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CONCESSION AGREEMENT

THIS AGREEMENT is made this day of [DATE].

BETWEEN:

- (1) **THE GOVERNMENT OF []** (the “**Government**”), at [] on the one part, and
- (2) [XXX] whose head office address is at []; and [YYY] at [].

([], [] and [] are collectively hereinafter called) the “**Developers**”), on the other part.

WHEREAS:

- (A) The Government requires the construction and operation of a new centralised wastewater system in [LOCATION] (hereinafter called the “**System**”). This System is intended to replace and improve the existing method of sewage collection, which consists primarily of privately-owned Septage arrangements and use of haulers for sewage removal;
- (B) In response to a Request for Proposals dated [] the Developers submitted to the Government a tender for the construction and operation of the System, together with the operation of the Existing System (as defined below) until the System comes into operation (the “**Tender**”).
- (C) The Government appointed the Developers as the preferred bidder on [DATE] by entering into a preferred bidder appointment letter on that date.
- (D) Pursuant to that appointment, the Government has agreed to enter into this Agreement with the Developers for the carrying out of the Project.
- (E) It is the intention of the parties hereto that the rights and obligations of the Developers under this Agreement shall be assigned and transferred to the Company (as defined below) by an assignment agreement, the terms and conditions of which shall be consented to in advance by the Government.

NOW IT IS HEREBY AGREED as follows:

1. **Definitions**

“**Act of State**”

Means any action of, or failure to perform an obligation by, the Government which has a material adverse effect on the Company’s ability to perform its obligations or receive the benefit of its rights under this Agreement (including the right to receive

	payments as described herein) or increases its costs of performing the Work.
“Additional Leased Areas”	Means such areas required for the purposes of expansion of the Treatment Plant or the construction of any additional treatment plant.
“Agreed Concession Areas”	Means the areas within [LOCATION] Systems identified specifically in the Map appended as Exhibit [B] hereof.
“Applicable Connection Fee”	Means the Connection Fee payable by the Registered Owner, as set out in Annex 2 excluding any Extra Connection Fees added in accordance with Annex 2, subject to any Tariff Rate Adjustment made in accordance with Annex 6.
“Applicable Law”	Means any applicable national, municipal or state statute, ordinance or other law, regulation or by-law or any rule, code or direction including applicable technical, safety or environmental standards or any licence, consent, permit, authorisation or other approval including any conditions attached thereto or interpretation thereof of [COUNTRY] or of any public body or authority, local or national agency, department, inspector, ministry, official or public or statutory person (whether autonomous or not) or professional body which has appropriate jurisdiction.
“Applicable Service Charge”	Means the Monthly Service Charge stated in Annex 2 subject to any Tariff Rate Adjustment made in accordance with Annex 6.
“Assignment Date”	Means the date of effectiveness of the Assignment Deed.
“Assignment Deed”	Means a duly executed Deed of Assignment of Rights and Assumption of Obligations concluded by the Developers and the Company with the approval of the Government, in the form set out in Annex 9.
“Audited Accounts”	Means audited annual accounts of the Company prepared by an internationally recognized independent firm of certified public accountants operating in [COUNTRY] nominated by the Company and approved by the Government, which approval should not be unreasonably withheld.

“Audited Accounts Issue Date”	Means, in respect of any Financial Year, the date of issue of duly signed Audited Accounts in respect of such Financial Year which Audited Accounts shall be prepared and issued as soon as reasonably possible after the end of the relevant Financial Year but in any event not later than three months after the end of the relevant Financial Year.
“Billings”	Means all amounts billed by the Company during the relevant Financial Year and calculated in accordance with the relevant Audited Accounts in respect of (a) all Applicable Connection Fees and Applicable Service Charges (b) all sales of Treated Effluent and sludge (c) Wastewater Planning Review Fees, Septage Discharge and Disposal Fees and (d) other fees or charges billed by the Company in return for its services pursuant to the Concession Agreement.
“Company”	Means the company to be established by the Developers to which the rights, benefits and obligations of the Developers under this Agreement shall be assigned and transferred pursuant to Clause 2.1 below; provided that prior to such assignment and transfer the term “Company” as used herein shall, to the extent the context permits, mean the Developers.
“Concession Agreement”	Means this Agreement.
“Connection”	Means the construction and completion by the Company of an LIC servicing a specific Registered Property (or Registered Properties) and any extension thereto to the Owner’s property line if the LIC is located outside of the property line, so that immediately thereafter it is possible to discharge Wastewater from such LIC or from the edge of the property directly in the sewerage pipes of the System by the Registered Property when the Final Connection is completed.
“Contractors”	Means any and all designers, contractors, subcontractors and operators involved in the design, procurement, construction, operation and maintenance of the System.
“Default Amounts”	Means Billings billed during the relevant Financial Year which are outstanding at the end of that Financial Year and which, as at the end of that Financial Year, have remained unpaid for at least [90] days from the date of invoice; provided that in the case of each Financial Year after the first Financial Year, Default Amounts shall also include any Billings billed during

the previous Financial Year where the date of invoice is less than [90] days prior to the end of such previous Financial Year and which Billings remain unpaid as at the end of the succeeding Financial Year. Default Amounts shall be calculated on the basis of the relevant Audited Accounts.

“Development Rights”	Means the rights granted to and obligations of the Company, as described in Clause 4.1 below.
“Direct Agreement”¹	Means the agreement to be entered into between the Lenders and the Government, pursuant to which the Government only agrees to [the customary collateral pledge to the Lenders by the Company of the System and related contracts and rights, and acknowledges the Lenders’ rights as secured party, including the right to cure defaults by the Company without further liability whatsoever on the part of the Government ²].
“Effective Date”	Means the date on which the conditions precedent listed in Clause 3 below have been satisfied and a certificate of acknowledgement thereof has been duly signed in duplicate by the Parties hereto, whereupon this Agreement shall become fully effective and binding on the Parties hereto.
“EPC Contract”	Means the agreement to be entered into between the Company and the EPC Contractor for the engineering, procurement and construction of the System, a copy of which shall be delivered to the Government immediately upon the signature thereof.
“EPC Contractor”	Means [], or such other contractor as the Company shall designate.
“Extra Connection Fee”	Means the extra connection fee as described in Annex 2, subject to the Tariff Rate Adjustment in accordance with Annex 6.
“Final Connection”	Means the removal or sand filling of any existing septage tank and construction and installation, by the Registered Owner, of connecting pipework from inside the Registered Property (toilets, sinks, etc.) to the LIC, if the LIC is situated inside the Owner’s property line, or towards the LIC up to the property line if the LIC is located outside the boundary, and linked to the Connection. The Final Connection remains the

¹ local legal advice should be sought to determine whether and on what basis direct agreements with lenders can be entered into

² subject to local law advice – security etc that can be taken by Lenders will vary on jurisdiction

	property and responsibility of the Registered Owner of the Registered Property.
“Financial Close”	Means the date on which the Financing Documents have been executed between the Lenders and the Company, and the Company has the unconditional right to receive the funds thereunder for the construction of the Treatment Plant and the System.
“Financial Year”	Means the financial year of the Company commencing on [] and ending on [] each calendar year except in the case of the first Financial Year which shall commence on the Effective Date and end on [] of such year and in the case of the last Financial Year which shall end on the Transfer Date.
“Financing Documents”	Means the financing documents in respect of the loan or loans provided by the Lenders directly to the Company for the purpose of constructing the System, including the Direct Agreement on terms acceptable to the Company.
“Force Majeure Event”	Means an event beyond the control of the Government and/or the Company, which prevents a Party from complying with any of its obligations under this Contract, including but not limited to: <ul style="list-style-type: none"> (a) act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); (b) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition, or embargo; (c) rebellion, revolution, insurrection, or military or usurped power, or civil war; (d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly; (e) riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to employees of the Company or of its subcontractors; or (f) acts or threats of terrorism.

"Good Operating Standards"	Means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor and operator complying with the relevant permits and all Applicable Laws and engaged in the same type of undertaking under the same or similar circumstances and conditions as contemplated by this Contract.
"Gross Income"	Means the total revenues received by the Company during the relevant Financial Year and calculated in accordance with the relevant Audited Accounts in respect of (a) all Applicable Connection Fees and Applicable Service Charges (b) income from sales of Treated Effluent and sludge (c) Wastewater Planning Review Fees, (d) Septage Discharge and Disposal Fees and (e) any other revenues derived from the activities of the Company pursuant to the Concession Agreement but excluding interest on income and fines, if any.
"Independent Consulting Engineer"	Means an internationally recognized professional consulting engineer who shall be employed by the Government (and reasonably acceptable to the Company) to oversee implementation of the System and ensure compliance with the agreed Specifications and Performance Standards, the reasonable fees of which shall be paid by the Company.
"Influent Standards"	Means the influent standards set out in [RELEVANT LEGISLATION][Performance Schedule] ³ .
"Insurances"	Means the insurance policies taken out by the Company as listed in Annex 5.
"Leased Area"	Means the area specified on the map attached as Exhibit A to the Lease Agreement set out in Annex 1.
"Lease Agreement"	Means the Lease Agreement for the Leased Areas and any Additional Leased Areas, which shall be concluded between the Government and the Company substantially in the form set out in Annex 1.

³ may be contractual performance standards or legal requirements that are to be met – depending on the project and the jurisdiction

“Lease Payment”	Means the rental payment payable each year by the Company to the Government under the Lease Agreement.
“Lenders”	Means the lenders under the Financing Documents.
“Liquidated Damages”	Means liquidated damages for failure by the Company to meet the Performance Standards or for delay, as set out in Annex 10;
“LIC”	Means the local inspection chamber.
“MU”	Means the [Ministry of Utilities] or other successor organization that performs the same function as MU.
“MU Letter”	Means the letter from the MU referred to in Clause 9.2 below or any other substitute enforceable law, measure or document acceptable to the Company.
“Municipality”	Means [].
“O & M Contract”	Means the agreement to be entered into between the Company and O&M Contractor relating to the operation and maintenance of the System, a copy of which shall be delivered to the Government immediately upon the signature thereof.
“O & M Contractor”	Means [] or such other operator appointed by the Company pursuant to the O & M Contract.
“Obligor”	Means a Registered Owner or Registered User of any Registered Property obligated to pay any Tariffs under [RELEVANT LEGISLATION].
“Operating Period”	Means the period from the date of issue of the Performance Certificate until the Transfer Date.
“Performance Standards”	Means the performance standards set out in Annex 3.
“Performance Tests”	Means the performance tests set out in Annex 4.
“Project”	Means the construction and operation of the System, together with the operation of the Existing System until the System comes into operation.
“Project Documents”⁴	Means this Agreement, the Direct Agreement, the EPC Contract, [the Stormwater Drainage Services Contract ⁵], the Lease Agreement and the O&M

⁴ the project documents will depend from project to project

⁵ if there are any other separate arrangements to be entered into in relation to the system or similar services to be provided

	Contract and any other contract or agreement the Parties agree should be concluded by the Company to enable it to fulfil its rights and obligations in connection with this Agreement.
“Registered Property”	Means a property which has been registered by the Company for the purposes of being connected to the System.
“Registered Owner”	Means any individual, company or business, government entity, or not-for-profit entity who or which owns a Registered Property and is an Obligor.
“Registered User”	Means any individual, company or business, government entity, or not-for-profit entity who or which is in occupation of a Registered Property that is connected to the System and is an Obligor.
“Registration Date”	Means the last date for registration of properties within the Agreed Concession Areas as determined by the Company.
“Rights and Approvals”	Means but without limitation (a) exclusive rights of use, leases, easements, licences, surface and underground rights, and any other property rights permitted by [] laws to be enjoyed by foreign companies having contracts or agreements with []. Government together with (b) approvals in connection with the System including permits, authorisation, licences, consents, waivers, releases, visas, work permits, customs, clearances, and any other rights of similar nature specifically required under [] law or by [] Governmental authorities or to permit the Company to perform fully its obligations and enjoy its rights under this Agreement in relation to the System.
“Septage”	Means untreated sewage collected in a septic tank that may be servicing one or more properties.
“Septage Discharge and Disposal Fee”	Means the fees payable for the receipt, collection and disposal of Septage at Septage Disposal Sites as described in Annex 2 Part VII
“Signature Date”	Means the date of signing of the Concession Agreement.

“Specifications”	Means the engineering specifications of the construction, works, plants, equipment, hardware and software of the System carried out or determined by the Company and approved by the Independent Consulting Engineer.
[“Stormwater”⁶	Means all water arising from rainfall and other sources materialising at or near ground level and being other than Wastewater.]
[“Stormwater Drainage Services Contract”	⁷ Means the contract between the Government and the Company whereby the Company shall be obligated to provide stormwater drainage services as part of its obligations hereunder for the separate monetary consideration stated in the said contract which shall be set out in Annex 11 and deemed as an integral part hereof.]
“Substantial Completion”	Means when the System is installed and satisfactorily tested in accordance with the Performance Standards excepting completion of those items of minor defects on the defects list which the Company shall complete before final acceptance of the System.
“System”	Means the sewerage system as described in Clause 4.5 and 4.6 and includes any additional systems to be constructed and operated by the Company in the Agreed Concession Areas.
“Traffic Department”	Means [].
“Tariff Rate Adjustment”	Means those adjustments to the Tariffs described in Annex 6.
“Tariffs”	Means Applicable Connection Fees, Applicable Service Charges, Wastewater Planning Review Fees, and Septage Discharge and Disposal Fees.
“Term”	Means the period commencing on the Effective Date until the expiry of a period of [twenty-five years] after the date of Substantial Completion).
“Transfer Date”	Means the last day of the Term.
“Treated Effluent”	Means the waterborne by-product of the treatment process after Wastewater has passed through the Treatment Plant.

⁶ if relevant

⁷ if relevant

“Treatment Plant”	Means the sewerage treatment plant to be constructed within the Agreed Leased Area.
“Wastewater”	Means that water discharged from housing, commercial and industrial properties that may contain biological and chemical constituents.
“Wastewater Planning Review”	Means the approval of the Company in respect of the Wastewater disposal aspect of any new building or development of a property within [].
“Wastewater Planning Review Fee”	Means the wastewater planning review fee referred to in Annex [].
“Works”	Means any and all types of contracting works undertaken by the Company or by the sub-contractors for effectuating the purposes of this Agreement with respect to the design, construction, equipment procurement, start up, maintenance and operation of the System.

2. **Transfer of Developers’ Rights and Obligations to the Company⁸**

- 2.1 Notwithstanding anything to the contrary in this Agreement, the Developers shall not later than [30] days after the Signature Date assign all their rights and benefits and transfer all their obligations under this Agreement to a company to be established pursuant to Clause 2.2 below (the “Company”). Such assignment and transfer shall be effected by the delivery to the Government of a duly executed Assignment Deed with effect from the Assignment Date specified in the Assignment Deed:
 - 2.1.1 The Developers shall be discharged and released from all obligations and liabilities owed by the Developers to the Government under this Agreement, but, simultaneously, the Company will become obliged to carry out all the obligations of the Developers under this Agreement as if the Company had been an original party to this Agreement instead of the Developers;
 - 2.1.2 The Government shall be discharged and released from all obligations and liabilities owed by the Government to the Developers under this Agreement, but, simultaneously, the Government’s obligations and liabilities under this Agreement will be owed to the Company instead of the Developers as if the Company had been an original party to this Agreement instead of the Developers; and

⁸ relevant where project company has not yet been established on contract signature – ideal situation is to have project company as signatory from outset but this is not always practically possible, especially where there are foreign shareholders etc as they may require permission/ authorization for shareholding etc

- 2.2 The Company shall be a special purpose limited liability company incorporated by the Developers in such jurisdiction as they shall determine under the name [XXX], or a similar name chosen by Developers, the sole purpose of such company being to carry out the Company's Rights and Obligations hereunder and any matters ancillary thereto.

3. Representations and Warranties and Performance of Conditions Precedent

- 3.1 The Government hereby represents and warrants to the Developers that:

- 3.1.1 the Government has full power to enter into and perform this Agreement and its duties and obligations hereunder constitute legally valid and binding obligations of the Government enforceable against the Government in accordance with its terms; and
- 3.1.2 the execution and delivery of, and the acceptance by the Government of its duties and obligations under this Agreement are in accordance with the laws of [] and do not result in a breach of any provision of the Constitution of [].

- 3.2 The Developers hereby represent and warrant to the Government that:

- 3.2.1 the Company shall be duly, validly and lawfully incorporated;
- 3.2.2 each of the Developers has, and the Company, when incorporated, shall have, full power to enter into and perform this Agreement and its duties and obligations hereunder constitute legally valid and binding obligations enforceable against each of such Developers and the Company in accordance with its respective Memorandum and Articles of Association;
- 3.2.3 no action, suit, claim, proceedings, arbitration or investigation is pending, threatened or anticipated against each of the Developers, which may prevent the Developers or each of them from participating in the concession or executing its obligations under this Agreement; and
- 3.2.4 the execution and delivery of, and the acceptance by each of the Developers and by the Company, when incorporated, of its duties and obligations under this Agreement do not result in a breach of any provision of its respective Memorandum and Articles of Association or those of the Company.

- 3.3 This Agreement shall be binding to the Parties hereto as of the Signature Date. However, the Company shall not be obliged to commence the Works unless the Government has satisfied all of the conditions precedent stated in Clause 3.3.2. and the Company has received from the Government within the prescribed time the notice stated in Clause 3.4.2. Likewise, the Government shall not be obligated with regard to any of its obligations hereunder (other than clause 3.3.2 and Clause 12.3 (hereof) and the Government's obligation to maintain confidentiality and exclusivity) until all of the conditions precedent stated in Clause 3.3.1 have been satisfied by the Company and the Government has

received from the Company within the prescribed time the notice stated in Clause 3.4.1.

3.3.1 The following documents have been delivered by the Developers to the Government:-

- (a) A duly issued performance bond obtained by the EPC Contractor, guaranteeing the proper performance of the obligations of the EPC Contractor to design, construct, commission and achieve Substantial Completion of the System in accordance with the agreed Specifications and due compliance with the Performance Tests and Performance Standards. Such Performance Bond shall be in an amount not less than ten percent of the total cost of the System. Text of the Performance Bond shall ensure that such Bond may be called up, upon the default of the EPC Contractor, by the Company or by the successors thereto.⁹
- (b) A duly certified and attested copies of the Certificate of Incorporation and Memorandum and Articles of Association or other constitutional documents of the Company;
- (c) A duly notarised and attested copy of power of attorney of the Company appointing a specific person to execute the Assignment Deed on behalf of the Company and generally to represent the Company in [];
- (d) A duly notarised and attested copy of a resolution of the board of directors of the Company confirming that the Company has become bound by and shall effectively implement all of the obligations of the Developers under this Agreement;
- (e) A duly signed, attested and certified copy of the Assignment Deed;
- (f) Duly executed and attested copies of the EPC Contract and of the O & M Contract;
- (g) Duplicate copies of the Lease Agreement duly signed by the Company;
- (h) [Duplicate copies of the Stormwater Drainage Services Contract duly signed by the Company;]

⁹ often the form of bond is appended to the agreement

- (i) Duly signed and attested copies of the Financing Documents or a letter from the Lenders in the form and substance acceptable to the Government confirming that the Financing Documents have been duly executed and that the funds for the execution of the System have become available to the Company for disbursement; and
- (j) a bond, in the amount of [] (the “Bond”), securing the performance of the Company’s obligations to satisfy the conditions on its part to be satisfied (as described in Clause 3.3.1); provided that it is understood that the terms of such bond shall indicate that it may not be drawn upon if the financing is not obtained as provided in Clause 3.4.1 hereof¹⁰.

3.3.2 The following documents listed below have been duly issued, executed (as applicable) and delivered by the Government to the Company:

- (a) [RELEVANT LEGISLATION, duly enacted and in force;]¹¹
- (b) The Lease Agreement duly executed by the Government and in full force and effect;
- (c) An undertaking from the Government to provide all such Rights and Approvals as may be necessary to allow the Company, the EPC Contractor and the O&M Contractor to carry out all activities in connection with the System in [], and to import construction plant, materials and equipment into [] without imposition of any taxes, duties, import fees or surcharges and without hindrance, and to allow their respective employees and families to enter into and reside in [] in connection with the implementation of this Agreement subject to applicable laws and regulations.

3.3.3 The Parties agree that the EPC Contractor shall commence preliminary design and site construction activities within [] days after (i) the receipt by the Company and delivery of a copy to the Government of a binding commitment of Lenders with respect to the non-recourse financing of the cost of construction of the System, on commercially reasonable terms acceptable to the Company, and (ii) satisfaction of the conditions precedent in Clauses 3.3.1 and 3.3.2.

3.4.1 The Company shall notify the Government as soon as the conditions listed in Clause 3.3.1 above are satisfied. If any of such conditions is not satisfied within [] [months] of the Signature Date, this Agreement shall terminate without any liability whatsoever on the Government under this Agreement and in such event, the Bond provided by the Company pursuant to clause 3.3.1(j) shall become lawfully forfeited to the Government. However, it is understood and hereby specifically agreed

¹⁰ often form of bond is appended to the agreement

¹¹ in case any legislative amendment is required for implementation of project

that the said Bond shall not be forfeited if the Company has been advised that [political risk insurance for debt and equity, on terms acceptable to it and Lenders, cannot be obtained]¹², and the Company notifies the Government promptly, in which case the Company shall have the right to terminate this Agreement without liability, and any bond that may have been provided pursuant to Clause 3.3.1(j) above shall be returned to the Company immediately.

- 3.4.2 The Government shall notify the Company as soon as the conditions listed in Clause 3.3.2 above are satisfied. If any of such conditions is not satisfied within [] [months] of the Signature Date, this Agreement shall terminate without any liability whatsoever on the Company or the Developers under this Agreement, and such event, the Company shall be compensated by the Government for all its past efforts and work in connection with the concession and the System including any preliminary work performed by the EPC Contractor up to a maximum of [].

4. The Concession and Description of the System

(A) The Concession

- 4.1 Subject to the express terms of this Agreement (and in particular clause 4.4 with regard to haulers of Septage prior to the commissioning and operation of the System), the Government hereby grants and conveys to the Company for the Term, the full and exclusive rights to collect, treat and dispose of all Wastewater in the Agreed Concession Area including, inter alia, the full and exclusive rights to:
- 4.1.1 Design, procure, construct, operate, manage, own and maintain the System and all future wastewater systems which may be installed within the Agreed Concession Areas or the Leased Area or within any Additional Leased Areas and to make additions and modifications to such systems.
 - 4.1.2 Finance the design, procurement, construction and maintenance of the System.
 - 4.1.3 Charge the Tariffs set forth in Annex 2 hereto.
 - 4.1.4 Retain for its own benefit all of the Tariffs except for the amounts payable by the Company to the Government hereunder.
 - 4.1.5 Sell within or outside the Agreed Concession Areas Treated Effluent and treated sludge, produced by the System.
 - 4.1.6 Subject to Sub-clause 4.4 below, receive, collect, treat and dispose of Septage and charge Septage Discharge and Disposal Fees as described in Annex 2, Part VII.

¹² there may be other appropriate exceptions to include here

- 4.1.7 Within the Agreed Concession Areas grant approvals in respect of Wastewater Planning Reviews and to charge for such services the Wastewater Planning Review Fee as described in Annex 2, Part VI.
- 4.1.8 Dispose of effluent, sludge and Septage in accordance with the Specification.
- 4.2 It is acknowledged and agreed that the Company will not be obliged to provide any Wastewater treatment or other services in respect of any area outside the Agreed Concession Areas.
- 4.3 [It is acknowledged and agreed that the Company shall be obliged to provide Stormwater drainage services under a separate Stormwater Drainage Services Contract, which shall be agreed upon prior to the Effective Date and added as Annex 11 hereto.]¹³
- 4.4 The Government shall not permit any entity other than the Company to carry out as from the Effective Date and throughout the Term, in the Agreed Concession Areas, any of the activities specified in Clause 4.1 above except in relation to the activities of haulers of Septage prior to the commissioning and operation of the System within the Agreed Concession Areas.

(B) Description of the System

- 4.5 The System shall be a wastewater system comprising a treatment plant, force mains, pumping stations, drainage basin connections and all other such facilities necessary or associated therewith required for the purpose of carrying out the activities specified in Clause 4.1 above and as detailed in Exhibit A.
- 4.6 The System will include the Treatment Plant, a network of gravity sewers to convey sewage to a central location within each drainage basin and a network of sewage pumping stations and force mains to convey the collected sewage to the Treatment Plant. In connection with the Company's carrying out this work, the Government agrees to cause Registered Owners of existing septic tanks and cesspits to abandon them and fill them in with sand or other suitable fill material or to pay the Company for doing so at such time as the Company is ready to connect such Registered Owners to the System.
- 4.7 [Discharge of unused effluent may be by construction of drainage channels or natural watercourses. Disposal of unused effluent may be through a combination of one or more methods including evaporation, percolation, or groundwater recharge. Distribution for reuse shall be through a tanker truck loading station located at the Treatment Plant.]
- 4.8 The Plan attached to Exhibit A to this Agreement indicates the drainage basins and pumping stations to be constructed for the System.

¹³ stormwater services often forms part of the same agreement as the main concession agreement and so this may not be relevant

- 4.9 The Company shall be responsible for the design, procurement and construction of the System in accordance with [internationally recognised design criteria], the Specifications and the Performance Standards, already reviewed and approved by the Independent Consulting Engineer, as attached at Annex [3].
- 4.10 The Company and the Government will mutually agree upon and appoint an Independent Consulting Engineer to review the construction of the System and ensure, on behalf of the Government, its compliance with the Specifications and Performance Standards and perform various other duties expressly allocated to the Independent Consulting Engineer in this Agreement.
- 4.11 The Independent Consulting Engineer shall be entitled and required to monitor the progress and quality of the System and for this purpose the Company shall:
- 4.11.1 Submit to the Government and the Engineer a quarterly report of progress in the construction and development of the System;
- 4.11.2 Ensure that the Engineer, Government and its representatives are afforded reasonable access to the Works site at normal business times provided that such access does not materially interfere with the Works, and that such representatives abide by the site safety rules prescribed and published by the Company, from time to time; and
- 4.11.3 Make available for inspection at the Works site copies of all plans, designs, drawings or other documents relating to the System or any part thereof.
- 4.12 All design documents, engineering documents, drawings and specifications prepared in connection with the System shall remain the property of the Company until the Transfer Date. The Government shall be entitled to receive copies of such documents within [] [days] of the Final Completion Date.
- 4.13 The Company and its employees shall comply with all Applicable Law. Any change in Applicable Law which come into effect after the Signature Date which delays the construction and commissioning of the System and/ or results in additional cost to the Company shall give rise to an extension of time and/ or claim for additional costs. The Company shall give notice thereof to the Independent Engineer in accordance with Clause 17.
5. **Commencement of the Works and Connections**
- 5.1 The Company shall commence the site construction activities within [] [days] after Financial Close.
- 5.2 Subject to the provisions set out below, as of the date that is [] [months] after the Effective Date the Company shall have:
- 5.2.1 completed and commissioned the [Treatment Plant];

- 5.2.2 connected to the System []% of [all Registered Properties agreed by the parties to be in Phase I of the System and identified in [blue]on the map of Agreed Concession Areas included in Exhibit B hereto]; and
- 5.2.3 duly commenced the construction of [the pipelines in Phase II of the System].
- 5.3 Subject to the provisions set out below, on the date that is [] [months] after the Effective Date the Company shall have connected to the System the Registered Properties identified in [red] on the map of Agreed Concession Areas included in Exhibit B and shall use reasonable endeavours to have connected any remaining Registered Properties in the Agreed Concession Areas registered with the Company as of the date that is 6 months prior to such date but which are not identified on the map.
- 5.4 For the purpose of Sub-clauses 5.2 and 5.3 above, completion and commissioning of [the Treatment Plant] and completion of at least []% of Connections to Registered Properties as set out in sub-clause 5.2.2 shall mean that Substantial Completion of [Phase I] has been achieved.
- 5.5 If and to the extent that the design or construction of the System is delayed or prevented by a Force Majeure Event, then the relevant completion dates shall be extended for a period equal to the delay caused by the Force Majeure Event plus any reasonable period of time as necessary and as certified in writing by the Independent Consulting Engineer as being necessary to enable the Company to re-establish normal operations. [In addition, to the extent that such Force Majeure Event results in material increase in costs for the Company, or in damage to the System that needs to be repaired, and such costs are not recovered under Insurances, the Company will be entitled to make an application to the Independent Engineer pursuant to clause [] for a tariff rate adjustment as provided in Clause 4(d) of Annex 6.]¹⁴
- 5.6 If the Company is prevented from performing any of its obligations under this Clause by the required date because of any wrongful or negligent act or omission of the Government or its agents or employees, or any delay on the part of the Government in fulfilling, or any breach or default by the Government of its obligations hereunder, or because of any delay or hindrance in respect of the installation of a Connection due to the act or omission of the relevant Registered Owner or Registered User, or because of any new development within the Phase I Area requiring a substantial number of additional Connections or which disrupts the installation of any of the Connections referred to in sub-clauses 5.2 and 5.3 above, or because any remedial action is needed to prevent influent not complying with the influent Standards from entering the System, then the applicable performance deadline shall be deferred for a reasonable period of time to permit the Company to overcome the effects of the relevant circumstance. The Company shall also be entitled to recover additional costs arising as a result of such actions or inactions (to the extent that these are not recovered under Insurances). In the event that the Company claims that it is entitled to an

¹⁴ Parties may agree to share risk re force majeure events.

extension of time or additional costs under this sub-clause 5.6, it shall give written notice to the Independent Consultant Engineer pursuant to Clause 18.

- 5.7 Subject to the provision of Sub-Clause 5.6 above, upon the failure of the Company to comply with its obligations under Clauses 5.1, 5.2 and 5.3 above, the Company shall pay to the Government Liquidated Damages as set out in Annex 10. In no event shall the Company be liable for any indirect, consequential, incidental, punitive or exemplary damages in respect of any breach of Sub-Clauses 5.1, 5.2 or 5.3 above except to the extent that such exclusion of liability is contrary to any [] law in force at the time of the relevant breach. Subject to any express right the Government may have under this Contract to terminate this Contract or any other express rights pursuant to the Contract, Liquidated Damages shall be the sole remedy of the Government for breach of Clauses 5.1, 5.2 and 5.3 in contract, tort or otherwise.
- 5.8 For the purposes of Clause 5.7, the company implementation plan for the design, procurement and construction of the Phase I and Phase II of the System is set out in Exhibit A, annexed to this Agreement.
- 5.9 Notwithstanding the dates specified in the Implementation Plan referred to in Clause 5.8 above. The Company shall also connect to the System:
- (i) any property within the Agreed Concession Areas but situated more than [] meters away from the nearest LIC, if the owner of the relevant property requests the Company to connect his property to the System and agrees to pay the Extra Connection Fees set out in Annex 2; and
 - (ii) any property outside the Agreed Concession Areas, if the owner of the relevant property requests the Company to connect his property to the System and agrees to pay to the Company the Extra Connection Fees set out in Annex 2.
- 5.10 The Company shall be entitled to use the open cut method of construction but in certain cases where there are public safety or access considerations, the Company may adopt alternative methods of construction in consultation with the Independent Consulting Engineer and the Municipality. The Company shall ensure that roads affected by such construction are properly repaired, at the cost of the Company, and to the satisfaction of the Municipality.
- 5.11 The Company shall send a reasonably sufficient prior notice to the Traffic Department and Municipality of any case that is likely to involve congestion or any other disturbance of normal traffic flow in carrying out the Works so that appropriate measures may be taken, at the cost of the Company, to ensure minimum disturbance to the public.
- 5.12 Not less than 30 days prior to commencing any Works of any drainage basin, the Company shall provide to the Government a short term basin programme indicating the proposed routing of the System and the timing of access to particular roads and private properties which it will require for this purpose.

6. Performance Tests

- 6.1. Following completion of the System, the Company shall give to the Independent Engineer and the Government [7] days' notice of the date on which the Company will carry out the Performance Tests. The Company shall, in the presence of the Independent Consulting Engineer, carry out the Performance Tests to ensure that the System is in compliance with the Performance Standards.
- 6.2. On the date on which the Performance Tests take place, the Independent Engineer will either: -
 - 6.2.1. provided that the System has passed the Performance Tests, issue a Performance Certificate stating the date on which the System has passed the Performance Test; or
 - 6.2.2. if the System has failed the Performance Tests, issue a notice stating that the System has failed the Performance Tests, giving its reasons for believing that the System has not passed the Performance Tests.
- 6.3. If the Engineer issue a notice stating that the System has failed to pass the Performance Tests, the Company shall promptly and in any event within [14] days inform the Independent Engineer of the action it proposes to take to ensure that it does pass them when retested and such failed Performance Tests shall then be promptly repeated under the same terms and conditions. Such failed Performance Tests shall be repeated in accordance with this Clause 6 as many times as is required until the System passes the Performance Tests.
- 6.4. If the Independent Engineer fails either to issue the Performance Certificate or issue a notice of failure on the day of the Performance Tests, and if the System has actually passed the Performance Tests (and the Company can furnish written proof of the same), the Performance Certificate shall be deemed to have been issued on the day of the Performance Tests.
- 6.5. The Government representative shall also be entitled to be present at any of the Performance Tests.

7. Operation and Maintenance of the System

- 7.1. During the Operating Period, the Company shall, at its own cost, be responsible for management and operation in accordance with the Performance Standards of the System.
- 7.2. The Company shall provide at its own cost, regular and efficient maintenance and repair services of the System and the Connections of the Registered Properties connected to the System to ensure that they are in good operating condition and meet the Performance Requirements.
- 7.3. The Company shall, in consultation with the Government, cause the entire System, including all of its Connections, to be subjected to comprehensive Performance Tests during the last 6 months of the Term and shall, at its own cost, carry out an overall detailed maintenance and repair service to ensure that the

entire system is in good operational condition on the Transfer Date (wear and tear excepted) and is successfully satisfying all of the Performance Requirements.

- 7.4. The Company shall establish a registration process as specified in the [Sewer Law] for Registered Owners and shall establish, manage and control an efficient electronic billing and collection system for levying and collecting the Tariffs.

7.5.

- 7.5.1. The Government shall require any newly developed properties to apply to the Company to be registered and connected to the System upon the acceptance by the Company of his or its development plan for Wastewater disposal. Before granting its acceptance to such application, the Company shall conduct a Wastewater Planning Review which shall be a condition precedent to the issuance of any Building Permit in respect of such property and to the commencement of any development thereof. Applicants to become Registered Owners shall be required to pay to the Company a Wastewater Planning Review Fee in accordance with the Tariffs. The Company shall be entitled to require the relevant person to amend the plans for the development if in the opinion of the Company the Wastewater disposal aspects of the development do not comply with the [Sewer Law]. In assessing applications the Company shall be further guided by the capacity of the System and the effects on other Registered Users in addition to the provisions of Clause 5.9 above.

- 7.5.2. The Company will establish detailed procedures in relation to Wastewater Planning Reviews. In determining such procedures, the Company shall consult with the Municipality and obtain its consent in writing to such procedures.

- 7.6. The Government shall make available to the Company and its officers, contractors and suppliers without charge all necessary access rights when required so as to enable the Company to operate, maintain, repair and replace the System or any part thereof and the Government will procure, if necessary, the closure of any roads for the purposes of routine maintenance, repair or replacement PROVIDED that the Company shall provide to the Government a monthly programme of routine maintenance and repairs [] days before the beginning of the month in question describing therein its next month routine maintenance and repair. It is recognised that the Company may require immediate access in emergency situations.

- 7.7. During the Operating Period, the Company shall carry out regular tests in accordance with Good Operating Standards to determine whether:

- 7.7.1. the influent sewage into the System complies with the Influent Standards; and

- 7.7.2. the treated effluent meets the Performance Standards.

The Company and the Engineer shall draw up and agree on a testing schedule. All testing shall be coordinated with the Independent Consulting Engineer, and a

full report of the results shall be provided in a monthly operating report to the Independent Consulting Engineer and the Government.

- 7.8. The Company shall not be treated as being in breach of the Performance Standards or in breach of any environmental law if such breach is the result of influent not being in accordance with the Influent Standards. In such event, the Company will use reasonable efforts in accordance with Good Operating Standards to treat the influent. The Company may in consultation with the Independent Consultant Engineer, carry out preventive maintenance or, wherever deemed necessary, temporarily shut down the Treatment Plant, either partially or completely.
- 7.9. In the event that the treated effluent does not meet the Performance Standards, PROVIDED such failure is not due to the influent exceeding the Influent Standards, the actions or inactions of the Government or a Force Majeure Event, the Company will be liable to pay Liquidated Damages in accordance with Annex 10.
- 7.10. The Company may terminate the service to, claim damages from, or impose such other penalties in enforcement proceedings, prescribed by the Sewer Law on, any Registered User that it reasonably believes discharges sewage into the System that is not in accordance with the Influent Standards. Details of items that will adversely affect Influent Standards must first be made known in writing to all Registered Users. The Company shall promptly notify the Government of any situation where Influent Standards are not satisfied, and the Parties shall meet in consultation with the Independent Consulting Engineer, to develop a plan to identify source of the problem and remedial actions to prevent reoccurrence.
- 7.11. During the Operating Period the Company shall prepare a monthly report containing charts, graphs and data as appropriate to demonstrate: the quality of the influent sewage and treated effluent; treatment plant efficiency; and the status of operations and maintenance activities. A confidential copy of the report shall be provided to the Government.
- 7.12. The Company shall, at its own cost, take out and maintain operating and all risks Insurances as specified in Part II of Annex 5 and such additional insurances as it believes are reasonably required for the adequate operation of the System or safety of the employees of the Company.¹⁵

8. The Tariffs

- 8.1. Each Registered Owner shall pay the Applicable Connection Fee in respect of the Registered Property owned by the Registered Owner and each Registered User shall pay the Applicable Service Charge in respect of the Registered Property occupied by such Registered User in accordance with the provisions of Annexes 2 and 6. [The Government shall incorporate the provisions of Annexes 2 and 6, together with the relevant provisions of Clause 7 and Clause 8, into the Sewer Law.]

¹⁵ Please note- this is a short-form provision – Lenders are likely to want more detailed insurance provisions. For more information go to Insurance Checklist.

- 8.2. [The properties specified in Annex 8 shall be exempted from payment of Applicable Connection Fees and Applicable Service Charges.]
 - 8.3. The Company shall maintain, through the continuing registration process, an up-to-date register of Registered Owners, Registered Users, and Registered Properties. A copy of this register shall be issued to the Government on each anniversary of the Effective Date or any time upon written request.
 - 8.4. The projected Connection date in respect of each Registered Property shall be determined by the Company in consultation with the Municipality and Traffic Department.
 - 8.5. If any instalment of the Connection Fee due prior to Connection is not paid in full by the projected date of Connection, then the Company shall be entitled to (i) refuse to connect the relevant Registered Property to the System, or (ii) connect the Registered Property and commence billing the Registered User(s) for the Service Charges, together with its right to demand prompt payment of the Connection Fees and such other penalties prescribed by the Sewer Law from the Registered Owner.
 - 8.6. Each Registered User will be required to pay a deposit of three months' Applicable Service Charges at the date of Connection of the Registered Property to the System. The deposits paid by Registered Users shall be held in a separate bank account in the name of the Company. All interest accruing on such deposits shall be distributed in equal shares to the Government and the Company. The Company shall be entitled to utilise the whole or a part of the deposit paid by any Registered User in the event of non-payment by such Registered User of any Service Charge. In the event of such utilisation such Registered User shall upon demand by the Company restore the amount of the deposit to the full amount of the three months' Service Charge. The deposit will be refunded to any Registered User less any outstanding charges when and in respect of each Registered Property that ceases to be occupied by such Registered User.
 - 8.7. Wastewater Planning Review Fees shall also be payable in accordance with Annex [].
9. **[Tariff Collection and Remedies Upon Non-Payment]¹⁶**
- 9.1. The Government hereby unconditionally undertakes to the Company to effectively and promptly implement the procedure and arrangements set forth in this Clause 9, so as to promote payment of the Tariffs by the Obligor, and ensure payment for Treated Effluent by the Municipality, to the Company as soon as possible after the date of relevant invoices but not later than the periods stated herein below.

¹⁶ Method of ensuring payment of tariffs will vary from project to project – in some cases it may be appropriate to cut off the customer's water supply, in other circumstances it will be more appropriate for the Company to have redress in the courts against customers.

- 9.2. To ensure the effectiveness of the procedure and arrangements set forth in this Clause 9, the Municipality shall designate and fully authorize a special officer of the Municipality, the "Sewer Tariff Officer", to perform the tasks stated in Sub-Clause 9.6 and 9.7 hereof. In addition the Government shall provide the Company with an official letter from the MU confirming the agreement, of MU throughout the term of this Agreement, to observe and immediately implement any request received from the Municipality for disconnection of the supply of potable water to any defaulting Obligor.
- 9.3. Invoices shall be issued to Obligors [on [] of each month]/ every [] days]. In the event that any Connection Fee, Service Charge or other Tariff (the "Unpaid Tariff") is not paid within [] days of the date of the delivery to the Obligor of the relevant invoice then, the Company shall send a notice (the "First Notice") to the respective Obligor to require such Obligor to pay the Unpaid Tariff together with [] % fine calculated monthly of the Unpaid Tariff within [] days from the date of the First Notice. A copy of the First Notice shall be sent to the Municipality to the attention of the Sewer Tariff Officer.
- 9.4. In the event that the Unpaid Tariff and the fine thereon is not paid within the prescribed [] days period the Sewer Tariff Officer shall send a final notice (the "Final Notice") to the relevant Obligor to warn him or it thereby that his or its supply of potable water will be disconnected in the even of non-payment of the Unpaid Tariff and the fine thereon to the Company within further [] days.
- 9.5. Immediately upon the payment by the respective Obligor of the Unpaid Tariff and the fine thereon, the Company shall promptly send a telefax or other faster electronic message to the Sewer Tariff Officer to confirm the said payment so as to cancel effectiveness of the Final Notice.
- 9.6. If, on the day following the expiry of the Final Notice, no confirmation has been received by the Sewer Tariff Officer regarding the payment of the Unpaid Tariff and the fine thereon, the Sewer Tariff Officer shall, immediately but not later than [] [hours], send an official request to the MU to procure the immediate disconnection of the supply of potable water to the respective Obligor.
- 9.7. The Sewer Tariff Officer shall diligently follow up the effectuating by MU of the disconnection of the potable water supply as requested by the Municipality under Clause 9.5 hereof latest within four days of the date of the said request and shall notify the Company accordingly. The Company shall be notified immediately as to the dates of actual cut-off of potable water supply, as well as reconnection of potable water supply. The Company shall notify the Sewer Tariff Officer promptly upon receipt of Payment in full by an Obligor whose potable water supply has previously been disconnected.
- 9.8. In the event of the non-payment by the Obligor of the Unpaid Tariff within [] days from the date of the disconnection of his or its potable water supply, a civil claim shall be filed by the [Government], on behalf of the Company to obtain a judicial order from [] Civil Court against the respective Obligor to pay the Unpaid Tariff (together with the fine thereon) to the Company plus liquidated damages for deferred payment in the total amount of [] plus prescribed court fees, litigation expenses, re-connection of potable water supply charges and

amounts required for re-establishing any deposit required to be maintained with the Company by such Obligor.

All payments received by the Company from an Obligor (whether as a result of legal proceedings or otherwise) shall be applied as follows:

- Firstly: in payment of the relevant Unpaid Tariff;
- Secondly: in payment of all costs and expenses of the Company (including without limitation legal cost and expenses) incurred by the Company in obtaining such payment;
- Thirdly: in payment of all relevant fines;
- Fourthly: in re-establishing any deposit required to be maintained by such Obligor; [and
- Fifthly: in payment of all costs and expenses of reconnection to the supply of potable water; and
- Sixthly: any surplus amount, in payment to the Government].

9.9 All amounts received by the Company in respect of reconnection charges shall be retained by the Company.

9.10 The Government further undertakes to the Company that if the Audited Accounts in respect of any Financial Year show that the Default Amounts in respect of that Financial Year exceed [] per cent ([]%) of the total Billings for that Financial Year, or the Municipality has failed to pay any amounts due under Clause 11, then the Company may set off the deficit over the said limit of [] percent ([]%) or amounts unpaid by the Municipality against any sum of money payable to the Government under this Agreement, provided, however such set off respecting Default Amounts shall be limited to the amount of Billings from Obligors whose potable water supply has actually not been cut off as of the end of such Financial Year. If the Default Amount in excess of the above mentioned []% of the total Billings or amounts unpaid by the Municipality cannot be promptly set off for any reason whatsoever, the Government shall promptly pay the deficit not being offset to the Company.

10 Rights and Obligations of the Company

10.1 The Company shall:

10.1.1 Subject to the provisions of this Agreement be entitled to carry on all necessary business activities in order to implement and operate the System in a free and unimpeded manner;

10.1.2 have, at all times, the right during the Term hereof to appoint, substitute or remove any of its employees and any contractors in respect of the System;

- 10.1.3 have the right to raise additional capital by way of public or private subscription by debt or otherwise;
 - 10.1.4 be entitled to enter into all necessary contracts and, at its own costs, to purchase and acquire or lease all materials, machinery, equipment and inventory and all replacements thereof required for the System;
 - 10.1.5 be entitled to assign by way of security, for the purpose of financing the implementation of the System only, its rights and benefits under this Agreement subject to prior approval of the Government.
 - 10.1.6 in the event of Clauses 16 or 20 of this Agreement being invoked, participate in a steering committee comprised of the Company, the Lenders and the Government to supervise the operation of the Systems until any termination or arbitral award has become fully effective, as the case may be.
- 10.2 In pursuance of its obligations under this Clause, the Company shall specifically have the right to:
- 10.2.1 Award contracts for design and construction in such manner as the Company shall determine, subject to the prior approval of the Government which approval shall not be unreasonably withheld, and to award the EPC Contract to the EPC Contractor;
 - 10.2.2 Appointment and removal of its own consultants and professional advisors;
 - 10.2.3 Purchase equipment in compliance with the Specifications, as so certified by the Independent Consulting Engineer, to meet the Performance Standards of the Project;
 - 10.2.4 Appoint, organise and direct staff to manage and supervise the construction of the Works of the System;
 - 10.2.5 Enter into contracts for the supply of materials and services; for the System; and
 - 10.2.6 Do all other things necessary or desirable for the construction and operation of the System.
- 10.3 The Company shall ensure that the EPC Contractor has obtained, or that it has itself obtained, as the case may be, the construction insurance and the operating insurances specified in Annex 5 and such policies are properly maintained and that copies of all these insurance policies are promptly and duly delivered to the Government. The insurance proceeds shall be kept in an escrow account pending distribution pursuant to determination by the Independent Consulting Engineer as to the amounts and schedule for disbursement necessary to complete any repairs not already completed by the Company.

10.4 In pursuance of its obligations set out above, the Company shall among other things have the right to:

10.4.1 award the O&M Contract to the O&M Contractor and award other contracts for operation and maintenance in such manner as the Company shall determine, but it is recognised that the Company shall use best efforts to give priority to [] local contractors;

10.4.2 appoint and remove its own consultants and professional advisers;

10.4.3 purchase equipment;

10.4.4 appoint, organise and direct staff to manage and supervise the System;

10.4.5 establish and maintain regular inspection, maintenance and overhaul procedures;

10.4.6 do all other things necessary or desirable for the operation of the System; and

10.4.7 [procure the disconnection of potable water supply to Registered Owners and Registered Users in the event of non-payment of any Connection Fee or Service Charge.]¹⁷

10.5 Title and Ownership of Assets

10.5.1 The Government shall give vacant possession of the Leased Area to the Company as from the Effective Date and hereby warrants to the Company that the Leased Area will be leased¹⁸ by the Company in its name and absolutely free from all liens and encumbrances, and that the Company shall enjoy peaceful and exclusive possession of the Leased Area from the Effective Date to the date of termination of this Agreement, or, in the event of termination due to Government default, until the payments due the Company under Clause 16.3.6 are made. The Government shall take all steps to execute the Lease and such other instruments and take such actions as may be necessary to duly implement the Lease of the Leased Area.

10.5.2 The Government shall also grant to the Company as from the Effective Date until the date of termination thereof the right, without additional concessionary charge, to use land for the pumping stations for the System and any other land necessary for the construction and operation of the System and shall grant all necessary reasonable rights of access by the Company to install and maintain the pipes for the System.

10.5.3 The Government agrees that the Development Rights and the rights of the Company in respect of the System specified herein shall, at all times

Comment [w1]: subject to local legal advice

¹⁷ if permitted under local law

¹⁸ form of title in land transferred to Company will depend on local law – in some cases the public entity may not be permitted to grant a lease but only a license. Lenders will be anxious that title in land transferred to Company is as strong as possible.

prior to the Termination Date hereof, vest and remain in the Company, and the Government hereby expressly waives any rights or claims which it may now or hereafter have or possess by operation of law or otherwise in relation to the same and shall protect, defend, indemnify and hold harmless the Company from and against any claims or actions that may arise in relation to any rights granted to the Company hereunder.

10.6 In the event that the Company fails to meet its obligations under clauses 7.1 or 7.2 above, then the Company shall be liable to the Government for Liquidated Damages for each day it fails to meet its obligations in accordance with Annex 10 for the period during which the breach continues. In no event shall the Company be liable for any indirect, consequential, incidental, punitive or exemplary damages in respect of any breach of Clauses 7.1 or 7.2 above.

10.7 The Company covenants that it shall:

10.7.1 obtain approval of the Government prior to any public announcement of any major contracts to be concluded by the Company, such approval not to be unreasonably withheld;

10.7.2 comply with the provisions of the [[[Labour Law] and use reasonable endeavours to employ [] nationals in various levels of official employment as per [] policies;

10.7.3 be responsible for all employment costs in respect of its employees including salaries, housing (if any) and other employment benefits as per [] Labour Law;

10.7.4 be responsible for the provision of appropriate security for the Treatment Plant;

10.7.5 take appropriate safety measures acceptable to the Government to protect persons and property during the construction, maintenance and operation of the System.

11 Treated Effluent

11.1 The Company shall grant to the Municipality [] I.G. of Treated Effluent daily absolutely free of charge. An additional [] I.G. of Treated Effluent daily will be purchased by the Municipality for []% of the Potable Water Cost as defined in Clause 11.5.1. The Government shall cause the Municipality to buy such additional [] I.G. of Treated Effluent daily and, to the extent provided in this Clause 11, pay for all amounts accepted.

11.2 If the Municipality shall become desirous of buying any additional quantities of Treated Effluent, Company sell such additional quantities at a price per I.G. equal to []% of the Potable Water Cost as defined in Clause 11.5.1 hereof.

11.3 Not later than [six] months prior to the date of commissioning of the Treatment Plant and for each succeeding year thereafter (the "Relevant Year"), the Municipality and the Company shall agree on the quantity of Treated Effluent,

beyond the [] I.G. daily amount specified in 11.1 above, to be sold by the Company and to be purchased by the Municipality during the Relevant Year.

11.4 Delivery of Treated Effluent shall take place at the Treatment Plant.

11.5 11.5.1 The unsubsidised cost of production for potable water shall be that certified by the Director of Finance of the MU for the Relevant Year (the "Potable Water Cost").

11.5.2 Yearly adjustments, if any, will be made to the Excess Effluent Price to take account of changes in the published cost of production referred to in Clause 11.5.1.

11.5.3 Neither the Potable Water Cost nor the price stated in Clause 11.1 and 11.2 above include the costs of delivery of Treated Effluent from the Treatment Plant, which shall be the responsibility of the Municipality.

11.6 Payment for Treated Effluent will be made bi-monthly in arrears on the basis of Treated Effluent sold to the Municipality during the relevant two month's period.

11.7 Without prejudice to the obligation of the Company to sell Treated Effluent to the Municipality in accordance with the provisions set out above, the Company shall also be entitled to sell Treated Effluent to third parties on such terms and conditions as the Company shall determine.

11.8 The Company shall ensure that each of the Independent Engineer and the Government is afforded reasonable access to inspect the System from time to time during normal working hours; provided that such inspections cause no unnecessary or unreasonable disruption to operation and maintenance activities and that established safety procedures are followed.

11.9 Subject to this Clause 11, the Company shall have the right to sell Treated Effluent and sludge to customers, other than the Government, within or outside the Concession Area at such price and in such manner as it shall determine.

12. Indemnities/ Limitation of Liability

12.1 The Company shall be fully responsible for and liable in respect of, and shall indemnify, defend and hold harmless the Government, its officers, employees and agents from and against all liabilities, damages, losses, claims, demands, suits, costs, expenses (including reasonable attorney's fees and expenses) and all proceedings of any nature, whatsoever, for bodily injury (including death) or property damage resulting directly or indirectly from any negligence, default, wilful misconduct or omission by the Company or any of its employees;

12.2 The Government shall be fully responsible for and liable in respect of, and shall indemnify, defend and hold harmless the Company, its officers, employees and agents from and against all liabilities, damages, losses, claims, demands, suits, costs, expenses (including reasonable attorney's fees and expenses) and all proceedings of any nature, whatsoever, for bodily injury (including death) or

property damage resulting directly or indirectly from any negligence, default, wilful misconduct or omission by the Government or any of its employees;

- 12.3 If the Company disposes of effluent in ponds designated and approved in writing by the Government for such disposal and if the Company disposes of sludge in Landfills designated by the Government for such disposal, the Company shall not incur any liability in carrying out such disposals in such designated ponds or landfills, such liabilities to the extent not covered by adjustments to the Tariffs or by insurance, shall be the responsibility of the Government.
- 12.4 The Company shall not be responsible for the state or condition of Septage disposal areas already existing within the Agreed Concession Areas at the Signature Date. All Liabilities associated therewith, and proceedings of any nature whatsoever for bodily injury or property damage pertaining to the condition of such Septage disposal areas shall, to the extent not covered by Insurance, be the responsibility of the Government.
- 12.5 The Company shall in no event be liable to the Government, by way of indemnity or by reason of any breach of the Contract or in tort or otherwise, for of profit or loss of any contract or for any indirect special or consequential loss or damage which may be suffered by the Government in connection with the Contract.

13. Government Rights and Obligations

13.1 The Government shall have the following Rights:

- 13.1.1 The right to receive a copy of the Assignment Deed duly executed between the Developers and the Company and thereupon to hold the Company fully liable for all of the obligations of the Developers hereunder as if the Company had been an original Party to this Agreement instead of the Developers.
- 13.1.2 The right to be treated as a beneficiary of the Performance Bond referred to in Clause 3.3.1 (a) which is to be provided by the EPC Contractor under the EPC Contract.
- 13.1.3 The right to require the Company and the EPC Contractor, jointly and severally, to ensure that the design, construction, commissioning and maintenance of the Works of the System shall be in strict conformity with the agreed Specifications and Performance Standards.
- 13.1.4 The right to be paid the annual rent stated in the Lease Agreement, subject to adjustment in accordance with this Agreement.
- 13.1.5 [The right to require the Company to execute the Stormwater Drainage Service Contract subject to the terms and conditions of such Contract.]
- 13.1.6 The right to receive from the Company duly signed and attested copies of all Financing Documents between the Company and the Lenders and other relevant documents as may be necessary for confirming that

the funds necessary for the construction and successful commissioning of the System have become available for disbursement.

- 13.1.7 The right to approve any award by the Company of contracts for the design and construction of any Works, to the extent required by and in accordance with Clause 10.2.1.
- 13.1.8 The right to participate in and approve in advance the appointment of the Independent Consultant Engineer.
- 13.1.9 The right to monitor the progress and quality of the System and, in this connection, to require the Company to submit a detailed quarterly report of its progress in the construction of the System.
- 13.1.10 The right to have reasonable access to the Works performed by the Company and its contractors and to receive copies of all plans and designs in relation to the System in the manner described in Clause 4.11.2 hereof.
- 13.1.11 The right to require the Company to procure and maintain the all Insurance specified in Part I of Annex 5 and to deliver to the Government copies of all relevant insurance certificates thus procured and maintained.
- 13.1.12 The right to require the Company to ensure that all roads affected by the construction of the Works of the System are properly repaired at the cost of the Company and to the satisfaction of the Municipality.
- 13.1.13 The right to require the Company to give sufficient prior advice to the Traffic Department and the Municipality of any Works that are likely to involve congestion or disturbance of normal Traffic flow, save only in events of emergency for maintenance purposes.
- 13.1.14 The right to receive copies of all design, drawings, specifications, maintenance and other engineering documents in connection of the System within [60] days after the completion of the construction of the System.
- 13.1.15 The right to require the Company to promptly complete and deliver the works of the System in accordance with the dates stated in [Annex 12] or Clause 5 save only in the case of occurrence of a Force Majeure event or in the other cases expressly provided for in this Agreement or otherwise, when any delay is agreed to by the Government in writing.
- 13.1.16 The right to require the Company to ensure, at its own cost, that the System will be adequately maintained throughout the Concession Term through a programme of routine maintenance and repair and that on the Transfer Date the System and all plants and machines thereof shall be and remain in good operating condition and successfully satisfying the Performance Standards

- 13.1.17 The right to require the Company to obtain the consent of the Municipality to any Wastewater Planning Reviews proposed by the Company under Clause 7.5.1.
- 13.1.18 The right to be present, through its own experts, during the conduct of any Performance Tests.
- 13.1.19 The right to require the Company to publish and make known to Registered Users all details of Influent Standards before requiring such Registered Users to comply with such standards.
- 13.1.20 The right to terminate this Agreement upon the occurrence of the event described in Clause 16.1.
- 13.1.21 The right to receive, half of the interest accruing on the deposits in the bank account referred to in Clause 8.6 hereof.
- 13.1.22 The right to be granted by the Company [] I.G. daily of Treated Effluent without charge, and to buy from the Company such additional quantities of such Treated Effluent at the concessionary rates stated in Clauses 11.1 and 11.2 hereof.
- 13.1.23 The right to be indemnified and held harmless against all liabilities and damages resulting from any negligence or default by the Company or by any of its employees, contractors or agents.
- 13.1.24 The right to require the Company and its employees and agents to fully comply with [] laws of general application except for those expressly excepted under this Agreement, and to use reasonable endeavours to employ and train [] nationals on the operation of the System in accordance with [] declared policies applicable to employees of foreign companies.
- 13.1.25 The right to give priority to [] local contractors whenever such priority would not [materially] prejudice the interest of the Company or the quality of the Works of the System.

13.2 Government Obligations

The Government covenants that it shall:

- 13.2.1 enact and maintain in force the [RELEVANT LEGISLATION] for the duration of this Agreement and shall not make any amendment thereto except as mutually agreed by the parties hereto;
- 13.2.2 ensure that the Municipality shall carry out in timely and efficient manner its obligations and duties under the [RELEVANT LEGISLATION] and shall enforce the [RELEVANT LEGISLATION] and in particular procure that the [Municipality] shall enforce the Influent Standards;

- 13.2.3 assist the Company in taking all necessary actions as may be required to permit the Company to exercise its rights and powers under the [RELEVANT LEGISLATION] and this Agreement;
- 13.2.4 obtain or take official approvals or steps which may in the future be required to enable the System to be duly and effectively implemented and generally make available to the Company all facilities to enable it to carry out its obligations and fully enjoy all its rights under this Agreement;
- 13.2.5 during the term hereof, assist the Company in its applications for the procurement of Development Rights and Approvals, and all other rights necessary or useful for the performance of the Company's obligations hereunder as it relates to this Agreement and the execution of the Development Rights, and actively assist the Company in expediting the procurement of such Rights and Approvals in a timely manner, provided that the Company shall remain responsible for the payment of all applicable charges in respect of applications for Development Rights and Approvals;
- 13.2.6 use its best efforts to obtain and provide to the Company such information and data as may be reasonably required by the Company for planning and executing the System;
- 13.2.7 do all things reasonably requested by the Company in order to assist the Company in the collection of the Tariffs [including ensuring that the procedures described in Clause 9 are adhered to];
- 13.2.8 ensure that no business income or corporation taxes, or other taxes of any kind are levied on the Company, the EPC Contractor or the O&M Contractor or their shareholders and that no customs duties, taxes or fees of any kind are levied in respect of any plant, equipment or material imported into [] for the purposes of the System;
- 13.2.9 ensure the convertibility into US dollars of, and the ability to export, all revenues received by the Company, the EPC Contractor and the O&M Contractor in connection with the System;
- 13.2.10 provide the Company with all necessary and reasonable rights of access in connection with the construction of the System, subject to reasonable prior written advice;
- 13.2.11 provide to the Company the following information, if in the possession of the Government and when requested by the Company in writing:
- (a) Access to property ownership and land grant certificates, building permit files and any other relevant information available with the Municipality.

- (b) A listing in written form of the name of each property owner, plot Number, location, and other pertinent information with respect to properties in [].
 - (c) Notices of changes in property ownership.
 - (d) Notices of requests for building permits submitted after the Effective Date, prior to their granting by the Municipality.
 - (e) Copies of maps which show plot numbers and information required for the Company to maintain updated plot maps.
 - (f) Copies of available maps, in electronic and/or paper form, which are useful to the Company in planning, designing and building the System and charging Tariffs.
 - (g) Copies of maps and other information regarding the location of utilities, and copies of, or Access to any, other databases as may be maintained by existing utilities with regard to their customers.
 - (h) access to all available information in respect of vacant land and the certification thereof.
- 13.2.12 provide electricity and water to the Company in quantities required by the Company at MU rates which shall not be higher than rates payable by other businesses in [].
- 13.2.13 provide without charge to the Company landfills for sludge disposal as required by the Company, at a distance within [5 km] of the Leased Land.
- 13.2.14 maintain and protect the rights of the Company to procure disconnection of potable water supply in the event of non-payment of Tariffs.
- 13.2.15 not revoke or amend the MU Letter to the Government or the other substitute document referred to in article thereof or interfere with the rights of the Company under such MU Letter or other document.
- 13.2.16 not interfere in the day-to- day business or activities of the Company except as otherwise expressly provided in this Agreement.
- 13.2.17 not expropriate or in any other way purport to levy, take or declare forfeiture or relinquishment of any of the movable assets, or underlying operating business assets, of the Company or the System;
- 13.2.18 not impose any fines or penalties upon the Company except in accordance with the provisions of this Agreement or under the laws and regulations generally applied [];

- 13.2.19 not during the validity of this Agreement carry on any activity or permit any other person or entity to carry on any activity in [] which directly competes with the Development Rights of the Company;
 - 13.2.20 not impose any restrictions on the ownership of shares in the Company or the management of the Company; except in accordance with the State Policies or laws generally applicable in [].
 - 13.2.21 not impose any taxes in respect of any payment by the Company of dividends, interest or any other kind of payment by the Company to its shareholders.
 - 13.2.22 not take actions which may impede the Company in carrying out the Works and operating the System.
 - 13.2.23 not impose or collect, for its own account, any tariffs, fees or other charges on or from the Company or any of its customers in respect of the services provided by the Company hereunder.
 - 13.2.24 The Government shall make available to the Company and its officers, contractors and suppliers all necessary rights of access when required so as to enable the Company to construct the System and operate and maintain it, subject to reasonably sufficient prior notice, the Government will procure, if necessary, the closure of any roads so as to enable the Company to construct and carry out the Works of the System.
- 13.3 Right to Create Liens and Security Interests
- 13.3.1 In the event that the Company seeks to finance the System with funds from banks or other financial institutions and obtain insurance coverage from insurers, the Government shall assist and cooperate with the Company in doing so by providing such information, as are normally and reasonably requested by any such entities in connection with the financing of businesses similar to the System.
 - 13.3.2 The parties acknowledge that it is essential to the success of the Concession that the Company is able to attract Lenders, and the Government accordingly hereby agrees to assist the Company in effecting security interests in and to any assets belonging to the Company.
 - 13.3.3 The parties acknowledge and agree that the Company may also be required to put in place security provisions with the Lenders, including assignment of the its rights under this Agreement, for the Lenders to take a direct interest in the System in the event of default by the Company of its obligations to the Lenders, and/or replace the Company with another suitable organisation acceptable to the Government, and that the Government and the Lenders will enter into the Direct Agreement for this purpose.

14 Rental Payments

- 14.1 As from the Effective Date until the Transfer Date the Company shall pay to the Government a rental in respect of the Leased Area of in the amount agreed upon mutually and stated in the Lease Agreement.
- 14.2 Rental payments accruing in respect of each Financial Year shall be paid by the Company to the Government on the dates specified in the Lease Agreement.
- 14.3 Except as stated above, and save for any rentals payable for any Additional Leased Areas, no charges shall be levied against the Company by the Government in respect of the Leased Area.

15. Transfer of the System Upon Expiry of the Term

- 15.1 One year prior to the end of the Term, the parties shall commence negotiations in good faith with a view to agreeing within the following six months the process of transferring the business and assets of the Company to the Government on the Transfer Date absolutely without pending liability and at no cost. Such negotiations shall include the possibility of a continuation of the role of the Company in operating and maintaining the System on mutually acceptable terms.
- 15.2 Under all events and whether or not such agreement is reached by the date which is six months before the Transfer Date, on the Transfer Date the Company shall transfer to the Government free from any lien, encumbrance or liability whatsoever and free from any debts and without the payment of any compensation to the Company:
 - (a) All of the Company's rights, title and interest in and to the System; and
 - (b) All fixtures, fittings, plant and equipment relating to the System.
- 15.3 The Company shall ensure in any event that the System is in good working condition on the Transfer Date normal wear and tear excepted, having regard to the age of the System. It is noted that the System is to be maintained by the Company up to the Transfer Date in accordance with periodic maintenance requirements that will be subject to the Independent Consulting Engineer's review and approval.
- 15.4 Upon the Termination hereof on six months period to the Transfer Date, whichever occurs first the Company shall provide to the Government complete set of "as built" drawings in relation to the System and such operating manuals and information as will enable the Government to take over the operation of the System.

16. Termination of the Agreement

- 16.1 The Government shall be entitled to terminate this Agreement by giving [60] days prior written notice to the Company if any of the following events occurs (unless such event occurs as a result of a breach by the Government of its obligations under this Agreement or by reason of an event of Force Majeure

applicable to the Company, or unless such event is cured, or the Company has commenced and is diligently pursuing such cure, prior to the expiration of such [60] day period.):

- 16.1.1 the dissolution, pursuant to law, of the Company, except for the purpose of a merger or reorganisation [which has been approved by the Government and the Lenders (such approval not to be unreasonably withheld or delayed)] which, in the opinion of the Government would adversely affect the ability of the resulting entity to perform its obligations under this Agreement.
- 16.1.2 if Substantial Completion of the System has not occurred within [] days after the date specified in Clause 5.2.[/ Annex 12] of this Agreement, or the Company has not satisfied the requirements of Clause 5.3 hereof within [60] days after the date specified therein; provided that the foregoing shall not entitle the Government to terminate if the Company has commenced and is diligently pursuing the cure of the default undertaken within such [] days.
- 16.1.3 due to the fault of the Company, after Substantial Completion of the Treatment Plant, the System is in material breach of the Performance Standards and the Company has failed to remedy such breach within [days] of commencement of the breach¹⁹.
- 16.1.4 the Company fails to make payment of any sum due from it to the Government or to the Municipality which exceeds [CURRENCY AND AMOUNT] within [] days from the due date.
- 16.1.5 the Company is in breach of Clauses 7.1 or 7.2 and the Company has failed to remedy such breach within 90 days.
- 16.1.6 the Company is in breach of any other material obligation under this Agreement and the Company has failed to remedy such breach within [days] of commencement of the breach.
- 16.2 The Company shall be entitled to terminate this Agreement by giving [] days prior written notice to the Government if any of the following events occur (unless such event occurs as a result of a breach by the Company of its obligations under this Agreement or by reason of an event of Force Majeure applicable to the Government unless such event is cured prior to the expiration of such [] day period) if:
 - 16.2.1 the Government fails to make payment of any sum due from the Government to the Company under Clause 9 above within [] days of the due date.
 - 16.2.2 the Government is in breach of any other material obligations under this Agreement.

¹⁹ It may be appropriate to require notice of breach to be sent to the Company and for it to be given a period within which to remedy a breach before the right of termination can be exercised.

- 16.2.3 An event of Force Majeure which materially affects the ability of the Company to finance, design, construct, operate or maintain the System or to collect one-third or more of expected Tariffs continues for a period of more than [90] days.
- 16.3 In the event either the Company or the Government delivers a written notice of termination as provided above, the following provisions will apply:
- 16.3.1 The overall supervision of the day-to-day operation of the System shall be entrusted to an ad hoc steering committee (the "Steering Committee") to be composed by equal representatives from the Lenders, the Government and the Company. The Chairman of the Steering Committee shall be one of the representatives of the Lenders. The purpose of the Steering Committee is to ensure that the System continues to be operated in a manner consistent with the terms of this Concession Agreement.
- 16.3.2 The Steering Committee shall perform its above mentioned function until the termination becomes effective by mutual agreement of the Parties or until when any arbitration award issued under Clause 20 hereof has been properly enforced and executed or until when the New Company referred to in Clause 16.3.3 has actually agreed to take over all of the rights and assume all of the obligations of the Developers or of the Company, as the case may be, under this Agreement with the consent of the Government.
- 16.3.3 If it has become certain that the Company shall abandon the System whether by its own accord, or pursuant to a mutual agreement with the Government (with the consent of the Lenders) or pursuant to a final arbitration award, then the Lenders shall have the right to coordinate with the Company to transfer all of the rights and obligations of the Company hereunder to a new Company (the New Company) to be formed by the Lenders and the Company for the sole purpose of continuing the operation of the System and Concession hereunder and under the requirements of the Financial Documents. It is recognized that, immediately upon the consent of the Government to the taking over of the operation of the System by the New Company, which consent shall not be unreasonably withheld, the Steering Committee shall hand over the System to the New Company and thereupon will cease its supervision of the System under Clause 16.3.1 above.
- 16.3.3 No such purported termination shall be effective if it is then the subject of dispute resolution procedures pursuant to the terms of Clause 20 hereof.
- 16.3.4 In the event the Government intends to abandon the System, or in the event that the Government intends to continue operating the System after any such termination but the Company has not received the payment described in Clause 16.3.6 within [] days after the delivery by it of a Termination Notice, the Company shall be entitled to remove

such components of the System as it desires within a period of [12] months following the date of such termination notice, and the Lease Agreement term shall be automatically extended for such purpose.

16.3.5 Whether or not the Government intends to continue operating the System after any termination pursuant to this Clause 16, it must pay, or cause a replacement operator to pay, to the Company an amount equal to the greater of (i) the Fair Market Value of the System determined as set forth below and (ii) the sum of (A) the principal amount outstanding of any debt incurred by the Company associated with the System and (B) unless the termination is pursuant to Clause 16.1, the amount of any equity contributed to the Company by its shareholders, and expected profits and return on equity for the [] year period following such termination. For purposes of the foregoing, Fair Market Value shall be determined by an internationally recognized appraisal firm, assuming an arms length transaction between an informed and willing buyer under no compulsion to buy, and an informed and willing seller under no compulsion to sell, and assuming no encumbrances and debt associated with the System will remain in place, and based upon the then-current condition of the System.

16.3.6 Subject to the provisions of this Clause 16.3, the Company shall cooperate with the Government, the Lenders, and any replacement operator in connection with any such termination where the Government desires to continue System operations.

16.4 The parties' termination remedies provided herein shall not be exclusive; both parties shall be entitled to specific performance and/or money damages in the event of any material breach hereof by the other party, or Liquidated Damages, as the case may be.

17. Force Majeure

17.1 Subject to Clause 17.2 and 17.3 below, the performance under this Agreement by the Government or the Company shall be excused if such performance is materially delayed or prevented by a Force Majeure Event; provided, however, that the Party claiming relief under this clause shall be required to use all reasonable diligence to seek to avoid the effect of such Force Majeure Event and resume performance of the Agreement within a reasonable time after the Force Majeure Event is removed.

17.2 If the Company's operations are materially delayed or prevented by a Force Majeure Event, the time for carrying out the obligations affected thereby, the duration of the relevant period of operations, the Term and all rights and obligations hereunder that are affected by the Event of Force Majeure shall be extended for a period equal to the delay caused by the Force Majeure Event, plus such reasonable period of time as is certified by the Independent Consulting Engineer as necessary to enable the Company to re-establish normal operations.

17.3 The Government may not claim an Act of State as an event of Force Majeure where such events occurs as a result of any breach of representation, warranty,

condition precedent or covenant by it, or any action taken by the Government or by any entity or agency operating under the authority, auspices or direction of the Government, unless such action is an Act of State taken in consequence of a national emergency or arising from a condition of Force Majeure other than an Act of State.

- 17.4 In an event of Force Majeure which materially affects the ability of any party hereof to perform its obligations or receive the benefit of its rights hereunder continues for a period of more than [90] days, then such party thereafter by [60] days notice in writing to the other Party may forthwith terminate this Agreement, in which circumstances the provisions of Clause 16.3 shall apply. Such right of termination shall be exercisable while such event of Force Majeure continues and shall be without prejudice to the obligations and rights of the parties under this Agreement.
- 17.5 The Party (the “Affected Party”) prevented/ hindered from carrying out its obligations hereunder shall give notice to the other Party of an Event of Force Majeure upon it being foreseen by, or becoming known to, the Affected Party.
- 17.6 If the Company wishes to claim an extension of time or additional costs as a result of the Force Majeure Event, it will notify the Independent Engineer in accordance with Clause 18.
- 17.7 The Affected Party shall keep the other Party informed of any further information in relation to an Event of Force Majeure.
- 17.8 Upon an Event of Force Majeure ceasing or upon termination of the effect of an Event of Force Majeure on the performance by the Affected Party of its obligations under this Agreement, the Affected Party shall give notice to the other Party of such fact in writing and the Affected Party shall resume performance of the obligations prevented by the Event of Force Majeure within a reasonable time.

18. Procedure for Claims for Additional Costs, Extensions of Time

- 18.1 If the Company considers that it should be entitled to an extension of time or additional costs due to:
- (a) a Force Majeure Event pursuant to Clause 17,
 - (b) actions or inactions of the Government pursuant to Clause 5.6,
 - (c) a change in Applicable Law after the Signature Date,
- then it shall send a written notice to the Independent Engineer within [] days following (i) the occurrence of the event giving rise to the claim and/ or (ii) in the case of additional costs which are not recovered under Insurances, within [30] days of receiving notification from the insurer of this lack of recovery).
- 18.2 This written notice shall set out the facts giving rise to the claim, shall make available to the Independent Engineer contemporaneous records relating to the

claim and in addition shall include a detailed estimate of the claimed delay on the applicable performance deadline and/ or additional costs involved.

- 18.3 The Independent Consultant Engineer shall, acting reasonably, determine within [] days of receipt of such notice whether to approve or reject the Company's claim for extension of time/ claim for additional costs and shall notify the Government and the Company accordingly, providing reasons for his determination.
- 18.4 In the event that the Independent Engineer determines that the Company is entitled to additional costs due to a Force Majeure Event, or change in Applicable Law, then such additional costs shall be recovered by the Company through a Tariff Increase. If such additional costs are resulting from the actions or inactions of the Government pursuant to Clause 5.6 then an amount equal to the additional costs shall be deducted from the remaining portion of the Lease Payment for that year.
- 18.5 A Party disputing such decision may refer it to arbitration in accordance with Clause 20.

19. Variations

- 19.1 Variations may be initiated by the Government at any time after the Effective Date and before the last day of the Term, either by instruction or by a request for the Company to submit a proposal. If the Government requests the Company to submit a proposal and subsequently elects not to proceed with the change, the Company shall be reimbursed by the Government for the cost incurred, including design services. The Government shall not be entitled to request a Variation which would reduce the scope of the System.
- 19.2 The Company shall not make any alteration and/or modification of the System, unless and until the Government has instructed and the Independent Engineer has approved a Variation.
- 19.3 If the Government requests a proposal or instructs a Variation, the Company shall submit to the Independent Engineer, as soon as practicable:
- 19.3.1 a description of the proposed design, work and/or services to be performed and a programme for its execution
 - 19.3.2 the Company's proposal for any necessary modifications to the programme according to Clause 19.5; and
 - 19.3.3 the Company's proposal for adjustment to the Tariff, Time for Completion and/or modifications to the Contract.
- 19.4 The Independent Engineer shall, as soon as practicable after receipt of such proposals, respond with its approval, rejection or comments on the Variation and the adjustments to the Tariffs, Time for Completion and Expiry Date, modifications to the Contract and who is to obtain any necessary Permits and the relevant Party shall obtain such Permits. Adjustment of the Tariffs shall include

profit and cost of financing. The Government shall then confirm in writing to the Independent Engineer and the Company whether it wishes to proceed with the Variation.

- 19.5 The Company shall have the right to ask the Independent Engineer to refuse a Variation requested by the Government if:

19.5.1 the Company reasonably considers that the Variation, if implemented, would have a material adverse effect on the Company's ability to perform its obligations under or in connection with this Contract;

19.5.2 the Variation would cause the Company to breach any Permits; or

19.5.3 the Variation would, if implemented, materially adversely affect the health and safety of any person or give rise to a breach of any Applicable Law.

- 19.6 If a Party disagrees with the decision of the Engineer hereunder, it may proceed to arbitration in accordance with Clause 20.

20. Arbitration and Waiver of Immunity

20.1 The parties will first use all reasonable endeavours to find an amicable and timely solution to any dispute or difference between them arising out of or in connection with this Agreement. Failing such solution, any dispute or difference between the parties relating to the rights or obligations of the parties under this Agreement, including any questions relating to its existence, validity or termination, shall solely be referred to and finally and conclusively resolved by arbitration.

20.2 The arbitration tribunal shall consist of three arbitrators, one appointed by each party and the third to be appointed by agreement between the parties, or failing agreement between the parties within 30 days after a request for a reference is made by any party, appointed by [] upon the application of any party.

20.3 The venue of arbitration shall be in [] and the language of the arbitration shall be English. All procedure of the arbitration shall be governed by UNCITRAL Rules of Arbitration.

20.4 The parties agree that, in any arbitration proceedings under this Agreement or in connection with any dispute concerning the legality, validity or enforceability of this Agreement or the rights and obligations of the parties under this Agreement, this Agreement shall be governed by the laws of [].²⁰

20.5 The Government confirms for the purposes of governing its relationship with the Company under this Agreement that it shall not be entitled to rely on any immunity or state privilege. Accordingly, for the purposes of this Agreement, the Government unconditionally and irrevocably agrees and undertakes not to claim in any jurisdiction, for itself or in respect of its assets, immunity from suit,

²⁰ would normally expect to see governing law clause separate from the arbitration provision

execution, attachment or other legal process and waives such immunity, whether or not claimed, for the duration of this Agreement.

20.6 The Government and the Company each unconditionally and irrevocably:

20.6.1 agrees that an award by the duly appointed arbitrators in any arbitral proceedings pursuant to the provisions of this Clause shall be conclusive and binding upon it and may be enforced in any court of competent jurisdiction; and

20.6.2 Subject to the provisions of Clause 20.5 hereof, consents generally to the giving of any relief or the issue of any process in connection with the enforcement of any arbitral award including, without limitation, enforcement or execution against any property of any nature, irrespective of its use or intended use.

21. Advisory Board

21.1 ²¹An Advisory Board shall be established comprising four members, two appointed by the Company and two appointed by the Government, of which one shall be an official of the Municipality. The Chairman and Members shall be remunerated for participation on the Board of the rates mutually agreed upon by the Parties.

21.2 Each party shall give written notice to the other party of its representatives on the Board and each party shall be entitled at any time by notice to the other party to replace either or both of its representatives on the Board.

21.3 The initial chairman of the Board shall be one of the representatives on the Board chosen by agreement of all the representatives. The chairmanship shall rotate annually amongst the representatives of the Board as agreed by them.

21.4 The Board shall meet at least once every two months or on the request of either party.

21.5 The Board shall act as an advisory body to review the activities of the Company, to consider generally ways in which wastewater can be collected and treated throughout LOCATION] in the most efficient manner and particularly:

21.5.1 To consider and advise in respect of any problem or significant dispute that may arise in relation to the implementation of this Agreement and the [RELEVANT LEGISLATION].

21.5.2 To notify the Parties regarding access requirements for the purposes of planned maintenance, repair, refurbishment and replacement.

21.5.3 To review the monthly reports prepared by the Company on the operation and maintenance activities.

²¹what is the link between Advisory Board function and arbitration process set out in clause 20?

- 21.5.4 To review the monthly reports prepared by the Company on the performance standards achieved in respect of influent and effluent in comparison to the Performance Standards.
- 21.5.5 To discuss any desired changes in the Registered Properties and Registered Users.
- 21.5.6 To discuss any matters related to Tariffs and to customer response to the Company.
- 21.6 The parties acknowledge that the Board is an advisory body only and shall have no right to compel either party to take any action. The provision of this Clause shall not affect the provisions of Clause 19 in respect of arbitration.

22 Miscellaneous

22.1 Notices

All announcements, notices and other formal communications required to be given under this Agreement shall be considered as properly given only if written in English or Arabic and delivered to the addresses respectively shown below:

For the Government: []

For the Independent Engineer []

For the Company: []
Telefax No.

Delivery may be effected by personal delivery, by facsimile transmission confirmed by registered mail, or by registered mail, in which case receipt shall be deemed effective only upon actual receipt. Either party may change its address by notifying the other party hereof in writing at least 14 days before the effective date of such change.

The parties further hereby appoint the following as their respective agents for service of all legal proceedings:

For the Government ()

For the Independent Engineer ()

For the Company ()

22.2 Confidentiality

Provided either party may change their respective appointee at any time hereafter by notice in writing to the other party.

- 22.2.1 All documents, information and data pertaining to the Company or any of the Development Rights shall be treated by the Government as confidential and shall not be released or disclosed to any third party without the prior written consent of the Company, other than as may be required by law or order of any competent court. If the Government releases any such information or data to a third party with such consent, it shall require from such third party a written agreement that the information or data will be used only for the purposes of this Agreement and that the confidentiality of any information released in this manner shall be maintained.
- 22.2.2 All documents, information and data pertaining to the Government shall be treated by the Company as confidential, and shall not be released or disclosed to any third party without the prior written consent of the Government other than as may be required by law or order of any competent court, or other than to the Company's professional advisers, or to any lenders or investors or their professional advisors, or in such other cases contemplated by this Agreement. If the Company releases any such information or data to a third party with such consent, it shall require from such third party a written agreement that the information or data will be used only for the purposes of the Agreement and that the confidentiality of any information released in this manner shall be maintained.
- 22.2.3 This Sub-clause 22.2 does not apply to confidential information which: (i) at the date of disclosure by and on behalf of one party to the other party or that other party's professional advisers is in the public domain, or (ii) after such disclosure, enters the public domain through no fault of that party or its professional advisers, or (iii) was lawfully in the possession of that party or its professional advisers at the date of hereof as evidenced by the written records of that party or its professional advisers, and which was not acquired directly or indirectly from such first party.
- 22.2.4 The foregoing acknowledgements and undertakings are essential for the protection of each party's legitimate interests.
- 22.2.5 This Sub-clause 22.2 shall survive any termination of this Agreement.

22.3 Anti-bribery

The Company and the Government declare that neither party nor its directors, employees, or agents has paid nor has it undertaken to pay and that it shall in the future not pay any unlawful commission, bribe, pay-offs, kick-backs and that it has not in any other way or manner paid any sums, whether in [] or foreign currency and whether in [] or abroad, or in any other manner given or offered to give any gifts or presents in [] or abroad to any person or company to procure this Agreement and the Company and the Government undertake not to engage in any of the said or similar acts during the Term of the Agreement.

22.4 Co-operation

The parties will use all reasonable endeavours to promote a spirit of co-operation and goodwill in their mutual dealings recognising the importance of maintaining communications between them during the implementation of the Development Rights.

22.5 Employment Procedures

The Company and employees thereof shall observe and respect the [applicable employment procedures] The Company shall in co-operation with the Government mutually agree on a program for training [] nationals at all levels of the Company.

22.6 Binding Nature

This Agreement shall be for the benefit of and be binding upon the parties, and their respective successors and permitted assigns. This Agreement may not be assigned by either party without the consent of the other; provided however, that the Company may assign its rights hereunder as security for its obligations to the Lenders.

22.7 Further Assurance

Each party agrees to execute, acknowledge, deliver, file record and publish such further contracts, certificates, amendments to certificates, instruments and documents, and do all such other acts and things as may be required by law, or as may be required to carry out the intent and purposes of this Agreement.

22.8 Heading and References

The clause headings are for convenience only and do not form part of this Agreement and references to Clause and Annexes shall be deemed to be references to clauses and annexes of this Agreement unless the context expressly provides otherwise.

22.9 Entire Agreement

This Agreement and any other Project Documents to which both Parties are a party constitute the entire agreement of the parties relating to the subject matter hereof. There are no promises, terms, conditions, obligations, or warranties other than those contained in this Agreement and any other Project Documents to which both Parties are a party. This Agreement and any other Project Documents to which both Parties are a party supersede all prior communications, representations, or agreements, verbal or written, among the parties relating to the subject matter hereof.

23 Annexes

The following Exhibits and Annexes attached hereto shall form an integral part of this Agreement and for the avoidance of doubt, each such Exhibit and Annex shall, for the purposes of interpretation and enforcement of this Agreement, have the same force and effect as the body of this Agreement, including, without limitation, the definitions, representations and warranties, conditions precedent and the rights and obligations of the parties.

Exhibit A	System
Exhibit B	Agreed Concession Areas
Annex 1:	Lease Agreement and Exhibit (A) thereto
Annex 2:	Tariff Structure
Annex 3:	Performance Standards
Annex 4:	Performance Tests
Annex 5:	Insurances
Annex 6:	Tariff Rate Adjustments Factors
Annex 7:	Exempt Properties [not populated]
Annex 8:	Assignment Deed [not populated]
Annex 9:	Liquidated Damages
Annex 10:	Schedule of Project Completion

IN WITNESS WHEREOF this Agreement was executed on the date first mentioned above.

THE GOVERNMENT OF []:-

By - [Signature] [Authorised Person]
By - [Signature] [Authorised Person]

COMPANY:-

By - [Signature] [Authorised Person]
By - [Signature] [Authorised Person]

Exhibit A

System

SAMPLE

Exhibit B

Agreed Concession Areas

SAMPLE

Annex 1

LEASE AGREEMENT

[Note: This document must be reviewed by local counsel to the Consortium, as well as lender's counsel.]

THIS LEASE is made the [] day of []

BETWEEN:

- (1) **THE GOVERNMENT** (hereinafter referred to as the "Landlord"); and
- (2) [] (hereinafter referred to as the "Tenant")

WHEREAS:

- (A) The Tenant proposes to build, own and operate a wastewater system in [] ("the Project").
- (B) The Landlord and the Tenant have entered into a concession Agreement ("the Concession Agreement") for implementation of the Project by the Tenant.
- (C) Under the terms of the Concession Agreement, the Landlord has agreed to lease to the Tenant the Leased Area, defined in the Concession Agreement and identified specifically in the Map appended hereto, for the Tenant's exclusive use and occupation in connection with the Project.

NOW, THEREFORE, the Landlord has agreed with the Tenant to grant to the Tenant a lease of the Leased Area upon and subject to the following terms and conditions.

1. Commencement Date; Lease Term

The initial term of this Lease shall commence on the Effective Date (the "Commencement Date") and shall continue in full force and effect for a period equal to, and contemporaneous with, the entire Term of the Concession Agreement, unless the Concession Agreement is earlier terminated pursuant to any provision thereof ("Lease Term"). If at any time during the Lease Term, the Concession Agreement terminates in accordance with its terms, this Lease shall terminate concurrently with the termination of the Concession Agreement; unless the rights and obligations of the Company are assumed by a new company who then shall also and automatically have the rights of assignment for this Lease and enjoy all rights accruing to the Company under this Lease.

2. RENT

2.1. Rental

During each year of the first ten years of Lease Term commencing on the Effective Date, the Tenant shall pay to the Landlord an annual rental of []. Thereafter, the amount of the Annual Rent shall be increased by 10% of the then applicable Annual Rent for each of the next following five years' period.

2.2. Payments

Rental payments accruing in respect of each Financial Year shall be paid by the Tenant to the Landlord one third in advance and at the latest within 15 days after the commencement of such Financial Year. The remaining two-thirds payment shall be paid at the end of such financial year at the latest within 15 days before/after the end of the year.

2.3. Late Payments

Payments due to the Landlord hereunder shall be treated as late if sent more than fifty (50) days after the due date. Late payments shall bear a delay penalty at a rate equal to [10 %] per annum until full payment of any such late sums.

2.4. Financing

The Tenant shall be entitled, in accordance with the provisions of Paragraph 5 hereof, to charge or otherwise encumber its interest in the Premises, the Project and this Lease and to obtain Financing on such terms and conditions as may be agreed between the Tenant and any Lender. The Landlord agrees to co-operate in executing any documents requested from the Landlord by the Tenant or by any bank or other financial institution encumbering or by any governmental agency or department, in connection with such Financing; provided, however, that under no circumstances shall the Landlord be obligated to subordinate its ownership of the Premises or the Agreed Leased Area be affected or prejudiced in any manner, whatsoever, and that any lien or other encumbrance placed on the Premises, the Project or on the Agreed Leased Areas in connection with such Financing shall upon the termination of this Lease, for any reason whatsoever, be fully removed and released at the sole cost of the Tenant.

2.5. No Liability for the Tenant's Creditors

The Landlord is not and shall at no time be liable to any creditor of the Tenant or any other persons occupying any part of the Premises or the Agreed Leased Areas or other improvements thereon as a sub-lessee, licensee or otherwise or to any claimant against the assets or property of the Tenant or such other occupants for any of their debts, losses, contracts or other obligations.

2.6. The Landlord's Co-operation

2.7. At any time and from time to time during the Lease Term, upon the written request of the Tenant, the Landlord shall join with the Tenant in executing and delivering to The Tenant or as the Tenant may direct such instruments as may be appropriate, necessary, required or desired by the Tenant for the purpose of:

- 2.7.1. the grant or dedication of any easement, right-of-way, license or other property right to any [COUNTRY] public entity or service corporation, so long as such grant or dedication does not impair the value of the Landlord's ownership interest of the Leased Area; and/or
- 2.7.2. the application to any [COUNTRY] governmental entity for, and the obtaining of all approvals, consents, changes, conditional uses, variances, maps or the like required for the development of the Premises in the manner permitted by the terms of the Concession Agreement

in each instance for the purpose of providing utility services to the Premises in connection with the Project or of permitting the Tenant to implement the Project or to construct any

other buildings or improvements on the Premises or make any alteration or addition thereto required in connection with the Project

2.8. Ownership of Buildings and other Improvements

Subject to applicable law, the Tenant shall have exclusive title to the Treatment Plant and all other ownership rights in and to all buildings and other improvements constructed on the Premises by or for the Tenant at any time and from time to time during the Lease Term.

2.9. Maintenance and Repair Obligations

The Landlord shall not be required or obligated to do any maintenance or to make any repairs, changes, alterations, additions, improvements or replacements of any nature whatsoever in, on or about the Premises or the Project, or any part thereof, at any time during the Lease Term; provided, however, That the Landlord shall be responsible for, and shall without delay effect, any repairs or maintenance necessitated by reason of damage or destruction caused by any act or omission of the Landlord, its employees, agents or anyone claiming under or on behalf of the Landlord, or by reason of the failure of the Landlord to observe or perform any conditions, covenants or agreements contained in this Lease. The Company shall undertake to hold an insurance policy that names the Landlord as an additional insured party to insure all of the Landlords obligations under this Clause 2.9.

3. UTILITY SERVICES

The Landlord shall not be obligated to pay any cost, expense, fee or charge relating in any manner whatsoever to the installation, maintenance and repair of utility systems servicing the Premises or the Project or to any utility services used on or in or supplied to or for the Premises.

4. FEES, TAXES AND ASSESSMENTS

The tenant shall be liable for any normal fees, relating to the Premises or the Project as per laws applicable to leased property in [].

5. ASSIGNMENT AND SUBLETTING

5.1. Generally

Except as provided in Paragraph 5.2, neither party may assign or otherwise transfer its interest in this Lease or the Premises without the prior written consent of the other party.

5.2. Permitted Assignment to Lenders and Transferees

5.2.1. The Tenant may freely, pledge, charge or assign its rights under this Lease to any Lender for purposes of any Financing subject to Clause 2.9 hereof; and

5.2.2. assign its rights under this Lease to any transferee in connection with an assignment of the Tenant's rights under the Concession Agreement, provided that such transferee agrees in writing to such assignment and assumes all obligations of the Tenant hereunder with effect from the date of such assignment; upon any such assignment under this Paragraph 5.2.2, the Tenant shall have no rights or obligations under this Lease, except those arising prior to the date of such assignment.

- 5.2.3. Nothing herein contained shall restrict or preclude the Tenant, at any time during the Lease Term, from entering into any construction, development, operation, maintenance and/or any other contracts deemed necessary or desirable by the Tenant, in connection with the Premises or the Project and in accordance with the terms of the Concession Agreement. The Landlord agrees that in addition to the Tenant, the parties to those contracts shall be entitled to access to, and use and occupation of the Premises pursuant to the terms of their contracts with the Tenant.

6. INDIVISIBILITY AND EARLY TERMINATION

Notwithstanding any provision herein to the contrary, neither this Lease nor the Concession Agreement may be terminated, assumed or assigned independently of the other (including any termination for breach or default hereunder) and then only as permitted under the terms of the Concession Agreement and this Lease.

7. SURRENDER OF PREMISES

Upon the termination of this Contract, the Tenant shall surrender to the Landlord the Premises and all the buildings and other improvements thereon in good tenantable condition at the time of such surrender and in accordance with the terms of the Concession Agreement.

8. WAIVER

No waiver by either party of any default by the other in the performance of any of the provisions of this Lease shall be effective unless in writing duly executed by an authorised representative of the party granting such waiver. No failure by any party to insist upon the strict performance of any provision of this Lease, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such provision, or of any other provision in this Lease.

9. NOTICES

All announcements, notices and other formal communications required to be given under this Lease shall be considered as properly given only if written in English and delivered to the addresses respectively shown below:

9.1. For the Landlord:[]

9.2. For the Tenant:[]

Delivery may be effected by personal delivery, by facsimile transmission confirmed by registered mail, or by registered mail, in which case receipt shall be deemed effective only upon actual receipt. Either party may change its address by notifying the other party hereof in writing at least 14 days before the effective date of such change.

10. CALENDAR

All dates herein shall be construed with reference to and in accordance with the Gregorian calendar.

IN WITNESS WHEREOF, the parties have duly executed this Lease in duplicate the day and year first above written.

The Government of []
(The Landlord)

[]
(The Tenant)

Signed: _____

Signed: _____

by: _____

by: _____

EXHIBIT A TO LEASE AGREEMENT

Leased Area

Annex 2

Tariff Structure

PART I

APPLICABLE CONNECTION FEES

APPLICABLE CONNECTION FEE

1. Applicable Connection Fee will be charged to the Registered Owner in respect of his or its Registered Property, which is in most cases a building. The Connection Fee includes an additional charge for each apartment/office/door or type of floor in the building. The Application Connection Fees are set out in Part II. The Connection Fee covers the Connection from the sewer main up to and including the LIC and, if the LIC is outside the Owner's property line, an extension thereto from the LIC to the property line, up to a maximum of 30 meters. Some buildings, due to their size or the volume of Wastewater generated, shall require more than one physical connection, in which case they will pay a Connection Fee for each separate connection.

- 2.1 Applicable Connection Fees for existing Registered Properties, both those completed and for those for which building permits have been issued as of Registration Date will be payable in four instalments, as follows:

<u>Instalment</u>	% of Applicable Connection Fees Payable
1	[] upon registration of the property
2	[]% six months after registration
3	[]% upon commencing work in the basin in which the property is located
4	[]% six months after connection

- 2.2 Provided, however, that a grace period of not less than six months shall be observed between each instalment and the next following one. Registered Owners who make a complete up-front payment of all instalments at the Registration Date shall receive a discount on their Applicable Connection Fees.

- 2.3 For all properties to be newly constructed, the Applicable Connection Fee will be collected by the Company in full prior to the issuance of a Building Permit by the Municipality. The Municipality will give the Company a copy of the building permit application and not issue the permit until the Company has informed the Municipality that payment of the Connection Fee has been received.

EXTRA CONNECTION FEES

3. The cost of the first [] meters of the pipe from the sewer to the LIC is included in the Applicable Connection Fee. Property owners are not obliged to connect if their LIC is more than [] meters from the main sewer line but they may choose to do so if they are prepared to pay for the length of

pipe work beyond 60 meters at the fixed rate per meter described below. The fee for this extra pipe work is the Extra Connection Fee.

Should a property owner be more than [] meters from the main sewer line and choose not to connect he will be de-registered and he will not be obliged to pay a Connection Fee. Those choosing not to connect under these circumstances may elect to be re-registered later and connect under the terms then prevailing. At the time of the System being extended, those properties coming within the [] meters shall be required to become Registered Properties and the Registered Users will be required to pay upon Registration the Tariff then prevailing.

- 3.1 All Extra Connection Fees will be assessed [3 to 6] months prior to anticipated connection date.
- 3.2 All Extra Connection Fees will be payable in two instalments, with []% due upon assessment date and []% due at the time of actual construction of extra piping works.

FINAL CONNECTION

4. This includes the construction of piping from the LIC into the property and the abandonment of the septic tank. In densely populated housing areas, it is anticipated that several properties will share an LIC. The cost of the Final Connection is not included in the Applicable Connection Fee or in the Extra Connection Fee and is the responsibility of the Registered Owner, who can use whomever they wish to perform the work.

Property owners can choose to either themselves remove or sand fill their septic tanks or request the Company to do so for a [] fee. However, the [] fee is only applicable if the work by the Company is done in line with the overall construction program of the collection system.

CALCULATION OF EXTRA CONNECTION FEES

5. The rates set out below will only be in effect for the period of four years from the Effective Date and will be reviewed in accordance with Annex 6 of this Agreement.

Extra Connection Fees

Extra Pipe Beyond 60 meters from main line	Unit Allocation	Charge
• Extra Pipe – 110 mm	Per Linear Meter	
• Extra Pipe – 160 mm	Per Linear Meter	
• Pavement Restoration	Per Linear Meter	

ADJUSTMENT

6. The Applicable Connection Fees payable by each Registered User will be subject to adjustment to take account of the Tariff Rate Adjustment specified in Annex 6.

Part II
SEWERAGE SYSTEM CONNECTION FEES

COMMERCIAL/INDUSTRIAL GOVERNMENT		[].
Banks, Showrooms		
Supermarkets and shops of more than 3 doors		
Industrial Enterprises		
Small (employing between 1 to 5 persons)		
Medium (employing 6 to 12 persons)		
Large (employing more than 12 persons)		
Largest 50 Industrial sites		
Schools (Government)		
Schools (Private)		
Government-owned Building (offices)		
Privately owned office buildings		
Gas Station without washing facilities		
Gas Station with washing facilities		
Laundry (wet) Large Cos. & Firms		
(wet) Medium		
(wet) Small		
Laundry (dry) treated as a shop without water		
Cinema/Theatre		
Clubs (social and sports)		
Restaurant Small (less than 12 seats)		
Medium (13-24 seats)		
Large (24-50 seats)		
Largest (51 seats and more)		
Hotel Small		
Medium		
Large		
Shops ** (1) (1 door) without water		
(1 door) with water		
(2 doors) without water		
(2 doors) with water		
(3 doors) without water		
(3 doors) with water		
Hospitals (Govt.)		
(Pvt.)		
Warehouses (not part of a factory or workshop)		
Small		
Medium		
Large		
Privately owned Vacant land ** (2)		
College/Institute		
University		
Apartment Building ** (3) of up to 4 floors		
From 5 floors upwards		
1 each 1 BR apartment		

COMMERCIAL/INDUSTRIAL GOVERNMENT		[].
2	each 2 BR apartment	
3	each 3 BR apartment	
4	each 4 BR apartment	
5	each 5 BR + up	
6		
7	House	
8	Small 2 BR	
9	3 BR	
10	Medium 4 BR	
11	5 BR	
12	Large 6 BR ++	
13		
14	Villas	
15	Small up to 3 BR	
16	Medium (1 Floor) 4 BR – 5BR	
17	(2 Floors) 4 BR – 5 BR	
18	Large 6 BR	
19	more than 6 BR	
20		

PART III

SERVICE CHARGES

1. The Service Charges are described in detail in Part IV taking into account of the Tariff Rate Adjustment specified in Annex 6.
2. Registered Users will pay the monthly Service Charge starting at the beginning of the month in which the company completes the Connection for that Registered Property.
3. All monthly Service Charges will be the responsibility of the Registered User concerned.
4. All Registered Users will pay a 3 month Service Charge Deposit at the beginning of the month in which the Registered Property is Connected.

PART IV

SEWERAGE SYSTEM SERVICE FEES

	1 ANNUAL	1 MONTHLY
Banks		
Supermarkets and shops (3 doors and more)		
Mosques		
Industrial Units: Per Person Employed		
Small		

	1 ANNUAL	1 MONTHLY
Medium		
Large		
Largest		
Schools (Government)		
(Private) per student		
Private Office Building		
Government – owned Office Building		
Gas Station with washing		
Gas Station without washing facilities		
Laundry Co. & Worship		
Laundry (with water)		
Laundry (without water) Ironing shop		
Cinema/Theatre		
Clubs (social and sports)		
Restaurant Small (less than 12 seats)		
Medium (13-24 seats)		
Large (25 and more)		
Hotel per room		
Shops* (2-3 doors) Medium using water		
Medium not using water		
(1 door) small using water		
(door) without water		
Apartment Building		
1 BR		
2 BR		
3 BR		
4 BR		
5 BR and more		
Arabic Houses		
Small (1 Floor) 2 BR		
(1 Floor) 3 BR		
Medium (1 Floor) 4 BR		
(2 Floors) 5 BR		
Large 6 BR +		
Council Houses		
1 Floor		
2 Floors		
1.1 ANNEXES		
All annexes within the compound walls of the villa or house		

	1 ANNUAL	1 MONTHLY
Villas		
Small (1 Floor) 3 BR		
Medium (1 Floor) 4BR		
(2 Floors) 5 BR		
Large (2 Floors) 6 BR		
(2 Floors) 7 BR		
Hospital (Government)		
(Private)		
University		
College		
Separate Warehouses for leasing (using water)		
Warehouses using water		
Separate labour Camp		
Vacant		

PART V
AGREED CONCESSION AREAS

See Exhibit B

PART VI
WASTEWATER PLANNING REVIEW FEE

1. As from the Effective Date Registered Owners and Applicant Registered Owners who wish to connect a property into the System that was not registered within the period six months after the Effective Date shall be required to have their Development Plans approved by the Company by means of a Wastewater Planning Review and to pay in full upon assessment of the proposed scheme content but prior to final approval/advice a Wastewater Planning Review Fee in accordance with the table set out below. Each change of use of a property prior to or following development will require a new approval and fee.

Property	Approval Fee
• Villas & Houses	
• Apartment & Office Blocks, Schools, and other Small to Medium Commercial and Industrial Premises	
• Large Industrial premises, Hotels and other large Facilities	

PART VII
SEPTAGE DISPOSAL FEES

1. Septage Disposal Fees will be payable [] months after Effective Date. At that time it is anticipated that the Company will have in place a receiving system for Septage that will improve the environmental conditions of the existing lagoon area.
2. Private contractors will continue to empty septic tanks.
3. The Company will monitor the activities of the private contractors.
4. The contractors must use the septage unloading facility that is run by the Company.
5. Tankers will make payments at the disposal facility gate based on the size of the tanker as follows:-

Septage Disposal Changes:

Table 8: Septage Changes Schedule

Tanker Size (gallons)	Charge/Trip
<ul style="list-style-type: none">• Less than 2000• 2001 to 5000• 5001 or more	

Annex 3

Performance Standards

The Works shall be designed and constructed to meet the following minimum standards.

Collection System

Gravity sewer systems - including connections, manholes, and piping - shall be designed and constructed to limit infiltration of groundwater into the System, and exfiltration of sewage out of the System to the following:

[] litres per millimetre of nominal pipe diameter
per kilometre of sewer per day.

Gravity sewers constructed using PVC or GRP pipe shall be designed and constructed so that deflection of the pipe after backfilling does not exceed [] percent of the inside diameter of the pipe.

Pumping station design flow shall be established during final design, as the total of all sewage collected within the drainage basin or basins that the station serves, with an appropriate peaking factor applied corresponding to the size of the drainage area. Pumping stations shall be designed and constructed with adequate capacity to pump the design flow with one pump out of service. If the station contains pumping equipment of more than one size, this requirement shall apply with one of the largest units out of service.

Force mains shall be designed and constructed to withstand the maximum calculated surge pressure, or 1.5 times the maximum operating pressure, whichever is larger. At this maximum pressure, leakage from the system shall not exceed the amount calculated from the following formula:

$$Q = [] \times [] \text{ DLN}$$

where Q = allowable leakage in cubic meters per hour

D = nominal diameter of pipe in millimetres

L = length of section tested in meters

N = square root of the average test pressure in kPa.

Treatment Plant

The Treatment Plant shall be designed and constructed to provide capacity to treat an average daily flow of [] cubic meters per day with an appropriate peaking factor.

The Treatment Plant shall provide facilities to treat all effluent that will be available for reuse to the following levels:

Wastewater Treatment Plant Effluent Standards For Irrigation and Industrial Reuse

Characteristic	Effluent Limit
BOD ₅ , mg/l	Less than []
Total Suspended Solids, TSS, mg/l	Less than []
Fecal Coliforms	None detectable per [] ml
Chlorine Residual	Equal or greater than [] mg/l

Effluent sold for reuse will be hauled from the Treatment Plant site by the user Municipality or other user. A truck loading facility shall be constructed on or adjacent to the Treatment Plant for the purpose of

loading haul trucks. Effluent that is not sold for reuse, shall be discharged or disposed of by environmentally sound methods acceptable to the Government. Effluent that will be discharged or disposed of shall be treated to the following limits:

**Wastewater Treatment Plant
Effluent Standards
For Discharge to Water Courses,
Disposal Ponds, or Ground Water**

Characteristic	Effluent Limit
BOD ₅ , mg/l	Less than []
Total Suspended Solids, TSS, mg/l	Less than []

BOD₅ and TSS limits shall be based on 30 day (monthly) average values of tests performed daily on 24 hour composite samples of effluent. Coliform count shall be based on a 7-day median value and shall not exceed [] fecal coliform organisms per 100 millilitre in any sample. Chlorine residual shall be measured after a minimum contact time of [] minutes.

Solids Criteria

Screenings and grit shall be removed and handled in a manner to minimize the amount of organic matter removed from the process. Biological sludge removed during the treatment process shall be stabilized and dewatered by processes that will produce sludge of Q quality equivalent to sludge that is stabilized in aerobic digesters for a period of not less than [] days, followed by dewatering in open sludge drying lagoons with a depth of not greater than 0.5 meters for a period of [] days or more. Sludge moisture content shall be suitable for the intended use or disposal method, but shall not be less than []% solids content for disposal in the municipal landfill.

System User Limits

The maximum levels of contaminants that Registered Users connected to the System will be permitted to discharge will be governed by the Sewer Law. The achievement of the Performance Standards shall be subject to the maximum and average level of contaminants from any single Registered User of the following:

Parameter	Units	Maximum
BOD ₅	mg/l	
COD	mg/l	
TSS	mg/l	
VSS	mg/l	
Temperature	°C	
pH	Range	
Conductivity	mS/m	
Oils & Fats	mg/l	

Annex 4

Performance Tests

All facilities shall be tested prior to acceptance by the Company and the test results delivered to the Government as proof that the Company's system complies with the Performance Standards specified in Annex 3. Monthly operating records from the wastewater treatment plant shall be submitted throughout the Term as proof that performance is in compliance with the requirements of this Agreement.

COLLECTION SYSTEM

Each reach of collection system gravity sewers and manholes, excluding individual service connections, shall be subjected to tests for alignment, leakage, and deflection. Individual service connections shall be tested for leakage only.

Alignment Each reach of sewer between manholes shall be tested for alignment by lamping between manholes. If the lamp can be seen directly from one manhole to another the reach of sewer between shall be considered in compliance with respect to alignment.

Exfiltration Exfiltration tests shall be conducted by blocking off all manhole openings except those connecting the reach being tested, filling the line with water, and measuring the water required to maintain a constant level in the manholes. Each manhole shall be subjected to at least one exfiltration test. The water level in the manholes at the lower end of the reach of pipe being tested shall not be lower than ground level or higher than 8 meters above the centerline of the pipe. The water level in the manholes at the upper end of the reach of pipe being tested shall be at least 1.5 meters above the crown of the pipe.

The maximum exfiltration rate measured in the test shall not exceed the value specified in Annex 3. For the purposes of testing, the nominal diameter and depth of manholes shall be included in the same manner as pipe. Minimum test period shall be 2 hours.

Low pressure air testing may be used in lieu of water testing for 600 mm and smaller diameter pipe. Low pressure air testing shall comply with ASTM C828 for plastic pipe and C924 for concrete pipe. The elapsed time for a 6.9 kPa drop in air pressure shall be not less than the limit set in the governing standard (ASTM).

Deflection After backfilling is complete, each reach of flexible pipe shall be checked for excessive deflection by pulling a mandrel through the pipe. Mandrel tests shall not be performed until 28 days after completion of backfilling. Maximum deflection shall not exceed the limit specified in Annex 3.

PUMPING STATION

Wastewater pumping stations shall be tested for hydraulic pumping capacity. Before testing, each pump shall be operated individually and demonstrated to run without excessive vibration or power usage. After each individual pump has been operated successfully, and after a sufficient number of connections have been made to provide adequate sewage flow, the pumping station shall be operated with all pumps running, except for standby pumps, for a period of 10 minutes to demonstrate a capacity at least equal to the peak design capacity of the station. Flow rate may be measured either by the pumping station flow meter or a temporary meter certified for accuracy of 95% or better.

FORCE MAIN PRESSURE AND LEAKAGE TESTS

All sewage force mains shall be tested at a pressure equal to the highest calculated surge pressure or 1.5 times the maximum operating pressure, as determined during the final design. The test pressure shall be maintained for a minimum of 2 hours with a maximum variation of 5%. Leakage shall be measured using

an accurate meter in the supply line used to maintain pressure in the pipe being tested. Leakage shall be defined as the total amount of water introduced into the line during the test to maintain the test pressure. Maximum leakage shall not exceed the amount specified in Annex 3.

TREATMENT PLANT

The Treatment Plant hydraulic and process designs will be monitored during operation throughout the Term. The results of daily monitoring for flow rate and each of the effluent parameters listed in Annex 3 will be performed on 24 hour composite samples of the effluent and the results recorded in plant monitoring reports. Monthly reports will be submitted to the Government showing the results of the daily testing and monthly averages compared to the limits specified in Annex 3. Testing and reporting procedures shall be in compliance with *Standard Methods for the Examination of Water and Wastewater* published as a joint effort of the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation.

Annex 5

Insurances

PART I CONSTRUCTION INSURANCES

- (1) Insurance for plant, material and the Works against loss or damage during construction.
- (2) Marine insurance in respect of physical loss or damage to plant, material and equipment in the course of transit.
- (3) Insurance against liability to third parties for damage to physical property or injury to any person while executing the Works of the System.
- (4) Insurance covering the risk of delay in start up or untimely progress of the Works of the System.

PART II OPERATING INSURANCES

- (1) Insurance for the System against accidental damage for all normal risks and to a level normal for prudent operators of facilities similar to the System.
- (2) Insurance against liability to third parties for damage to physical property or injury to any person.
- (3) Business interruption insurance.

Annex 6

Tariff Rate Adjustment Factors

The Connection Fee and the Service Charge will be adjusted from time to time in consultation with the Municipality in accordance with the following factors:

1. Adjustment for Inflation

- (a) Not later than [] of each year the Company shall obtain information as to the [] rate of inflation during the previous year from [] to [] based upon the [] Ministry of Planning Consumer Price Index or if such index is not available such other internationally recognized index agreed by the parties for the purposes of calculating the [] rate of inflation.
- (b) Based upon that information any Connection Fee payable in whole or in part during the subsequent period [] to [] and any Service Charge payable during that period will, subject to paragraph (c) below be increased in accordance with the relevant rate of inflation. There will be no adjustment if the rate of inflation is negative.
- (c) The Connection Fees for the 4 year period commencing [] and ending [] will be fixed in accordance with the provisions of Annex 2 but will be adjusted on [] for the period [] to [] taking into account on a compounded basis any annual increases in the relevant rate of inflation over such period. The Service Charges will be adjusted in accordance with the provisions of this Annex on, and with effect from the Effective Date.
- (d) The adjusted Connection Fee and Service Charge will be further adjusted in each subsequent year mutatis mutandis in accordance with the procedures set out in paragraphs a) and b) above.

2. Adjustment for volume growth in Billings of less than [] % per year

- (a) The financial viability of the project relies on the assumption that growth in the customer base within the Agreed Areas, as measured by the volume of Billings (i.e., Billings after taking out the cumulative pricing adjustments set forth elsewhere in this annex), must equal or exceed [] % per year. Low growth affects Billings in two ways, by reducing Service Charges and Connection Fees, and each shortfall has to be measured and compensated for in a somewhat different manner. The principle of this Agreement is that a Billing volume shortfall will be compensated [] for [] by a special price increase so that the revenue requirement is maintained.
- (b) The impact on **Service Charges** –
 - (i) In the event that growth of less than a [] % increase in aggregate Service Charges Billings, Service Charges will be increased proportionally so that total potential Service Charge Billings, after taking out the cumulative pricing adjustments set forth elsewhere in this annex, are [] % higher than the year before. This will be accomplished in the manner described in (ii) below.
 - (ii) A “Base Registration” of all potential customers that will be served when the construction is completed in the Agreed Areas will take place immediately after the Effective Date. The date it is completed and delivered to the Government will be called the “Base Registration Date”. If one year after the Base Registration Date the total of potential Service Charge Billings in respect of all Registered Users (the sum of the

appropriate monthly Service Charge Billings for all Registered Users) has not increased by at least three percent, then the Service Charges payable during the succeeding year and thereafter will be increased by multiplying each of the Service Charges by the following ratio:

$$[\quad] / \text{actual annual growth index}$$

For example, if the monthly potential Service Charge Billings one year after the Base Registration Date were [] % higher due to growth in the number of Registered Users (after eliminating any price adjustments pursuant to this Annex, due to, for instance, correction for inflation, exchange rate or change in law) then all the Service Charges would be adjusted by a factor of [], which is equal to [] in accordance with the above formula.

The growth index can be less than one, however. If work visas are not renewed and expatriate residents of have to leave, and if businesses close and apartments become vacant, the number of customers can go down, and in that case the price adjustment could be higher than [] %.

The adjusted Service Charge will be further adjusted in each subsequent year in accordance with the same procedure, with one year's adjusted Service Charge becoming next year's base, continuing the principle that the potential Service Charge Billings are increased by [] % for each elapsed year.

c) The impact on **Connection Fees** –

(i) Low growth also affects the Connection Fee Billings, and this impact on revenue can be more dramatic. Because Connection Fee Billings at a customer growth rate of [] % represent approximately [] % of total Billings, an absence of growth, meaning no new connections and therefore no Connection Fees, would cause a [] % shortfall in revenue which has to be made up. This is much greater than the [] % shortfall in Service Charge Billings that would result from a year of zero growth.

In order to avoid material increases to Connection Fees assessed and administrative difficulties in such an assessment, any shortfall in Connection Fees will be made up by increasing the Service Charges for the next year through the imposition of a surcharge to the Service Charge (the “SC Surcharge”) which will be multiplied by the Service Charge payable by each Registered User in accordance with the following formula:

$$SCS = ([\quad] \% - AGR) \times .25^*$$

3%

Where:

SCS = SC Surcharge

AGR = Price-adjusted CF for the prior year, divided by cumulative price adjusted CF for all years after the Base Registration Date through the prior year, expressed as a percentage. For purposes of this formula, “price-adjusted CF” means the CF without taking into account adjustments for factors other than growth, as described elsewhere in this Annex 6. AGR is never less than zero.

CF = Connection Fees

* Fraction of total Service Charges that CF, at a [] % growth rate, represents

The SC Surcharge is not permanent, as is the adjustment in paragraph (b) above, because the Connection Fee, unlike the Service Charge, is a one time event. The shortfall is therefore a one time event as well and can be made up over a one year period through the imposition of the SC Surcharge. The timing of these adjustments will also be on the anniversary dates of the Base Registration Date.

Cumulative growth shortfalls, if any, for the first two years after the Base Registration Date will be assessed in the third year after the Base Registration Date and paid in the third, fourth and fifth years after the Base Registration Date. Accordingly, in the fourth and fifth years, there could potentially be two separate SC Surcharges that apply.

3 []/US Dollar Exchange Rate

In the event of a change in the official []/US Dollar exchange rate such that the cost to the Company in [] of financing, constructing and/or operating the System is increased, the Company will notify the Municipality and provide to the Municipality all such information as may be reasonably necessary to show such increased cost and upon such notification, the Company shall be entitled immediately to increase the Connection Fees and Service Charges by multiplying the same in accordance with the following formula:

$$\frac{X_n}{X_o} \times F$$

where:

- Xo means the []/US Dollar Exchange Rate on the Effective Date
- Xn means the new []/US Dollar Exchange Rate
- F means the proportion of the Cash Costs of the Company denominated in US dollars.

For the purpose of this provision “Cash Costs” means annual expenses on a cash basis including debt service payments. “F” will therefore change from year to year, causing adjustments in the tariff apart from further changes in the exchange rate itself.

4 Environmental Standards, Changes in the Works, Force Majeure

In the event of:

- (a) any change in the laws of [] or any new application of any such existing laws (including without limitation any environmental laws or changes in environmental standards); or
- (b) any imposition of any taxes or charges on the Company or the Lenders or any imposition of any customs duties in respect of material or equipment required for the System; or
- (c) any changes imposed by the Government in respect of the timing or sequencing of the Works or any modifications or additions to the Works required by the Government or any failure to provide access when required by the Company or any circumstance described in Clause 5.6; or
- (d) any event of Force Majeure such that the cost to the Company of financing, constructing and/or operating the System (after taking into account the receipt of any insurance proceeds where relevant) is increased. The Company will notify the Municipality and provide to the Municipality all such information as may be reasonably necessary to show

such increased cost and the Connection Fees and Service Charges shall be adjusted by such amount as to enable the Company to recover such increased cost.

SAMPLE

Annex 7
Exempt Properties
[if relevant]

SAMPLE

Annex 8
Assignment Deed

SAMPLE

Annex 9

Liquidated Damages

For delay

[] der pay

For breach of the Performance Standards: -

Up to an aggregate maximum of []

Annex 10
Schedule of Project Completion]

SAMPLE