve or comment upon all reports submitted by the Operator pursuant to Schedule 3.
- 4.5.3 The Grantor shall be given reasonable access during normal working hours to premises, works and sites of the Operator for the purposes of inspection and certification to the extent this does not disturb the Operator's performance of its obligations under this Management Contract. For the avoidance of doubt the term "Grantor" as used herein shall include duly authorized officers, employees and representatives as well as the Financial and Technical Auditors.

5 TECHNICAL PROVISIONS

5.1 Operators Performance

- 5.1.1 The Operator agrees and undertakes to provide and manage the Services in the Service Area so as to meet the Service Standards, as set forth in Schedule 4.
- 5.1.2 If the Operator fails, as determined by Technical and Financial Auditors, for reasons attributable to the Operator, to meet any or all of the Service Standards, the Operator shall be subject to Penalty Reductions, as set forth in the Section 6.1.1 and Schedule 5 Part A.
- 5.1.3 The Operator shall not be liable for failure to meet Service Standards and shall not be subject to Penalty Reductions where such failure is caused by:
- (i) Grantor Event of Default pursuant to Section 9.2.2;
 - (ii) Materially Adverse State Action pursuant to Section 10.1.3;
 - (iii) Force Majeure pursuant to Section 10.2.2;
 - (iv) the existence of a Snag Item which cannot be reasonably cured by minor works that can be financed by the Repair, Replacement and Rehabilitation Fund, as determined by Technical Auditors; and
 - (v) a System taken over by the Operator which does not meet, as determined by Technical Auditors, Service Standards.

For the avoidance of doubt, where (i), (ii), (iii), (iv) or (v) above do not affect all the Systems, the limitation of liability provided in this Section 5.1.3 shall relate only to the affected Systems.

- 5.1.4 The limitation of liability provided in Section 5.1.3 shall cease to apply when the origin thereof has been cured.
- 5.1.5 The Operator will receive Incentive Compensation, as set forth in the Section 6.1.1 and Schedule 5 Part B if it exceeds the targets set forth therein, as determined by Technical and Financial Auditors.
- 5.1.6 The Operators performance will not be tied to the Capital Investment Program implemented by the Grantor.
- 5.1.7 Notwithstanding the enumeration, and specification of requirements for, particular aspects of Service Standards set forth herein the Operator shall not be relieved of its duty to perform the Services in accordance with Applicable Law, Prudent Industry Practices, and the Consumer Charter.

5.2 Title to the Facilities

- 5.2.1 Title to the Facilities (other than Operator Removable New Facilities) shall remain at all times in the Grantor. Such Facilities shall be marked accordingly by the Grantor.
- 5.2.2 Title to Operator Removable New Facilities shall remain with the Operator. Title to all other New Facilities shall pass to the Grantor upon commissioning thereof.

5.3 Title to Documents

- 5.3.1 All plans, drawings, specifications, designs, reports, and other documents and software prepared by the Operator in the course of performing its obligations under this Management Contract shall become and remain property of the Grantor, and the Operator shall, not later than upon termination or expiration of this Management Contract, deliver all such documents and software to the Grantor, together with a detailed inventory thereof.

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- 5.3.2 The Operator may retain copies of such documents and software, and use such software for their own use with prior written approval of the Grantor.
- 5.3.3 The Operator shall not use these documents and software for purposes unrelated to this Management Contract without the prior written approval of the Grantor.

6 FINANCIAL PROVISIONS

6.1 Payments to the Operator

6.1.1 Operator's Remuneration

Operator's total remuneration shall comprise:

- (a) the Base Fee, as set forth in Schedule 5 Part A and as may be reduced from time to time by Penalty Reductions as set forth in Schedule 5 Part A; and
- (b) the Incentive Compensation, if any, as set forth in Schedule 5 Part B.

6.1.2 The Operator acknowledges that the intent of the Incentive Compensation is to compensate the Operator based on the extent to which it exceeds the targets set out in Schedule 5 Part B.

6.1.3 Adjustments of Base Fee

- (a) Payments of the Base Fee made in accordance with Section 6.1.1 above, in the currency of the Bid Price and/or [] shall be adjusted as set forth in Section 6.7 and Schedule 10.
- (b) Except as specified in Section 6.1.1, Schedule 10 and Section 6.7 below, no adjustments to the Base Fee shall be made pursuant to this Management Contract.

6.1.4 Currency of Payments

- (a) For the first four years of this Management Contract, the Base Fee shall be payable in the currency of the Bid Price.
- (b) For year five of this Management Contract, seventy five percent (75%) of the Base Fee shall be payable in the currency of the Bid Price and the remaining twenty five percent (25%) shall be payable in [] at the then applicable currency of the Bid Price to [] exchange rate.

6.1.5 Terms and Conditions of Payments

- (a) Payments to the Operator shall be made by the Grantor to the Operator Account within thirty (30) days upon receipt by Grantor of an invoice from the Operator; provided however that in year five of this Management Contract, twenty five percent (25%) of the Base Fee shall be deducted directly by the Operator from the Revenue Collection Account.
- (b) The Base Fee will be paid monthly according to the Payment Schedule. In any event, the monthly amount of the Base Fee shall (i) not be less than 85 per cent of the Average Base Fee and (ii) not be capped, provided however, the maximum monthly amount of the Base Fee shall (x) be based on the Operator's staffing plan and (y) not cause any subsequent monthly Base Fee payment to be less than 85 per cent of the Average Base Fee.

Water Management Agreement - Example 1

- (c) Payments to the Operator shall be made within thirty (30) days of receipt of invoice.
- (d) Incentive Compensation shall be paid by the Grantor to the Operator from two sources:
 - 1. increase in cash flow through the Revenue Collection Account for items B 1 and B2 of Schedule 5 Part B; and
 - 2. Project Funds for items B3 and B4 of Schedule 5 Part B.

6.2 Performance Security

- 6.2.1 The Operator and the Successful Bidder shall provide the Performance Security in an amount not less than three million (3,000,000) United States Dollars, as may be reduced from time to time as specified in the Schedule 8 hereto, to be issued by an internationally reputable bank or financial institution, subject to the approval by the Grantor not to be unreasonably withheld or delayed and in the form of Schedule 8 hereto.
- 6.2.2 The Performance Security shall guarantee the proper and timely performance of all of the Operator's obligations under this Management Contract and shall remain valid until such period determined in the Schedule 8 hereto.
- 6.2.3 The Grantor shall not be entitled to draw upon such Performance Security until such time as either by (i) amicable settlement pursuant to Section 11.1, (ii) a determination by the Expert pursuant to Section 11.2 or (iii) an arbitral award pursuant to Section 11.3, a failure of the Operator in the proper and timely performance of its obligations under this Management Contract has been found.

6.3 Revenue Collection Account

- 6.3.1 All amounts received by the Operator from Customers and any other revenues of the Operator (other than the Operator's total remuneration set forth in Section 6.1.1) shall be deposited in the Revenue Collection Account; provided that all amounts received by the Operator related to the surcharge for Sewage shall be transferred monthly into an account determined by the Grantor.
- 6.3.2 The Grantor hereby irrevocably grants to the Operator for the Management Contract Period the care and control of the Revenue Collection Account, which shall be operated exclusively by the Operator pursuant to the terms of this Management Contract. Subject to the availability of the amounts, the Operator shall pay from the Revenue Collection Account operating expenses, including vendor accounts payable (notwithstanding that they may have been incurred prior to the Commencement Date) under this Management Contract in the following order:
 - (i) staff salaries;
 - (ii) staff pensions and benefits;
 - (iii) Grantors Headquarter Operating Cost (on a monthly basis);
 - (iv) vendor accounts payable, including cost of chemicals;
 - (v) reasonable and prudent maintenance costs;
 - (vi) operating costs (including Electricity Costs pursuant to Section 6.5 below and insurance premiums pursuant to 6.6 below) other than maintenance;
 - (vii) Raw Water abstraction fees;
 - (viii) general and administrative costs;

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- (ix) in year five (5) of this Management Contract, the portion of Base Fee not covered by the Project as set forth in Section 6.1.5;
 - (x) that portion of the Incentive Compensation set forth in Section 6.1.5 (d) 1.;
 - (xi) debt service on Grantor's Existing Loans, as from the Debt Rationalization Date;
 - (xii) amounts payable to Technical and Financial Auditors for years when the Project is not effective;
 - (xiii) Operator Working Capital upon termination of this Management Contract; and
 - (xiv) all other reasonable and necessary costs not included in (i) to (xiii) above.
- 6.3.3 The surplus after the payment of items (i) through (xiv) of Section 6.3.2 above shall be paid quarterly into an account determined by the Grantor
- 6.3.4 Notwithstanding Section 6.3.3 above, the Operator Working Capital will remain in the Revenue Collection Account until the Management Contract Period is terminated. The Operator Working Capital can however be refunded before the Management Contract Period is terminated if for six (6) continuing months the Operator pays items (i) through (xiv) of Section 6.3.2 above. In such case, the Operator Working Capital shall be refunded from the seventh (7) month, in twelve (12) equal monthly installments
- 6.3.5 If the amounts in the Revenue Collection Account are insufficient for the payments all items (i) through (xiv) of Section 6.3.2 above, the Operator shall not be liable for covering the costs and Grantor shall have an option to cover such costs.
- 6.3.6 Notwithstanding Section 6.3.5 above, if the amounts in the Revenue Collection Account are insufficient for the payment of staff salaries, staff pensions and benefits and the reimbursement of the Operator Working Capital at the end of the Management Contract Period, the Grantor shall pay for such items.

6.4 Financial Liabilities

- 6.4.1 All amounts received from Customers shall, as of the Commencement Date, be deposited in the Revenue Collection Account.
- 6.4.2 The Grantor shall retain and discharge the credits and all other debts, liabilities and obligations in connection with the Existing Facilities and Services prior to the Debt Rationalization Date. After such Date, such amounts shall be paid from the Revenue Collection Account, but such credits and debts, liabilities and obligations shall remain the responsibility of the Grantor. The Grantor will provide the Operator from time to time with a list of eligible debts and the priority according which such debts, liabilities and obligations are to be paid.
- 6.4.3 The Grantor shall fully indemnify the Operator against all lawful costs, claims, demands and liabilities made by any third party to the Operator in respect of any of the credits or the debts, liabilities and obligations referred to above, unless such credits or the debts, liabilities and obligations are caused by the gross negligence of the Operator.

6.5 Electricity Costs

- 6.5.1 The Operator shall pay from the Revenue Collection Account, during the first five (5) months from the Commencement Date, [] per month for the Electricity Costs during such period. Such amount is the monthly amount paid by the Grantor to [electric company] in the year 2004. The difference between the actual monthly electricity consumption of the Grantor and the amount of such payment shall be paid

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by the [] to [electric company] as a set off of the public sector water consumption bill.

- 6.5.2 From the sixth (6) month following the Commencement Date and during the remaining term of the Management Contract, the Operator shall pay [] per month for the Electricity Costs, adjusted (i) to suit the Service Area and (ii) by the mean increase granted periodically to all [electric company] customers by the PURC.
- 6.5.3 The Operator is not liable for the payment of the amount of the Electricity Costs not covered by payments as specified in Sections 6.5.1-6.5.2.

6.6 Insurance

- 6.6.1 The Operator and the Successful Bidder shall procure and maintain, and shall cause any Operator sub-contractors to procure and maintain, throughout the term of this Management Contract a professional liability insurance coverage. Such professional liability insurance shall be purchased by the Operator at its own cost at such levels as are consistent with Applicable Law and Prudent Industry Practice and in any event no less than two million (2,000,000) United States Dollars. Such insurance shall be effective as of the Commencement Date and cover the Operator, the Operator Staff and sub-contractors.
- 6.6.2 The insurance coverage of the Facilities remains the responsibility of the Grantor. Such insurance coverage premiums shall be payable by the Operator through the Revenue Collection Account pursuant to Section 6.3.2. (iv) of this Management Contract.
- 6.6.3 The Operator shall provide the Grantor with certificates of insurance or other satisfactory evidence that the required insurance policies have been issued and are in force and shall promptly pay all insurance premiums, fees or other costs due in relation with the required insurance policies. The said insurance policies may not be cancelled or modified except with the prior written consent of the Grantor obtained not less than thirty (30) days before the intended date of cancellation or modification.
- 6.6.4 To the extent that a loss or damage suffered by the Operator falls within the terms of the insurance cover required under this Section 6.6, the Operator shall forthwith make the appropriate claims thereunder and shall replace or repair such loss or damage.

6.7 Taxes and duties

- 6.7.1 Subject to the appropriate exemption under Applicable Law, the Operator, its sub-contractors and their foreign personnel shall be exempted from paying Taxes.
- 6.7.2 If, during the Management Contract Period, any or all of the Operators', its sub-contractors' and their foreign personnel activities under this Management Contract are not Tax exempted, the Operator's remuneration will be adjusted accordingly.

6.8 Operator Working Capital

- 6.8.1 The Operator Working Capital may be used by the Operator in its discretion, subject to Prudent Industry Practice, for working capital.
- 6.8.2 Any Operator Working Capital not used by the Operator for its working capital needs during the Management Contract Period, shall be maintained in the Revenue Collection Account through the Management Contract Period except as provided herein.

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6.8.3 Operator Working Capital shall be refunded to the Operator at the termination of this Management Contract from amounts in the Revenue Collection Account, except if returned earlier as provided in Sections 6.3.4 above or 9.2.4 or 9.3.2 below.

7 PERSONNEL

7.1 Staff Retrenchment

7.1.1 With effect from the Commencement Date, the Operator shall join the Staff Retrenchment Steering Committee.

7.1.2 Within eighteen (18) months from the Commencement Date, the Operator shall establish a list of Seconded Staff proposed for retrenchment under the Staff Retrenchment Program.

7.1.3 The Staff Retrenchment Program shall be payable from Project Funds during the first eighteen (18) months from the Commencement Date and in an amount of up to eleven million (11,000,000) United States Dollars. Such sum includes the fees of the Administrator during such period.

7.2 Seconded Staff

7.2.1 With effect from the Commencement Date and subject to appropriate Secondment Contracts, all the employees of the Grantor listed in the Schedule 6 shall be seconded to the Operator, on the terms and conditions of their current employment with the Grantor (the "**Seconded Staff**"); notwithstanding the terms of this Management Contract, such Seconded Staff shall remain employees of the Grantor. The salaries of the Seconded Staff shall be determined by the Operator in consultation with the Grantor.

7.2.2 During the term of this Management Contract, within the scope of the Applicable Law and collective bargaining agreement, the Operator shall assign duties, work location, manage and discipline the Seconded Staff to accomplish the objectives of this Management Contract. The Operator may recommend to the Grantor the promotion of any Seconded Staff and shall manage and update human resource records and information systems as relevant. If the Operator has reasonable cause to be dissatisfied with the performance of any Seconded Staff or for any other reasonable cause, the Operator may recommend to the Grantor the suspension, termination, and/or retrenchment of such staff. The Grantor may act upon any recommendation of the Operator, subject to Applicable Law. The Operator shall not be obliged to replace any Seconded Staff retiring or resigning during the Management Contract Period.

7.2.3 Remuneration of all categories of Seconded Staff shall be paid by the Operator acting in the name and on behalf of the Grantor through the Revenue Collection Account pursuant to Section 6.3.2 of this Management Contract.

7.2.4 The Operator shall assess within six (6) months from the Commencement Date training needs for the Seconded Staff and propose and implement a training program in consultation with the Grantor (the "**Training Program**").

7.2.5 The principles outlined in the Consumer Charter shall be reflected in the Training Program.

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7.2.6 The Training Program shall be payable by the Grantor from Project Funds up to one million five hundred thousand (1,500,000) United States Dollars.

7.3 Operator Staff

7.3.1 The Operator shall provide such qualified and experienced staff (the "**Operator Staff**") and sub-contractors, other than Seconded Staff, as are required to carry out effectively the functions related to the Services.

7.3.2 If the Grantor has reasonable cause to be dissatisfied with the qualification and/or performance of any Operator Staff or sub-contractors, the Operator shall, at the Grantor's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Grantor. For the avoidance of doubt, "reasonable cause" shall not include causes not related to technical qualifications or performance of the Operator Staff.

7.3.3 The Operator shall have no claim for additional costs arising out of or incidental to the removal and/or replacement of Operator Staff or sub-contractors.

7.3.4 The Operator shall ensure that throughout the term of this Management Contract, there is a Resident Project Manager meeting the job description and minimum qualification requirements set forth in Schedule 7 and acceptable to the Grantor, who shall manage the Services in an effective and efficient manner.

7.3.5 Remuneration of the Operator Staff and sub-contractors is included in the Base Fee.

8 LIABILITY

8.1 Limitation of liability of the Operator

Notwithstanding any other provision of this Management Contract, the Parties agree that the maximum cumulative liability of the Operator to the Grantor for each calendar year of the Management Contract Period arising under or in relation to this Management Contract shall not exceed twenty (20) percent of the aggregate Base Fee payable by the Grantor to the Operator during such year, provided that such limitation shall not apply to fraud, gross negligence or willful misconduct of the Operator, any sub-contractor, or their respective agents or employees.

8.2 Mitigation of Loss

Any Party alleging a breach of contract or right to be indemnified in accordance with this Management Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred, provided that it can do so without unreasonable inconvenience or cost.

8.3 Consequential Damage

No Party shall be liable to any other Party by way of indemnity or by reason of any breach of this Management Contract or of its statutory duty or by reason of tort (including negligence), strict liability or otherwise for any incidental, consequential, punitive or special damages or any consequential or economic loss including, but not limited to, any loss of profit, use, opportunity, production or other indirect or consequential loss that may be suffered by that other Party.

8.4 Third Party Claim

A Party shall indemnify, defend and hold harmless the other Party and/or its sub-contractors or their officers, agents or employees against any and all claims for loss, damage and expense of whatever kind and nature (including all related costs and expenses) in respect of personal injury to or death of third parties and in respect of loss of or damage to any third party property to the extent that the same arises out of any negligence, default or breach of statutory duty on the part of the other Party, its sub-contractors or their officers, agents or employees.

9 TERMINATION AND COMPENSATION

9.1 Termination by Mutual Consent

This Management Contract may be terminated at any time by mutual consent of the Parties.

9.2 Termination in case of an Event of Default

9.2.1 Termination by the Grantor due to Operator Event of Default

Each of the following shall, to the extent that it is not caused by the Grantor Event of Default, Materially Adverse State Action or Force Majeure and is not cured within the time period permitted (if any), be an Operator Event of Default and entitle the Grantor to issue a notice of intention to terminate this Management Contract where:

- (a) the Operator fails to perform any of its obligations under this Management Contract in a material respect and such failure continues for thirty (30) days after written notice from the Grantor to the Operator requesting that such failure be cured ; or
- (b) the Operator fails to provide the Services to Service Standards causing directly a widespread danger to the health of the public in the Service Area and such failure continues after written notice from the Grantor to the Operator requesting that such failure be cured; or
- (c) the Operator and/or the Successful Bidder becomes insolvent or bankrupt or goes into liquidation whether compulsory or voluntary;
- (d) the Operator fails to provide Operator Staff acceptable to the Grantor, as specified in Section 7.3; or
- (e) the Operator and/or the Successful Bidder, in the judgement of the Grantor has engaged in corrupt or fraudulent practices in competing for or in executing this Management Contract.

For the purpose of this Section:

"corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the selection process or in contract execution.

"fraudulent practice" means a misinterpretation of facts in order to influence a selection process or the execution of a contract to the detriment of the Grantor, and includes collusive practices among bidders (prior to or after submission of proposals) designed to establish prices at artificial non competitive levels and to deprive the Grantor of the benefits of free and open competition.

9.2.2 Termination by the Operator due to Grantor Event of Default

If the Grantor fails to perform any of its obligations under this Management Contract in a material respect and such failure continues for thirty (30) days after written notice from the Operator to the Grantor requesting that such failure be cured, such failure, to the extent it is not caused by the Operator Event of Default or Force Majeure, shall be a Grantor Event of Default and shall entitle the Operator to issue a notice of intention to terminate this Management Contract.

9.2.3 Procedure

- (a) After service of the notice of intention to terminate this Management Contract specifying in reasonable detail the Operator Event of Default or the Grantor Event of Default giving rise to such notice, the Parties shall consult with each other for a period (the "**Consultation Period**") of thirty (30) days in order to discuss any option to avoid termination of this Management Contract.
- (b) Upon expiration of the Consultation Period unless the Parties have agreed otherwise or the circumstances giving rise to the notice of intention to terminate has been remedied, either the Grantor (for an Operator Event of Default) or the Operator (for a Grantor Event of Default) are entitled to serve a notice of termination and to stop the performance of its obligations under this Management Contract. This Management Contract shall therefore automatically terminate upon the receipt by the relevant Party of the termination notice. Such termination shall be without prejudice to any rights accrued to any of the Parties prior to such termination.

9.2.4 Compensation

- (a) If the termination of this Management Contract is due to an Operator Event of Default, the Operator shall reimburse the Grantor all properly justified expenses related to the works needed to be done to restore and maintain the Services to the level and scope as they should have been on the date of receipt by the Operator of the notice of intention to terminate this Management Contract issued by the Grantor (including the expenses for the substitution of the Operator).
- (b) If the termination of this Management Contract is due to a Grantor Event of Default, the Grantor will (i) pay to Operator the Operator's remuneration due prior to the date of the receipt by the Grantor of the notice of intention to terminate this Management Contract issued by the Operator, (ii) reimburse to the Operator the Operator Working Capital and (iii) reimburse to the Operator reasonable, necessary and properly justified demobilization costs subject to the Operator taking all reasonable steps to minimize costs.

9.3 Termination due to the Affermage Contract

9.3.1 The Grantor hereby retains the right to terminate this Management Contract unilaterally in order to enter into the Affermage Contract at any time after the end of forty eight (48) months following the Effective Date and upon issuance of a notice to the Operator at least six (6) months prior to the proposed termination date (which date shall be the date which the Affermage Contract becomes effective).

9.3.2 Upon termination pursuant to Section 9.3.1, Grantor will (i) pay to Operator the Operator's remuneration due prior to the date of the receipt by the Grantor of the

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notice of intention to terminate this Management Contract issued by the Grantor, (ii) reimburse to the Operator the Operator Working Capital and (iii) reimburse to the Operator reasonable, necessary and properly justified demobilization costs, subject to the Operator taking all reasonable steps to minimize costs.

9.4 **Handover**

9.4.1 Upon termination or expiration of this Management Contract, the Parties shall have no further rights or obligations hereunder except for rights and obligations which arose prior to such termination or expiration and those which expressly survive termination or expiration pursuant to this Management Contract.

9.4.2 Forthwith on termination of this Management Contract:

- (a) the Operator shall return to the Grantor the Facilities other than the Operator Removable New Facilities in an order consistent with Prudent Industry Practice;
- (b) the Seconded Staff shall cease to be seconded to the Operator; and
- (c) the Operator shall transfer care and control of the Revenue Collection Account to the Grantor.

9.4.3 Except in the case of termination pursuant to Sections 9.2 and 10, the Operator and the Grantor shall cooperate as reasonably necessary during the six (6) month before termination or expiration of this Management Contract in order to ensure the smooth continuation and provision of Services.

10 **MATERIALLY ADVERSE STATE ACTION AND FORCE MAJEURE**

10.1 **Materially Adverse State Action**

10.1.1 **Definition**

For the purposes of this Management Contract, "**Materially Adverse State Action**" means any act or omission, after the date hereof, by the GOG, the Grantor or any GOG authority which causes a materially adverse effect on the Services, or otherwise on the economic position of the Operator, except in so far as such act or omission is necessary on grounds of public safety.

Materially Adverse State Action shall include, but shall not be limited to, the following:

- (a) the interference with the access to land or right to use the Facilities set forth in Sections 4.1 and 4.2;
- (b) the imposition of any blockade, embargo, rationing or allocation; or
- (c) the introduction or application of any law, decree or regulation (including any tax, environmental or import regulation) or the grant of any subsidies to other competing industry which would affect the Operator, the principal effect of which is directly or indirectly borne by the Operator or by its sub-contractors and Service providers and only incidentally by other persons.

10.1.2 **Notice of Materially Adverse State Action**

In the event that any Materially Adverse State Action occurs, the Operator shall, as soon as practicable after becoming aware of such Materially Adverse State Action,

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give written notice to the Grantor specifying the event or situation which the Operator considers as a Materially Adverse State Action and its likely consequences for the Operator (the "**Notice of Materially Adverse State Action**").

10.1.3 No breach of contract

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

10.1.4 Cure of Materially Adverse State Action

Within thirty (30) days of receipt of the Notice of Materially Adverse State Action, the Grantor shall remedy the Materially Adverse State Action and restore the Operator to the position it would have been in had such action not occurred. The Grantor shall compensate the Operator for the costs incurred and the losses suffered in relation with the Materially Adverse State Action.

10.1.5 Continuing Materially Adverse State Action

Should the Grantor fail to remedy the Materially Adverse State Action prior to the expiry of the thirty (30) day period set forth in Section 10.1.4, the Parties shall consult each other in order to reach a mutually satisfactory solution to restore the Operator to the position it would have been in had such Materially Adverse State Action not occurred.

10.1.6 Termination Due to Materially Adverse State Action

In the event the Parties fail to reach a mutually satisfactory solution within sixty (60) days of the commencement of the discussions mentioned in Section 10.1.5, the Operator shall have the right to terminate this Management Contract by written notice (the "**Materially Adverse State Action Termination Notice**") to the Grantor and this Management Contract shall then immediately terminate.

10.2 Force Majeure 10.2.1 Definition

- (a) For the purposes of this Management Contract, "**Force Majeure**" means an event other than Materially Adverse State Action which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), and with respect to the Operator only, any failure, shortage or interruption of the supply of electricity for more than two (2) consecutive days.
- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's sub-contractors or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this

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Management Contract, and avoid or overcome in the carrying out of its obligations hereunder.

10.2.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Management 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, all with the objective of carrying out the terms and conditions of this Management Contract.

10.2.3 Measures to be Taken

- (a) A Party affected by an event of Force Majeure shall continue to perform its obligations under this Management Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.
- (c) During the period within which a Party shall not be able to perform its obligations under this Management Contract as a result of an event of Force Majeure, the Operator, upon instructions by the Grantor, shall either:
 - (i) demobilize, in which case the Operator shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Grantor, in reactivating the Services; or
 - (ii) continue to perform its obligations under this Management Contract to the extent possible, in which case the Operator shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.
- (d) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Section 11 below.

10.2.4 Continuing Force Majeure

If any event of Force Majeure continues for longer than sixty (60) days, the Parties shall enter into discussions in order to agree on a mutually satisfactory solution to continue the performance of this Management Contract. If the Parties fail to reach a mutually satisfactory solution within sixty (60) days of the commencement of such discussion, either Party shall have the right to terminate this Management Contract by written notice (the "**Force Majeure Termination Notice**") to the other Party and this Management Contract shall then immediately terminate.

11 DISPUTE RESOLUTION AND APPLICABLE LAW

11.1 Amicable Settlement

11.1.1 If any dispute arises out of or in connection with this Management Contract, either

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Party may give notice to the other Party of the same, whereupon the Parties shall meet promptly and in a good faith attempt to reach an amicable settlement.

11.1.2 In the event that the Parties do not resolve a dispute in accordance with Section 11.1.1 within thirty (30) days of notice of the dispute being given, then either Party may refer the dispute to the Expert for determination pursuant to the procedure set forth in Section 11.2.

11.2 **Expert**

11.2.1 The Expert shall be (and the terms of his appointment shall so provide that he or she is) independent of the Parties and shall act impartially. The Expert's appointment may be terminated only by mutual agreement between the Parties. The Expert's terms of appointment shall expire as the Parties may mutually agree.

11.2.2 In making its determination, the Expert shall:

- (a) have regard to the Services required to be performed hereunder and the terms and conditions of this Management Contract; and
- (b) ensure that the position of the Parties is restored to the position they would have been in if the event triggering the dispute under this Section had not occurred and all the Parties had complied with the Management Contract.

11.2.3 The Party who initially issued the notice of intention to refer the dispute to the Expert shall within ten (10) days of such notice submit to the Expert and to the other Party the following written documents:

- (a) a description of the dispute;
- (b) a statement of that Party's position; and
- (c) copies of relevant documentary evidence in support.

11.2.4 Within ten (10) days of receipt of the above documents, the other Party shall submit:

- (a) a description of the dispute;
- (b) a statement of that Party's position; and
- (c) copies of relevant documentary evidence in support.

11.2.5 The Expert may call for such further documentary evidence and/or interview such persons as it deems necessary in order to reach their decision.

11.2.6 The Expert shall give notice to the Parties of its decision within twenty (20) days of receipt of the documents provided under Section 11.2.3 or 11.2.4 as the case may be.

11.2.7 Unless this Management Contract has already been terminated or abandoned, the Parties shall in every case continue to proceed with the performance of their rights and obligations under this Management Contract with all due diligence whilst the Expert is reviewing the dispute.

11.2.8 The decision of the Expert shall be binding unless and until one Party, within ten (10) days of the date of such decision, issues a notice of intention to refer the matter to arbitration in accordance with Section 11.3.

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

Water Management Agreement - Example 1

11.3 Arbitration

11.3.1 All disputes arising out of or in connection with this Management Contract, not settled by amicable settlement or by the Expert under the provisions of Section 11.1 and 11.2 above, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

11.3.2 The arbitration shall take place in Geneva, Switzerland.

11.3.3 The arbitration shall be conducted in the English language.

11.4 Applicable Law

This Management Contract shall be governed by and construed pursuant to the Applicable Law.

11.5 Survival

The dispute resolution provisions contained in Section 11 shall survive termination of this Management Contract.

12 MISCELLANEOUS

12.1 Authorized Representative

Any action required or permitted to be taken, and any document required or permitted to be executed under this Management Contract by the Grantor or the Operator may be taken or executed by the officials specified in the Schedule 9.

12.2 Assignment of this Agreement

12.2.1 Assignment by the Grantor

The Grantor shall not assign or transfer all or any part of its rights or obligations under this Management Contract without the prior written consent of the Operator, such consent not to be unreasonably withheld or delayed.

12.2.2 Assignment by the Operator

The Operator and the Successful Bidder shall not without the prior written consent of the Grantor, such consent not to be unreasonably withheld or delayed, transfer all or any part of its rights or obligations under this Management Contract, provided that the Successful Bidder shall be entitled to assign the whole of its obligations under this Management Contract to any person controlling directly the Successful Bidder

12.3 Confidentiality

12.3.1 Each of the Parties, their employees, sub-contractors, consultants and agents, shall hold in confidence all documents and other information, whether technical or commercial, supplied to it by or on behalf of the other Party in relation with this Management Contract, and shall not publish or otherwise disclose or use the same for

its own purposes otherwise than as may be required by the Applicable Law or to perform its obligations under this Management Contract.

- 12.3.2 The Parties' obligations under this Section 12.3.1 shall survive for a period of five (5) years following the termination of the Management Contract or any extension or renewal thereof.

12.4 Relations between the Parties

12.4.1 Subject to the provisions of this Management Contract, the Operator shall be an independent contractor in its performance of this Management Contract. This Management Contract does not create any agency, partnership, joint venture or other joint relationship between the Operator and the Grantor.

12.4.2 Subject to the provisions of this Management Contract, the Operator shall be solely responsible for the manner in which the Contract is performed. All Operators staff and sub-contractors shall be under the complete control of the Operator and nothing contained in this Management Contract or any sub-contract awarded by the Operator shall be construed to create any contractual relationship between the Operator's representatives or subcontractors and the Grantor.

12.4.3 None of the Parties has any responsibility whatsoever with respect to the obligations assumed by the other Parties under this Management Contract nor, other than as set out in Section 8.4, in respect of any employment claims of any of the employees of any other parties hereto, and nothing in this Management Contract shall constitute the Operator, the Successful Bidder or the Grantor to be a partner, agent or local representative of the other or create a fiduciary relationship or trust between them.

12.5 Variations in Writing

All additions, amendments and variations to this Management Contract shall be binding only if in writing, signed by duly authorized representatives of each of the Parties.

12.6 Entire Contract

This Management Contract, including the Recitals and the Schedules attached hereto, represents the entire agreement between the Parties in relation to the subject matter thereof and supersedes any or all previous agreements, communications or arrangements, whether oral or written, between the Parties.

12.7 Separability

If any part or parts of this Management Contract are agreed by the Parties or declared by any competent tribunal to be invalid, the other parts shall remain valid and enforceable.

12.8 Non-Waiver

None of the provisions of this Management Contract shall be deemed waived by either Party except when such waiver is given in writing. The failure by either Party to insist upon strict performance of any of the provisions of this Management Contract or to take advantage of any of its rights under this Management Contract shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

12.9 Notices

Unless otherwise agreed by the Parties, notices to be given under this Management Contract shall be in English, in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Grantor: []

[Address] _____

Attention _____

:

Telex:

Fax:

The Operator []

[Address] _____

Attention _____

:

Telex:

Fax: _____

The Successful Bidder [

]

[Address] _____

Attention _____

:

Telex: ___ Fax: _____

or such other address, telex number, or facsimile number as may be notified by that Party to the other Party from time to time, and shall be deemed to have been made or delivered

(i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and

(ii) in the case of any communication made by telex or facsimile, when transmitted properly addresses to such telex number or facsimile number.

12.10 Language

This Management Contract is made in the English language.

IN WITNESS WHEREOF, this Management Contract has been executed by duly authorized representative of the Parties hereto on the day, month and year above written.

Grantor

By: _____

Name: _____

Title: _____

Operator

By: _____

Name: _____

Title: _____

Successful Bidder

By: _____

Name: _____

Title: _____

SAMPLE

SCHEDULE 1. SERVICE AREA

SAMPLE

SCHEDULE 2. SERVICES

A. TECHNICAL SERVICES

A.1 The Operator shall operate and maintain all the Facilities with no restriction, in order to preserve continuity and the Service Standards.

A.2 The Operator's responsibility covers the management of the following technical services:

- (i) abstraction, receipt, transfer and collection of Raw Water;
- (ii) production, transportation, treatment and delivery of piped Potable Water;
- (iii) procurement and supply of chemicals;
- (iv) procurement and supply of energy;
- (v) definition of technical procedures;
- (vi) definition of meters specifications and location; and
- (vii) attainment of Service Standards as specified in Schedule 4.

A.3 Only management services are included in the Base Fee. Operational expenses are charged to the Revenue Collection Account and the Operator Working Capital.

A.4 No authorization from the Grantor or any of its representatives shall be required for the Operator to incur expenses necessary for the operation and maintenance of the Facilities, as far as such Facilities can be maintained without rehabilitation. Reasonable and prudent maintenance costs shall be paid through the Revenue Collection Account.

A.5 The Operator shall determine the use of the Repair, Replacement and Rehabilitation Fund

B. COMMERCIAL SERVICES

B.1 The Operator's responsibility covers management of all Customers including invoicing, collection and metering. This includes *inter alia*:

- (i) management of applications for new connections;
- (ii) management of new subscriptions;
- (iii) management of Customers files;
- (iv) management of Customers disconnections;

- (iv) identification and removal or regularization of illegal connections; and
- (v) definition and establishment of commercial procedures.

B.2 The Operator shall undertake all necessary actions to achieve the commercial efficiencies and collection ratios as set forth in Schedule 4.

B.3 All commercial services are included in the Base Fee.

C. ADMINISTRATIVE AND FINANCIAL SERVICES

C.1 The Operator's responsibility includes:

- (i) preparation and presentation of Suggested Capital Investment Report;
- (ii) definition and establishment of accounting procedures, allowing daily follow-up of main charges and costs and the basis thereof, follow up of the Revenue Collection Account; and
- (iii) presentation of reports, records and accounts as defined in Schedule 3.

C.2 All administrative and financial services are included in the Base Fee.

**SCHEDULE 3 .
PERIODIC REPORTING REQUIREMENTS**

A. GENERAL PRINCIPLES OF RECORDING AND REPORTING

A.1 General requirement to maintain records

The Operator shall use or create records in the quality and quantity required for facilitating efficient implementation and supervision of this Management Contract, for providing information to the Grantor, and for informing Customers and third parties about the Services.

A.2 Reporting regime

- (a) The Financial Year under this Management Contract shall be a period of twelve calendar months commencing on the 1st January and ending at midnight on the 31st December following.
- (b) The Operator shall submit such reports as requested from time to time by the Grantor. As a minimum the following routine reports shall be submitted to the Grantor:

Title	Frequency
Annual Reports (including audited accounts)	Annually
Collection and costs summary	Quarterly
Market Surveys	Annually
Suggested Capital Investment Reports	Annually

- (c) The format and content of all reports shall be as instructed from time to time by the Grantor. All reports shall be subject to the approval of the Grantor. Such approval shall be timely given.

A.3 Verification by the Grantor

- (a) The Grantor shall have the right to verify details given in all reports and accounts submitted to the Grantor. To this effect, the Grantor, or its authorized representative may request any information or clarification necessary for their review.
- (b) It shall be the duty of the Operator to co-operate with Technical and Financial Auditors and to provide them with all such information as they may reasonably require for the purpose of carrying out any investigation.

B. ANNUAL REPORTS

- (a) Not later than three (3) months following the end of the Financial Year, the Operator shall provide the Grantor with an Annual Report containing as a minimum:
- (i) a report on the activities of the Operator during the Financial Year; such a report shall cover the contractual activities of the Operator in the Services Area; and
 - (ii) an audited set of accounts for the Service Area, as set forth in Section 3.3 of this Management Contract.
- (b) In its Annual Report, the Operator may be required to indicate any circumstances having an impact on the revision of financial mechanisms of this Management Contract.
- (c) As a minimum, the Operator shall report on the following for each System:
- (i) volume, pressure, quality results and commentary;
 - (ii) numbers and categories of Customers;
 - (iii) staff employed;
 - (iv) levels of service performance and commentary;
 - (v) profitability;
 - (vi) billing, and collection ratio;
 - (vii) renovation works and repairs carried out or to be carried out;
 - (viii) situation of Raw Water sources;
 - (ix) reduction in non-revenue water;
 - (x) average daily production;
 - (xi) response to customer enquiry;
 - (xii) customer accounts recoverable;
 - (xiii) interruptions and emergency actions; and
 - (xiv) reasons for failure to achieve or maintain Service Standards.

C. COLLECTION AND COST SUMMARY

The Operator shall prepare and submit quarterly billing, collection and cost summary data.

D. MARKET SURVEYS

The Operator shall undertake annual surveys of existing and potential Customers which should identify priorities for development and expansion.

SCHEDULE 4 .

SERVICE STANDARDS

A. RAW WATER

- (a) Raw Water will be abstracted from approved sources in []. and shall meet the relevant standards of the []. Any costs incurred or to be incurred in order to make the Raw Water compliant with the said relevant standards shall be borne by the Grantor.
- (b) The Operator shall cooperate with the Grantor, if required, in the development of additional Raw Water sources, provided that the Parties have reached an agreement with respect to the remuneration of the Operator relating to such cooperation. Any development costs incurred or to be incurred in relation with this additional development shall be borne by the Grantor.

B. TREATED WATER QUALITY and PRESSURE:

Within six (6) months from the Commencement Date, the Operator will produce and maintain water quality, pressure and flow rates at all (i) discharge points from treatment plants for Treated Water ("**Headworks**") and (ii) throughout the distribution networks that meet or exceed all relevant standards determined by the [].

C. REDUCTION IN NON-REVENUE WATER

- (a) Within twelve (12) months of the Commencement Date, the Operator shall submit to the Grantor for discussion and approval a plan for the systematic measurement and reduction of non-revenue water in the Service Area.
- (b) The plan referred to in (a) above will specify how to calculate non-revenue water in the absence of complete metering and determine yearly targets for reduction in non-revenue water in the Service Area of at least five (5) per cent per year and shall propose relevant penalty provisions for failure to meet such yearly targets. It will also include how Operator intends to reduce leakage and illegal connections.
- (c) After agreement with the Grantor, the Operator shall implement such plan.

D. TREATMENT PLANT OPERATIONS.

- (a) Within sixty (60) days from the Commencement Date, the Operator will provide the Grantor with the specifications for meters and the required location thereof. Installation of new meters, rehabilitation of old meters and connections shall be payable from the Project Funds. For the Management Contract Period, the Operator shall maintain average daily production, for at least ten (10) months per year, at a level not less than that which was measured when the relevant bulk meter was installed or rehabilitated.
- (b) In each year's Suggested Capital Investment Report, the Operator will document investments required to increase water production at selected Systems. This report should also include provisions for low income Customers taking into consideration the [].

- (c) For any Facilities in the Service Area, that are rehabilitated to the point of either original, or more than original installed capacity, or for any new System in the Service Area commissioned during the Management Contract Period, the Operator shall maintain average daily production at a level not less than ninety (90) percent of installed capacity or of hundred (100) percent demand whichever is lower, for an average of ten (10) months per year.

E. CUSTOMER RESPONSE PLAN

Within six (6) months from the Commencement Date, the Operator shall provide a report acceptable to the Grantor that: (i) defines what a "response to customer inquiry" means according to Prudent Industry Practice; (ii) documents average customer response time by the Grantor immediately prior to the Commencement Date; and (iii) outlines a plan to reduce the average customer response time to forty eight (48) hours beginning no later than month twenty-four (24) of this Management Contract.

F. CUSTOMER ACCOUNTS RECEIVABLE

Within twelve (12) months from the Commencement Date, the Operator shall maintain non-public sector accounts receivable at a level that does not exceed ninety (90) days of non-public sector sales.

G. INTERRUPTIONS AND EMERGENCY ACTIONS

Within one (1) month of the Commencement Date, the Grantor and the Operator shall agree upon the regime applicable to interruptions of Services and emergency actions in case of potential danger to public health due to failure to comply with Potable Water specifications and standards.

SCHEDULE 5.

PAYMENTS TO THE OPERATOR

A. BASE FEE and PENALTY REDUCTION

A.1 Base Fee shall be *[Bid Price to be inserted from Bid of the Successful Bidder]*, subject to adjustments pursuant to Sections 6.1.3 and 6.7 of this Management Contract.

A.2. Subject to Section 5.1.3 of this Management Contract, Operator's performance below the Service Standards as set forth in Schedule 4 will result in the decrease of the Base Fee as follows:

- (a) For each two (2) days that any System managed by the Operator fails to meet the Service Standards as described in Schedule 4, Section B, regarding WATER QUALITY and PRESSURE as measured at the Headworks, the Operator shall forfeit an amount ("the **Penalty Reduction**") from the monthly payment of the Base Fee as calculated in Table A below. The Penalty Reduction shall be calculated separately for each System managed by the Operator;
If more than five (5) per cent of samples taken within the distribution network in any System managed by the Operator as certified by the Technical Auditors do not meet the QUALITY standards set forth in Schedule 4, Section B, the Operator shall forfeit as a Penalty Reduction [one thousand (1,000) United States Dollars] per occurrence.
- (b) For each month that any System managed by the Operator fails to meet the Service Standards as described in Schedule 4, Section C, regarding REDUCTION IN NON-REVENUE WATER, the Operator shall forfeit as a Penalty Reduction an amount set forth pursuant to Schedule 4, Section C (b).
- (c) For every month that any System managed by the Operator fails to meet the Service Standard as described in Schedule 4, Sections D (a) and (c), regarding TREATMENT PLANT OPERATIONS, the Operator shall forfeit as a Penalty Reduction an amount as calculated in Table A below from the monthly payment of the Base Fee, based on the number of cubic meters actually achieved below the Service Standard for that month. The Penalty Reduction shall be calculated separately for each System managed by the Operator.
- (d) For every month the Operator fails to achieve the Service Standard described in Schedule 4, Section E, regarding the CUSTOMER RESPONSE PLAN, the Operator shall forfeit as a Penalty Reduction an amount of one thousand (1,000) United States Dollars from the monthly payment of the Base Fee.
- (e) For every month the Operator fails to achieve the Service Standard described in Schedule 4, Section F, regarding CUSTOMER ACCOUNTS RECEIVABLE, the Operator shall forfeit as a Penalty Reduction an amount of one thousand (1,000) United States Dollars from the monthly payment of the Base Fee. This Penalty Reduction shall be calculated separately for each System managed by the Operator.

Table A

Section n° from Schedule 4	B	D (a) & (c)
System size (m3/day)	Penalty (USD/m3/day)	Penalty (USD/m3/month)
>100,000	0,01	0,10
25,001-100,000	0,03	0,25
10,001-25,000	0,06	0,50
5,000-10,000	USD [] flat amount	USD [] flat amount
<5000	USD [] flat amount	USD [] flat amount

B. INCENTIVE COMPENSATION

Subject to requirements of Section 3.1.4 of this Management Contract:

B1. Customer Collection

Based on audited financial accounts prepared by the External Auditor for each Financial Year, incentive compensation shall be equal to eight (8) per cent of any reduction in the level of accounts receivable less provisions for bad debt as compared to the level of accounts receivable less provisions for bad debt for the preceding Financial Year.

B2. Chemical usage

- (a) Within twelve (12) months from the Commencement Date, the Operator shall present a plan to the Grantor for the optimization of chemical usage while maintaining Treated Water quality standards as well as a proposal for incentive compensation for such reduction.
- (b) The Parties shall discuss and reasonably agree on such plan and corresponding incentive compensation.

B.3 Power consumption

- (a) Within twelve (12) months from the Commencement Date, the Operator shall present a plan to the Grantor for the reduction of power consumption as well as a proposal for incentive compensation for such reduction.
- (b) The Parties shall discuss and reasonably agree on such plan and corresponding incentive compensation.

B4. Public sector water consumption

- (a) Within six (6) months from the Commencement Date the Operator shall present a plan to the Grantor for the reduction of water consumption by the public sector entities within such System by at least three (3) per cent over a baseline annual consumption to be established by the Operator pursuant to Section 3.6.1 of the Management Contract, as well as a proposal for incentive compensation for such reduction.
- (b) The Parties shall discuss and reasonably agree on such plan and corresponding incentive compensation.

SCHEDULE 7.
RESIDENT PROJECT MANAGER
Minimum Qualification and Job Description

A. MINIMUM QUALIFICATION

Candidate should possess suitable academic qualifications and relevant experience in similar Management Contract assignments.

Specifically, the candidate should have the following minimum experience:

- (i) Total number of years experience: 20 years
- (ii) Experience in similar contracts: 10 years
- (iii) Experience as Resident Manager in equivalent management contract assignment: 5 years
- (iv) Experience in similar contracts in sub - Saharan Africa would be an advantage.

B. JOB DESCRIPTION

The Resident Manager as the sole representative of the Operator shall be responsible for the efficient performance of the Services. In carrying out this function, the Resident Manager shall:

- (i) Have administrative control over all Seconded Staff and the Facilities for the performance of the Services.
- (ii) Assign duties and tasks to the Seconded and Operator Staff.
- (iii) Supervise the day to day activities of the Seconded and Operator Staff.
- (iv) Make recommendations to the Grantor in respect of hiring and firing of Seconded Staff, as well as for other disciplinary actions.
- (v) Evaluate performance of Seconded and Operator Staff.
- (vi) Liaise with Grantor and the PURC for the purpose of achieving the Service Standards.

SCHEDULE 8 .
FORM OF PERFORMANCE SECURITY

(On headed notepaper of the Approved Bank)

On [] the Grantor and [] (*Operator*) entered into the Management Contract (*Contract*) pursuant to which the Operator has agreed to manage and operate []'s urban water systems, as provided in this Contract.

Under Section 6.2 of the Contract, the Operator is required to provide to the Grantor a Performance Security as security for the proper and timely performance of all Operator's obligations under the Management Contract.

We, the undersigned [•] (*Bank*), agree that the Grantor shall be entitled, subject to Section 6.2.3 of the Contract, to make demand (*Demand*) under this Performance Security in the form attached as **Annex A** to this Performance Security up to an amount equal to three (3) million United States Dollars, or such lesser amount as set forth below (*Maximum Amount*).

The Maximum Amount shall be:

Year 1: []

Year 2: []

Year 3: []

Year 4 and Year 5: []

(each such amount, by year, the *Yearly Maximum Amount*)

Notwithstanding the foregoing, should any Demand have been made under this Performance Security in a given year, then until such time as this Performance Security has expired pursuant to the terms hereof, the Maximum Amount shall no longer be reduced and shall be equal to the relevant Yearly Maximum Amount at the date of such Demand.

The Bank hereby irrevocably and unconditionally undertakes to the Grantor that, within 7 working days of receiving a first written Demand from the Grantor in the form and accompanied with information provided in Annex A hereto, the Bank shall without any protest or challenge pay to the Grantor in full the sum claimed by the Grantor in such Demand up to an amount which, when aggregated with all previous payments made under this Performance Security, equals the Maximum Amount.

Any payment made under this Performance Security shall be made in [United States Dollars] and to the account specified in the Demand.

Grantor may make one or more Demands under this Performance Security, provided always that the aggregate amount of all payments made by the Bank under this Performance Security shall never exceed the Maximum Amount. Each Demand made by the Grantor shall be sent to the Bank in the form of the relevant Annex A attached hereto and shall be signed by an authorized officer of the Grantor or any other permitted assignee, with a copy of such Demand to be sent to the Operator.

This Performance Security shall take effect at the date hereof shall automatically expire on the earlier of:

- (a) 30 Days after the expiry or termination of the Management Contract (as notified by the Grantor to the Bank in the form attached as **Annex B**, and copied to the Operator); or

- (b) the date the Maximum Amount is reduced to nil (**Expiry Date**); save in respect of any Demand received on or before the Expiry Date.

It is understood that the Grantor shall return the original of this Performance Security to the Bank within 14 Days of the Expiry Date.

After this date, this Performance Security shall become null and void, whether the original is returned to the Bank or not.

The construction, validity and performance of this Performance Security shall be governed by and construed in accordance with the laws of []. The Bank and the Grantor submit to the exclusive jurisdiction of the courts of [] in respect of any dispute or difference arising out of or in connection with this Performance Security subject only to the rights of the Grantor to commence proceedings in the courts of any jurisdiction in which the Bank's assets may be situated.

[Definitions of capitalized words and expressions used in this Performance Security will be the same as in the Management Contract and shall be set out here once the final text has been agreed.]

Place, Date

Bank

ANNEX B

(On headed notepaper of the Grantor) To

[Name and address of Bank]

Attention: []

Date: []

Performance Security No: [] dated []

We, the Grantor, hereby declare that the Operator has failed to perform its obligations under the Management Contract in the proper and timely manner and that an amicable settlement or an Expert decision or an arbitral award has so found.

Accordingly, we hereby demand payment under the Performance Security of [] [in words and figures].

Please make payment of this sum to the account of the Grantor at [account number].

Capitalized words and expressions used in this Demand shall have the same meanings as are ascribed to them in the Performance Security.

Yours faithfully

.....
for and on behalf of the Grantor

Copy to: Operator.

**SCHEDULE 9.
AUTHORIZED REPRESENTATIVE**

The authorized representatives are:

For the Grantor: []

For the Operator: Resident Project Manager.

SAMPLE

SCHEDULE 10 . ADJUSTMENTS OF BASE FEE

A. The Base Fee paid in the Bid Price currency shall be adjusted every twelve (12) months (and, the first time, on the day of anniversary of the Commencement Date) by applying the following formula:

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

where R_f is the adjusted Base Fee, R_{fo} is the Base Fee payable in the Bid Price 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 the foreign currency for the month of the Commencement Date.

B. The Base Fee paid in [] shall be adjusted every twelve (12) months (and, for the first time the day of anniversary of the Commencement Date) by applying the following formula:

$$R_l = R_{lo} \times \frac{I_l}{I_{lo}}$$

where R_l is the adjusted Base Fee, R_{lo} is the Base Fee payable in [], I_l is the official index for salaries in the [] for the first month for which the adjustment is supposed to have effect and, I_{lo} is the official index for salaries in [] for the month of the date of the Commencement Date.

SCHEDULE 11 PAYMENT SCHEDULE

SAMPLE