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## WATER AND SEWERAGE LEASE CONTRACT

Between

[AUTHORITY]  
(The Lessor)

and

[            ]  
(The Operator)

Dated [            ]

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## FORM OF LEASE CONTRACT

**WATER AND SEWERAGE LEASE CONTRACT** dated [        ].

BETWEEN

[Authority] (the “**Lessor**”) whose Principal Office is at [location] of the first part

AND

[        ] (the “**Operator**”) a company incorporated under the laws of [country] whose Principal Office is at [location] of the second part

### WHEREAS:

- A) Under the provisions of the Act the Lessor has been authorised to appoint an Operator to perform the functions and to exercise the powers of the Lessor on such terms and for such period as shall be specified in a contract or agreement made between the Lessor and such Operator.
- B) This Contract is the contract and agreement provided for in the Act and it is confirmed that the Operator is the body described as the operator in the Act.
- C) The Act states that such contract may provide for the incremental application of the Operator’s operations over the whole area of jurisdiction of the Lessor in accordance with a plan as shall be stipulated under such contract.
- D) The Act further states that, during the subsistence of such contract, the powers, duties and functions of the Lessor in the area specified in the contract shall be exercised and performed by the Operator and that the Lessor shall retain the powers to perform the functions and discharge responsibilities stipulated under such Act in areas in which the operator has not extended services.
- E) The Act states that such contract may provide for the lease or temporary transfer of operations, functions and possession of the fixed and landed assets of the Lessor to the Operator and for the Operator to improve, upgrade, purchase and add new items to the fixed and landed assets of the Lessor during the subsistence of the contract (and that the new assets purchased and added shall be deemed to be vested in the Lessor at all times) and for such new assets to be conveyed back to the Lessor on the determination of the contract.
- F) The [LEGISLATION] provides for the establishment of a regulatory authority, which shall be responsible for performing regulatory functions in relation to the water industry in [COUNTRY].
- G) The [LEGISLATION] states that the Operator and the Lessor shall be subject to regulation by such regulatory authority. The Act states that the Operator and the Lessor shall be required to obtain a licence for the purposes of performing their respective functions under the [LEGISLATION].
- H) The Lessor desires to lease the Assets and the Operator is willing to take on lease the Assets in order to provide the Services within the Operator’s Area in accordance with and subject to the terms and conditions set forth in this Contract.
- I) The Operator confirms that the intention is that it will hand back at the end of this Contract term all Assets in good working order having Maintained such Assets in accordance with Good Industry Practice.

- J) The Parties recognise that the Lessor and the Government intend to enter into the Development Contract and acknowledge the importance of the Lessor and the Government's respective obligations under the Development Contract.

**Now, therefore**, in consideration of the promises and the mutual covenants of the Parties hereto, as set forth hereinafter, it is mutually agreed as follows:

## **DIVISION I - GENERAL PROVISIONS**

### **1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Contract, the following words and expressions shall have the meanings assigned hereto, unless the Contract otherwise requires:-

<< **Abstraction** >> in relation to water contained in any Source of Supply, means the doing of anything whereby any of that water is removed from that Source of Supply, whether temporarily or permanently, including anything whereby the water is so removed for the purpose of being transferred to another Source of Supply and << **Abstract** >> shall be construed accordingly;

<< **Accessories** >> means

- (a) in relation to a water mains, Sewers or other pipes, includes any manholes, ventilating shafts, inspection chambers, wash-out pipes, ferrules, valves, meters, stop-cocks, pipe supports, thrust blocks/restraints, for the water main, Sewer or other pipe, but does not include any telecommunication apparatus, unless such apparatus:

- (i) is or is to be situated inside, or in the close vicinity of the main Sewer or other pipe or inside, or in the close vicinity of, another accessory for it; and
- (ii) is intended to be used only in connection with the use or Maintenance of the main, Sewer or other pipe or of another accessory for it.

- (b) in relation to all other Network Assets, within a site boundary or where there is no site boundary within a building or structure, includes any water mains, sewers or other pipes, manholes, ventilating shafts, inspection chambers, wash-out pipes, pumps, ferrules, valves, meters, stop-cocks, pipe supports, thrust blocks/restraints, or any machinery or other apparatus which is designed or adapted for use in connection with the use or Maintenance of the Network Asset or of another accessory to it (including but not limited to control equipment, monitoring equipment, lifting equipment...), but does not include any telecommunication apparatus, unless such apparatus:

- (i) is or is to be situated inside, or in the close vicinity of the main Sewer or other pipe or inside, or in the close vicinity of, another accessory for it; and
- (ii) is intended to be used only in connection with the use or Maintenance of the main, Sewer or other pipe or of another accessory for it;

<< **Act** >> means [water act] as amended or replaced from time to time;

<< **Additional Rental Fee** >> means the additional Rental Fee to be paid by the Operator to the Lessor as set out in Article 38.4 and Appendix K;

<< **Affiliated Company** >> means any company which is an affiliate, associate, subsidiary or parent or otherwise related company or in common ownership with any other company;

<< **Agreed Physical Asset Register** >> means the inventory of Assets to be drawn up in accordance with Article 8.2.(b) which shall include digitised mapping and model of the water distribution and Sewerage networks and, as appropriate and applicable, indicate, inter alia,

the age of such Assets, their condition, location, working capacities, performance assessment, valuation, mode of operation of the associated equipment and those Assets not operational on hand over to the Operator by the Lessor as the same may be updated in accordance with Article 8.3.(a);

<< **Analyse** >> in relation to any sample of water, land, Sewage or effluent or other discharge from a pipe or other form of outfall or discharge, includes subjecting the sample to a test of any description, and cognate expressions shall be construed accordingly;

<< **Annual Report** >> means the report prepared by the Operator and submitted to the Lessor in accordance with Article 58;

<< **Annual Review** >> means an annual review of the Operator Tariff carried out in accordance with Article 40.5;

<< **Application Form** >> means the Model Domestic Customer Application Form attached hereto as Appendix F;

<< **Appropriate Technology** >> includes equipment, plant, machinery, techniques, systems, and other material resources, and the training in the use thereof, together with the relevant management competencies which shall be required in all circumstances to meet the standards of Good Industry Practice;

<< **Approved Technical Standards** >> means the internationally accepted standards adopted within [COUNTRY] in respect of the manufacture or construction or utilisation of water mains or Sewers and pipes or other apparatus used for the conveyance of water or Sewage and wastewater or Accessories, or water fittings and pipes associated with plumbing or wastewater systems for use in Buildings;

<< **Area** >> means (unless the context otherwise requires) the Operator's Area as defined in Article 7;

<< **Assets** >> (unless otherwise stated) means from time to time the fixed or landed and other assets of the Lessor, which are to be leased to the Operator in accordance with this Contract, and the fixed or landed assets to be procured, constructed or provided by the Lessor under the provisions of this Contract and includes *inter alia*, all Buildings, rights, mains, pipelines, Sewers, works, plant and equipment associated with the management and administration of the Services and Abstraction and collection of Raw Water and the conveyance and treatment of Sewage; the treatment, storage and distribution of Potable Water ; plant, equipment and facilities used or intended to be used for the purposes of scientific analyses or for the measurement of water and Sewage, and for the avoidance of doubt includes all plans, records and associated information irrespective of the format in which such plans, records and associated information are maintained or otherwise stored but the term << **Assets** >> shall not include the Consumables;

<< **Asset Management Plan** >> means a strategy to Maintain and replace existing Assets to ensure that the Assets are maintained in a manner that enables them to deliver the required Performance Standards and condition of this Contract. The Asset Management Plan will identify the required investments for this purpose based upon asset condition and performance grading using Sound Water and Sewerage Engineering Practices. The Asset Management Plan concerns only the Assets in the agreed Physical Asset Register;

<< **Auditor** >> or << **Auditors** >> means the financial auditors or technical auditors (or either or both according to the circumstances) (whether appointed by the Lessor or the Operator) carrying out an audit function, under generally accepted principles within [COUNTRY], as referred to in Division X of this Contract;

<< **Authorised Representative** >> means any one individual person who may be designated and nominated respectively by and on behalf of each of the Parties to take any action required or permitted on behalf of the appointing Party to be taken or execute or sign any

document so required or permitted under this Contract, Provided that on each and every change of such Authorised Representative, each appointing Party shall notify all other Parties in accordance with the provisions of this Contract relating to Notices of the names, titles and all relevant details of such representatives at least seven (7) Days prior to such person becoming such an Authorised Representative and provided that, where the circumstances so require, the Lessor may require the Operator to so designate such Authorised Representative by granting him or her a Power of Attorney so as to provide the necessary evidence of such person's formal status;

<< **Base Value** >> is the value of a Performance Target or Key Performance Target as existed at the Commencement Date such value being determined after the end of the Enhanced Monitoring Period and as agreed between the Operator and Lessor;

<< **Building** >> means any construction or erection (whether completed or in the course of construction or destruction, and whether used or occupied or not) which is or may be used for any purpose, and includes a part of a building, if that part is separately occupied;

<< **Business Systems** >> means the information systems and all related computer hardware and software and all relevant documentation;

<< **Capital Investment Programme** >> means the works as set out in Appendix J;

<< **Capital Works** >> means all new capital works and major Rehabilitation Works to be undertaken by or for the benefit of the Lessor (whether by or through the Operator or any other body, company or organisation);

<< **Change Request** >> means a request, made pursuant to Article 1.7, to amend Appendices B, D or E;

<< **Civil Works** >> means works of a civil engineering nature, including without limitation water and Sewage treatment works, mains, pipelines, Sewers, storage tanks and Buildings but excluding electrical and mechanical elements;

<< **Code** >> means any or all of the Codes of Practice set out in Article 13;

<< **Code of Public Works** >> means the code regarding the construction of public works currently in force in [COUNTRY];

<< **Commencement Date** >> means 1 July 2005, the effective date of this Contract;

<< **Conditions of Supply** >> means the Regulations and Codes of Practice relating to the supply of Services for water and Sewerage provided by the Operator, as referred to in Articles 12 and 13 and in the Customer Contract set out in Appendix G;

<< **Consumables** >> includes, without limitation, chemicals, pipes and fittings;

<< **Contract** >> means this Contract and the documents listed as being read and forming part of it, (including all Appendices to this Contract and all documents contained therein), and such other further documents as may be expressly incorporated, together with all and any alterations and amendments;

<< **Contract Year** >> means a period of twelve (12) continuous months commencing on the Commencement Date or the anniversary of the Commencement Date

<< **Cure Notice** >> means a notice issued by the Lessor pursuant to Article 48 requiring the Operator to cure the breach specified in the notice within a reasonable time;

<< **Customer** >> means any Person or organisation who has entered into or will enter into or is deemed to have entered into a Customer Contract and to whom water is supplied or from



whom waste water (including Sewage) is removed and discharged and who is so supplied or served by the Operator or who should be so supplied or served by the Operator pursuant to its obligations, and who is or will be required to pay for such Services;

<< **Customer Contract** >> means the contract to be entered into between the Operator and its Customers and setting out the respective obligations of the Operator and Customer in relation to the provision of Services by the Operator;

<< **Customer Meter** >> means a Meter specifically installed on a Customer connection pipe;

<< **Customer Tariff** >> means the tariff charged by the Operator to Customers in accordance with the provisions of this Contract and as approved by the Regulator;

<<**Authority**>> means the [Authority];

<<**Designated Area** >> means [LOCATION] as shown on the sketch map attached as Map 1 in Appendix A and deposited in the office of the Managing Director of the Lessor;

<< **Days** >> means a continuous period of twenty-four hours commencing at one second past midnight and ending at midnight the same day, and in relation to any specified period for an application to be lodged or for a notice to be served, any period of consecutive days excluding weekends or public holidays;

<< **Deed of Handover** >> means the deed of handover to be executed by the Lessor and the Operator;

<< **Delegated Capital Works** >> means that part of the Immediate Capital Investment Programme financed by the Lessor and implemented by the Lessor /Operator as set out in Appendix J and described in Article 18.4 (a)(ii);

<< **Direct Costs** >> shall have the meaning set out in Article 16.4;

<< **Drain** >> means a pipe for conveying Sewerage from a Customer's premises to the public Sewer;

<< **Enforcement Authority** >> means any Person having jurisdiction to enforce or to take action under or in respect of the relevant legal requirement and includes the Regulator;

<< **Enhanced Monitoring Period** >> means a period of twelve (12) months commencing on the Commencement Date during which the Operator determines Base Values and water and Sewage quality data and such period shall end a maximum of eighteen (18) months after the Commencement Date;

<< **Employee** >> means any Person who is employed by any Person or company (on a short term or long term contract or arrangement) and includes (where appropriate) Operator's Personnel;

<< **Expert Panel** >> means the panel of three experts appointed in accordance with Article 64.2, for the resolution of disputes on commercial or contractual issues. In particular, in the case of a dispute over a review of the Operator Tariff or the value of a termination settlement, the third expert shall be appointed in accordance with Article 64.2.(d), and in the case of a dispute over the Operator's performance, the application of financial penalties or payment for works carried out by the Operator, the third expert shall be appointed in accordance with Article 64.2.(e);

<< **Financial Year** >> means a period of twelve (12) continuous months as agreed between the Parties which is deemed or agreed to be the financial year of the relevant Party;



<< **First Time New Domestic Water Supply Connection** >> means a new connection, including a standpipe or kiosk, to domestic premises which has not previously been connected to the water supply system and shall have a maximum Service Pipe diameter of 18 mm (or 3/4") and a maximum length of twenty (20) metres from the point of connection to the water main to the boundary of the Customer's property (excluding the length of any connection pipework which is common to more than one Customer's connection) and will include a Customer Meter and Accessories. For the purposes of this definition, "domestic premises" includes: domestic houses, a cluster of domestic houses, and all areas designated for residential purposes.

<< **First Time New Domestic Water Supply Connection Fund** >> means the fund to be established in accordance with article 36.1;

<< **First Time New Domestic Water Supply Connection Tariff** >> means the Tariff of the name to be levied by the Operator in accordance with article 36.1;

<< **Force Majeure** >> means circumstances arising and completely outside of the control and beyond the contemplation of the Parties to this Contract which renders its performance impossible and frees the Parties hereto from their respective obligations under this Contract, and as set out in Article 51;

<< **Foreign Personnel** >> means any Person who is not a citizen of [COUNTRY] within the meaning of [LEGISLATION], and accordingly << **Local Personnel** >> means any Person who is a citizen of [COUNTRY];

<< **Good Industry Practice** >> means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled, experienced and prudent Person engaged in the provision of Services and the carrying out of operations, Maintenance and administration pursuant to this Contract from time to time;

<< **Government** >> means the Government of [COUNTRY];

<< **Government Institutions** >> means ministries, agencies, departments and institutions of the Government;

<< **Government Loan** >> means the loan to be made by the Lessor to the Operator on the terms set out in the Government Loan Agreement;

<< **Government Loan Agreement** >> means the loan agreement entered into by the Lessor and the Operator and amended and restated in the form attached as Appendix Q;

<< **Immediate Capital Investment Programme** >> means that part of the Capital Investment Programme which is set out in detail in Appendix J and includes the Priority Works Programme, Delegated Capital Works and Non-Delegated Works and which shall be carried out within the first five Contract Years;

<< **Income** >> means the amounts received by way of Operator Tariff, both Operator Tariff (Water Supply) and Operator Tariff (Sewerage);

<< **Independent Assessor** >> means an assessor appointed in accordance with Article 65.

<< **Indexation Formula** >> means the formula set out in Appendix K;

<< **Interim Review** >> means an interim review of the Operator Tariff arising as a result of an event of Material Change of Circumstances and carried out in accordance with Article 40.4;

<< **Key Performance Targets** >> means those standards of performance detailed in Table 1 of Appendix N which the Operator is required to attain in accordance with Appendix H and Appendix N and which are subject to financial penalty for non compliance in accordance with Article 46;

<< **Legal Requirements** >> means any legislation or Regulation to the extent that it applies to the Operator in its capacity as a water or Sewerage services utility and, for this purpose, but without prejudice to the generality of the foregoing, such legislation or Regulation includes:

- (a) any legislation or Regulation in respect of water quality standards, or effluent discharge standards; and
- (b) any permit, licence, or authorisation given or to be given by the Regulator or relevant Minister, administrative authority or other Government agency or any other body of competent jurisdiction to the Operator for the purpose of carrying on any of the functions, powers and duties of a water or Sewerage services utility.

<< **Lessor Tariff** >> means the proportion of the Customer Tariff charged by the Operator to Customers in accordance with the provisions of this Contract, that is due to be paid by the Operator to the Lessor, and is approved by the Regulator;

<< **LIBOR** >> means the London Interbank Offered Rate as stated at a specific date;

<< **Maintenance** >> means those activities which are necessary, using Good Industry Practice, to maintain an Asset to ensure its reliability, prevent the necessity for Repairs, ensure the Asset performs the function for which it is intended and preserve the materials from which the Asset is constructed and <<**Maintain** >> and << **Maintained** >> shall be construed accordingly;

<< **Major Review** >> means the major review of the Operator Tariff to occur during the fifth Contract Year and to be carried out in accordance with Article 40.3;

<< **Material Breach** >> means non-compliance with obligations or violation of the rights established in this Contract which occurs in a serious and repeated form and/ or causes financial loss to either party;

<< **Material Change in Circumstances** >> means circumstances arising as set out in Article 41;

<< **Medium Term Capital Investment Programme** >> means that part of the Capital Investment Programme which shall be carried out after completion of the Immediate Capital Investment Programme, subject to availability of funding and agreement between the Parties as to its final content, and which is set out in draft form in Appendix J;

<< **Mobilisation** >> means a period of 100 days from the Commencement Date during which each Party shall carry out its respective obligations under the 100 days rescue plan set out in Appendix E;

<< **Network Assets** >> means those Assets leased to, used and operated by the Operator in the provision of the Service and includes, *inter alia*, the following:

- (a) water treatment works (including associated installations such as pumping stations) and boreholes;
- (b) service reservoirs and tanks; trunk, and other mains and waste pumping station;
- (c) sewers, Sewage pumping mains and pumping stations, Sewage treatment plants discharge channels, and outfalls;
- (d) ancillaries, including valves and pumps, manholes and non-revenue Meters;
- (e) connections between the mains and Sewers and the property served; and

- (f) all future assets which are added to the facilities listed in (a)-(e) above by the Operator or any third party and which fall to be handed back on termination of this Contract.

<< **New Connection Works** >> are the First Time New Domestic Water Supply Connections as mentioned in Article 17.3 and the New Connections to the Sewerage System as referred to in Article 17.7;

<< **Non-delegated Works** >> means subject to Article 18.5 that part of the Immediate Capital Investment Programme which is financed and implemented by the Lessor as detailed in Appendix J and described in Article 18.4 (a)(i);

<< **Obsolete** >> means any Asset which has been fully depreciated and which has no further useful economic or practical use, and which will be disposed of as scrap, or at a nominal value;

<< **Operating Equipment** >> means the equipment or assets to be provided by the Operator to enable the Operator to fulfil its obligations under this Contract, and includes, *inter alia*, vehicles, tools and site equipment, information technology hardware and software, and office equipment, and specifically excludes any Assets to be leased to the Operator;

<< **Operator's Area** >> means that part of the Designated Area in which (under the provisions of this Contract) the Operator is required to provide the Services and as shown in Map 2 of Appendix A. The << Operator's Area >> includes the Water Supply Area and the Sewerage Area as defined in Article 7 and in particular it is understood that such Area may be altered or enlarged during the period of this Contract and in that case the term << **Operator's Area** >> or << **Area** >> shall apply to such altered area;

<< **Operator's Personnel** >> means staff employed or nominated by the Operator and seconded or attached to the Operator including Persons seconded or attached to managerial positions in the Operator and staff on short term assignment;

<< **Operator Tariff** >> means the tariff paid to the Operator as described and calculated in accordance with Article 35;

<< **Parties** >> means collectively the Operator and the Lessor; and << **Party** >> means either of them;

<< **Performance Guarantee** >> means a guarantee substantially in the form provided in Schedule 4 and which shall be provided by the Operator to the Lessor to guarantee performance and payment obligations in accordance with its terms;

<< **Performance Targets** >> means those standards of performance which the Operator is required to attain in accordance with Appendix H and Appendix N which are not subject to financial penalties for non-compliance and excludes Key Performance Targets;

<< **Person** >> means any natural or legal person and shall include any person, or firm, or trader, whether incorporated or not, or partnership, or corporation, or agency of the State, or Ministry of the Government, or any association (whether or not having separate legal personality) of any two or more of the above and shall include a firm, corporation, partnership, joint venture, unincorporated association and public authority, and accordingly words importing person shall include firms and corporations;

<< **Personnel** >> means any and all Persons employed by the Party concerned, under whatever legal relationship, including but not limited to, full and part time Employees, staff, advisors, agents, servants, representatives, and independent contractors, and such Personnel shall at all times be treated and regarded as Employees of the appropriate Party;

<< **Potable Water** >> and << **Drinking Water** >> means water that is available or otherwise supplied and intended to be suitable for human consumption on the premises to which the water is supplied or otherwise carried thereto;

<< **Potable Water Quality Standards** >> means the Treated Water Quality Standards as are prescribed in Appendix H;

<< **Project** >> means the [Water Supply and Sanitation Project] and includes without limitation:

the implementation of the Capital Investment Programme in accordance with the Contract: and

the construction and procurement of Assets;

<< **Raw Water** >> means untreated water which is or may be Abstracted from Sources of Supply which is available for water supply purposes;

<< **Regulations** >> means all regulations of [COUNTRY] applicable directly or indirectly to water supply and Sewerage services;

<< **Regulator** >> means the regulatory authority established under the [legislation];

<< **Rehabilitation Works** >> means work undertaken on the Network Assets financed by the Lessor, in order to restore them to a proper and effective condition, but for the avoidance of doubt shall not include any Repairs;

<< **Reinforcements** >> means works required to upgrade or strengthen the capacity of the water supply and Sewerage systems;

<< **Rental Fee** >> means the fee to be paid by the Operator to the Lessor for the contract of the Assets pursuant to Article 38.4;

<< **Repair** >> means those activities which are necessary, in accordance with Good Industry Practice, to restore an Asset to being fully functional in the event of such Asset failing to perform the function (in part or in full) for which it is intended, but shall not include the complete replacement or renewal of any Asset except as may be required in accordance with Article 16.4, and "Repaired" shall be construed accordingly.

<< **Reports** >> means collectively the reports, documents, plans, budgets, tables and statements listed in Article 57.1 and the Financial Report, Annual Report and Technical Report listed in Article 58.2;

<< **State** >> means [COUNTRY];

<< **Restricted Operations** >> means operations that are concerned directly with the treatment and the subsequent distribution of water intended for human consumption and the conveyance and treatment of Sewage, and the term << **Restricted Operations Personnel** >> shall be construed accordingly;

<< **Service** >> or << **Services** >> means the supply of Potable Water, Sewerage Services and Sewage treatment and disposal service provided by the Operator in accordance with Good Industry Practice under the provisions of this Contract, including Maintenance, Repair, Rehabilitation Works and renewal of the Assets;

<< **Service Pipe** >> means a pipe conveying water, from a water distribution main to the Customer's premises. For the avoidance of doubt, "premises" includes public Standpipes and water kiosks;

<< **Sewage** >> means foul or used water, soiled water and waste water (whether treated or not) originating from any premises and includes any discharge from water closets and urinals and water containing excremental liquid or substance, but does not include any surface or rain water which is conveyed exclusively through a dedicated surface water sewer and << **Sewerage** >> means the means of conveyance of such Sewage;

<< **Sewage Zones** >> means the discrete zones as designated under Article 24.2 and as set up by the Operator for providing Sewerage Services;

<< **Sewer** >> means a pipeline for the conveyance of Sewage with a contribution of Sewage from more than one property or curtilage, but does not include dedicated surface water sewers;

<< **Sewerage Services** >> means the provision and delivery of all necessary Services related to the collection, transport, treatment and disposal of Sewage and waste water (including sludges);

<< **Small Equipment** >> means all minor fixed assets with normal economic lives of ten (10) years or less including (but not limited to) pumps of one hundred and fifty millimetres (150mm) diameter or less, electric switch boards for such pumps, valves of one hundred and fifty millimetres (150mm) nominal diameter or less, Standpipes, and hydrants;

<< **Sound Water & Sewerage Engineering Practices** >> means those practices which throughout the international water and sewerage engineering profession are regarded as representing the current levels of competent skills and expertise, taking into account the physical conditions in which such practices are required to be carried out;

<< **Source of Supply** >> in relation to any area, means either:

- (a) so much of any inland water, including any natural river or stream or any artificial conduit for the passage of Raw Water (other than a lake, pond or reservoir or a group thereof not discharging to another inland water) as is situated in the Area; and
- (b) any underground strata in which Raw Water is or at any time may be present.

[<< **Specific Change in Law** >> means the coming into effect in [COUNTRY] after the Commencement Date of:

- (a) Any Legal Requirement, other than any Legal Requirement which at the Commencement Date has been published and is available to the general public in [COUNTRY], whether in draft or final form; or
- (b) Any guidance issued by the Government or any Government Institution relating to the interpretation of any Legal Requirement; or
- (c) Any judgment given by a court or tribunal of competent jurisdiction (in respect of which the period for making an appeal has expired) which requires any Legal Requirement to have effect in a way different to that in which it previously had effect or different to that in which it was taken to have effect:
  - (i) For the purposes of determining the adjustments to the Operator Tariff and prices;
  - (ii) In determining whether the above adjustments should be changed



the terms of which apply expressly to the Project and not to similar projects in [COUNTRY], or which specifically refer to the provision of services the same as or similar to the Services.<sup>1</sup>

<< **Standpipe** >> means a water supply pipe which is erected in a street or public place and from which water is supplied to local residents and communities and operated by a Standpipe Agent;

<< **Standpipe Agent** >> means any Person or organisation which operates any one or more Standpipes or water kiosks as appointed or approved by the Operator;

<< **Standpipe Rate** >> means the rate charged to Standpipe and water kiosk Customers as referred to in Article 33.7 and as described in Appendix K (Tariffs);

<< **Strategic Business Plan** >> means the business plan to be prepared by the Operator and approved by the Lessor;

<< **Supply of Water in Bulk** >> means a supply of water, treated or untreated, for subsequent distribution by the Person taking the supply;

<< **Tariff** >> means any of the Operator Tariff, the Lessor Tariff, the Customer Tariff and the First Time New Domestic Water Supply Connection Tariff and << **Tariffs** >> means all of them collectively;

<< **Technical and Financial Assumptions** >> means the technical and financial assumptions set out in Schedule 1;

<< **Termination Date** >> means the date when this Contract shall be terminated in accordance with Article 49;

<< **Unregistered Connections** >> means Unregistered Water Supply Connections and Unregistered Sewerage Connections which have not been registered, whether or not such connections have been made by an authorised or unauthorised person;

<< **Unregistered Water Supply Connection** >> means a connection to the water supply system which has not been authorised or adopted by the Operator or any previous operator of the water supply system and which is therefore illegal, and << **Unregistered Water Supply** >> shall be construed accordingly;

<< **Unregistered Sewerage Connection** >> means a connection to the Sewerage system which has not been authorised or adopted by the Operator or any previous operator of the Sewerage system and which is therefore illegal, but excluding a connection to surface water Drains, and << **Unregistered Sewerage Supply** >> shall be construed accordingly;

<< **Water Law** >> means all or any one of the Laws of [COUNTRY] in relation to water and Sewerage (including Acts of Parliament and statutory instruments) and which are applicable to the operation of this Contract;

<< **Water Meter** >> or << **Meter** >> means an apparatus installed for the purpose of measuring the quantity of water or Sewerage flowing through an identified pipe;

<< **Water Supply Zones** >> means discrete zones as designated in Article 24.1 and as set-up by the Operator for the purposes of monitoring water quality and other Service levels in the distribution system.

<< **Weekly Revenue** >> means the average amount of income actually received as the Operator Tariff by the Operator in each week of the preceding year, and in the case of the first

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<sup>1</sup> this does not appear to be used in the text of the agreement – perhaps due to looking to material changes of circumstances (41) to cover changes in law

year following the Commencement Date shall be the average amount of income received as Operator Tariff by the Operator in each week following the Commencement Date;

In addition to the definitions set out above, the following matters and definitions shall have effect in the interpretation, construction and use of this Contract:-

Any reference to any legislation includes subsidiary legislation and all or any consolidations, amendments, re-enactment or replacements of any such legislation (including such subordinate legislation).

The headings used in this Contract are for reference only and shall not be taken into consideration in the interpretation and construction hereof.

A reference in this Contract to any Article is, except where it is expressly stated to the contrary, a reference to such Article herein.

This Contract, together with the Deed of Handover, constitutes the entire agreement between the Parties concerning the subject matter hereof for the term granted by this Contract and supersedes and cancels all previous agreements, discussions and other documents in whatever form concerning the same.

No variation of this Contract shall be effective unless in writing and signed by or on behalf of a duly Authorised Representative of each of the Parties.

## 1.2 References

- (a) In this Contract, references to a pipe, including references to a main, shall include references to a tunnel, channel or conduit which serves or is to serve as the pipe in question and to any Accessories for the pipe and accordingly, references to the laying of a pipe shall include reference to the construction of such a tunnel or conduit, to the construction or installation of any such Accessories and to the making of a connection between one pipe and another;
- (b) Any reference in this Contract to water contained in underground strata is a reference to Raw Water so present otherwise than in a Sewer, pipe, reservoir, tank, main, or other underground works constructed in such strata. However, water for the time being contained in:
  - (i) Any well, borehole or similar work, including any passage constructed in connection with the well, borehole or work for facilitating the connection of water in the well, borehole or work; or
  - (ii) Any excavation into underground strata, where the level of water in the excavation depends wholly or mainly on water entering it from those stratashall be treated as water contained in the underground strata into which the well, borehole or work was sunk or, as the case may be, the excavation was made;
- (c) In this Contract, words in the singular shall include words in the plural and words in the plural shall include words in the singular; and the male shall include the female.

## 1.3 General Interpretations

- (a) This Contract shall be interpreted and construed as a whole and its provisions shall not be taken out of their overall context. Applicable and appropriate statutory and Regulatory provisions shall be considered in the interpretation of this Contract.
- (b) The order of chapters and Articles in this Contract shall not be interpreted as an order of



precedence among them.

- (c) All periods of time stated in this Contract shall be counted in Days in [COUNTRY], unless expressly stated otherwise.
- (d) In the event there is any inconsistency or discrepancy between this Contract and any appendices hereto, the terms and conditions of this Contract shall prevail.

#### 1.4 Interpretation of Schedules and Appendices

The Schedules and the Appendices (as listed in the Table of Contents) and as attached or referred to in this Contract shall be deemed to form an integral part of this Contract. For the avoidance of doubt the provisions of the Development Contract annexed to this Contract shall have no binding effect as between the Parties.

#### 1.5 Representations by the Operator

The Operator represents and warrants that<sup>2</sup>:

- (a) it is a [Public]<sup>3</sup> Corporation duly established under the laws of [COUNTRY] with its Principal office in [LOCATION] and has all requisite legal power and authority to enter into this Contract and such other agreements, being agreements to which the Operator will be a party, as are contemplated elsewhere in the Contract and in the Appendices hereto and to carry out the terms, conditions and provisions thereof;
- (b) There is no litigation, actual or pending at the Commencement Date of this Contract, which relates to the Operator and to which the Operator is a party or of which the Operator is aware which would materially affect the Operator or the Operator's ability to perform its obligations under this Contract and the transactions contemplated hereby.

#### 1.6 Representations and covenants by the Lessor

- (a) The Lessor represents and warrants that:
  - (i) it is a public corporation duly formed and constituted under the Laws of [COUNTRY] and in particular under the [LEGISLATION] and has all requisite legal power and authority to execute this Contract and such other agreements as are contemplated in this Contract and in the Appendices hereto and to carry out the terms, conditions and provisions hereof;
  - (ii) no other proceedings on its part are necessary to authorise the execution and delivery by it of this Contract or the completion of the transactions contemplated thereby; upon due execution and delivery by the Parties, this Contract shall be binding and enforceable against it;
  - (iii) all legislative, administrative or other Governmental action, approvals, authorisations and consents required to authorise the execution, delivery and performance by it of the terms of this Contract and the transactions contemplated hereby shall be taken and shall have full force and effect as of the Commencement Date;
  - (iv) the execution, delivery and performance of this Contract and the transactions contemplated hereby do not and will not infringe and are not and will not be contrary to any laws or regulations of any Governmental, administrative or regulatory body at present in effect;

<sup>2</sup> more usual for Operator to be required to give additional warranties – similar to those provided by the Lessor in 1.6(a)

<sup>3</sup> The lease could be applicable to an arrangement between the Utility and a public or private operating company.

- (v) all negotiations relative to this Contract and the transactions contemplated hereby have been carried on, so far as the Lessor is aware, by the Parties hereto without intervention of any other Person or firm in such manner as to give rise to any valid claim against any of the Parties hereto for a broker's commission, finder's fee or other like payment to any Person or entity; and
  - (vi) the Assets are owned outright by the Lessor, without encumbrances, liens or pledges of any kind.
- (b) The Lessor covenants that:
- (i) it will provide to the Operator all necessary access to, and exclusive use of, the Assets, (free of any additional charge other than the financial provisions specifically provided in this Contract) and without responsibility for any debt charges on such Assets (other than as provided in the general provisions of this Contract) and without interruption from any other Person PROVIDED that the Lessor has the right (at all reasonable times, in all reasonable places, and subject to the operational needs of the provision of the Service) to visit, inspect and conduct tests on all or any of the Assets, and the Operator shall make reasonable provision to assist the Lessor in such events;
  - (ii) for the whole period of this Contract (subject to the provisions of Article 7) the Lessor will not retain, use or employ another contractor or operator, or employ any other Person or body to perform the Services within the Operator's Area or any of those Services or operate in any way which shall hinder, or be in conflict with, the Operator in the proper performance of its responsibilities under this Contract, unless such alternative provision is caused or made necessary by any failure of the Operator to perform its obligations under this Contract or if it is deemed necessary by the Lessor to employ other contractors to carry out Capital Works under Articles 18, 19 or 20, (in which case the practical consequences will be agreed between the Parties);
  - (iii) however, (subject to the provisions of the Act, and the operation of the Community Water, Sewerage and Sanitation Programme within the Operator's Area) there are at present in existence private and community wells and boreholes which supply water, and these shall be allowed to continue unless and until the Operator is in a position to supply an equivalent amount and quality of water. In the event of the Operator making such supply, the arrangements for the substitution of the Operator's supply for the previous private supply (including issues of compensation) shall be agreed between the Lessor, the Operator and the Person who had the previous supply, and, shall be subject to the approval of the Regulator.
- (c) For the avoidance of doubt, Articles 1.6.(b) (ii) and 1.6.(b) (iii) do not apply to any special arrangements which may in the future be made for the provision of water supply by boreholes to local communities (for which special arrangements may be made by the Lessor after discussion with the Operator) or enter into any scheme or arrangement such as is identified in Clause 1.6 (b) (iii) without the prior consent of the Operator (except where the Operator would be unable to provide an equivalent service).
- (d) In any of the events happening as mentioned in Article 1.6.(b) (ii) , (including any work being carried out on or in relation to the Assets by a Person other than the Operator) any access to the Assets, or use of the Assets, by any Person other than the Operator shall be at the responsibility of, and at the sole risk of, the Person so having access or use (including all liability for any damage so caused to themselves, others or the Assets), and not at the risk of the Operator.
- (e) The Lessor will undertake the Immediate Capital Works Programme as described in this Contract at Appendix J.

- (f) the Lessor and the Operator shall execute the Government Loan Agreement if the Operator has requested the Government Loan; and
- (g) The Lessor and the Operator shall each be licensed under the [legislation].

#### 1.7 Change Procedure in respect of Appendices B, D and E

- (a) It is acknowledged by both Parties that Appendices B, D and E will need to be varied from time to time.
- (b) Subject to Article 1.7(e) no Change Request shall be binding on the Parties unless the requirements of this Article 1.7 have been satisfied and the Change Request is agreed to in writing by an authorised representative of both Parties.
- (c) Subject to Article 1.7(e) the Parties shall, until such time as a Change Request is formally agreed to by both Parties, continue to perform their respective obligations without taking account of the Change Request.
- (d) Change Requests may be originated by either Party or by the Parties jointly and such a Change Request shall specify in writing the details of the proposed change which shall include the Change Request start date.
- (e) The Parties shall use all reasonable endeavours in good faith to agree a Change Request within ten (10) Business Days of receipt of the Change Request.

## 2 **CONTRACT FORMATION**

- 2.1 In pursuance of this Contract and in consideration of the payment of the Rental Fee and of the terms and conditions, covenants and agreements herein contained and on the part of the Operator to be observed and performed, the Lessor hereby engages the Operator and the Operator accepts the engagement to provide services within the Operator's Area in accordance with the terms and conditions of the Contract.

## 3 **DURATION OF THE CONTRACT**

### 3.1 Commencement of Obligations and Responsibilities

- (a) All provisions of this Contract shall become effective and binding as of the Commencement Date. The Operator shall provide the Services for a period of ten (10) years from the Commencement Date unless this Contract is otherwise terminated in accordance with its provisions. Amendments to the period of this Contract can only be made in accordance with the provisions of Article 3.5.
- (b) Prior to the Commencement Date the Operator shall be granted such rights of access to the Operator's Area and any other area within the Designated Area as it requires to make arrangements for the commencement of its obligations on the Commencement Date. The Operator shall give notice of its requirements to the Lessor and the Operator and the Lessor shall agree such access so as to avoid interruption to the provisions of services by the Lessor prior to the Commencement Date.

### 3.2 Notice of Non-Renewal

Unless terminated earlier, at any time between twenty four (24) and eighteen (18) months before expiry of this Contract, either Party may give prior written notice to the other that it does not wish to renew or extend this Contract.

### 3.3 Procedures at the end of the Contract

Subject to the provisions of Articles 53 and 54, at the end of the period of this Contract, as provided in Article 49, the Operator shall use its best endeavours and acting in good faith and in accordance with Good Industry Practice, to co-operate with the Lessor and its appointed representatives or any new operator which the Lessor may appoint to take over responsibility from the Operator. The Operator shall seek to ensure the smooth continuation and provision of the Services throughout the period from receipt of any notice of termination of this Contract till the expiry date of such notice, or during the last six (6) months of the period of the Contract (if no such notice is served).

### 3.4 Co-operation at the end of the Contract

The Operator shall on termination of the Contract immediately:

- (a) provide to the Lessor all relevant information held or used by the Operator relating to the Assets (including physical data, condition data and operational data) and the listing of moveable assets, operating equipment and consumable items owned by the Operator that will be transferred to the Lessor and those which are to be offered for sale to the Lessor, including the quantities, descriptions and prices if applicable;
- (b) provide to the Lessor all relevant information held by or used by the Operator relating to Customers (including charging, billing and payment records);
- (c) subject to the provisions of Article 70 relating to intellectual property rights ensure immediate access to and the use and management of the computer software and any proprietary software and systems that will be transferred by the Operator to the Lessor ; and
- (d) return such Assets as the Operator is required to return to the Lessor as provided in Article 54.

Failure to effect smooth and effective transfer of all assets, information, software and hardware according to this Article shall make the Operator liable to the Lessor for such fair sum as shall either be agreed between them or shall be assessed by the Expert Panel under the provisions of Article 64.2.

### 3.5 Amendments to the Period of the Contract

The Contract can be terminated at any time in accordance with the relevant provisions of this Contract, either by mutual agreement or for cause<sup>4</sup>.

The Contract period may be extended<sup>5</sup> beyond the original duration of ten (10) Contract Years, in accordance with the following provisions:

- (a) any extension can only be granted by the Lessor during the last twenty four (24) months of the original ten (10) year term;
- (b) Government approval shall be a condition precedent to any extension being granted by the Lessor;
- (c) the corresponding extension of the Development Contract shall be a condition precedent to any extension being granted by the Lessor;
- (d) the written approval of the Regulator shall be a condition precedent to any extension being granted by the Lessor;

<sup>4</sup> this is not very specific – usually there is a provision setting out the circumstances in which a party may terminate due to material or persistent breach by other party (as per clause 49 – not clear whether this provision is intended to supplement clause 49.

<sup>5</sup> subject to applicable procurement rules requiring new procurement process for a contract extension beyond a certain period

- (e) the corresponding extension of the Operator licence or a new Operator licence shall be condition precedent to any extension being granted by the Lessor.

#### **4 OPERATOR'S OBLIGATIONS**

##### **4.1 Compliance with the Contract**

- (a) The Operator undertakes to the Lessor that it will not undertake or perform any function within the Operator's Area except through and under the provisions of this Contract;
- (b) The Lessor vests all necessary authority and powers to provide the Services (subject to the laws of [COUNTRY]) to the Operator for the sole purpose of carrying out and implementing the provisions of this Contract and includes the specific powers conferred on the Operator elsewhere in this Contract (including Articles 8 and 9);

These powers and rights include:-

- (i) rights of disconnection of Services to properties for non-payment of charges for water or Sewerage;
  - (ii) rights of entry to premises and properties;
  - (iii) rights to Abstract water and control discharges to Sewers and make discharges to watercourses;
  - (iv) rights to manage, use and operate the Assets;
  - (v) rights to take legal action for breach of obligations by Customers and others causing damage or adversely affecting the Services.
- (c) The Operator shall obtain and keep in force all necessary and appropriate licences, permits and warranties for the provision of Services and carrying out the works.

##### **4.2 Description of Services**

- (a) In carrying out its contractual obligations, the Operator shall:-
  - (i) provide the Services required by this Contract in accordance with this Contract and in an efficient, effective and economic manner and shall report thereon to the Lessor in accordance with the provisions of this Contract;
  - (ii) shall operate a quality monitoring and assurance system in accordance with accepted international standards (ISO) to ensure the quality of the provision of the Services except where such operation and provision is expressly excluded by other Articles of this Contract<sup>6</sup>;
  - (iii) maintain in good condition and working order throughout the whole of the term of this Contract all Assets entrusted to its use by the Lessor in accordance with the Asset Management Plan;
  - (iv) not dispose of any Assets except in accordance with the provisions of this Contract;
  - (v) comply with its obligations to renew the assets provided by the Operator for the purposes of complying with the provisions of this Contract (including and subject to those relating to timing and payment);

<sup>6</sup> need to consider whether international standards or more local standards are appropriate for all aspects of the Service (eg provision of standpipes)

- (vi) nominate and provide suitably skilled and qualified Personnel (including Persons to be seconded or nominated to act in such managerial positions) and, through the Operator's Personnel, to offer advice to the Lessor;
  - (vii) ensure that all of the Operator's Personnel remain Employees of the Operator for all salary and benefit purposes and shall be compensated in accordance with the normal policies of the Operator as may be amended from time to time;
  - (viii) comply with, meet and fulfil the Performance Targets and the Key Performance Targets as set out in Appendix N and, in the event of the Operator not meeting such Key Performance Targets, shall be liable for the Penalties as also set out in Appendix N.
- (b) The functions of the Operator shall include (but not be limited to), the following:-
- (i) the Abstraction, treatment, transmission and distribution of water and the collection, transmission, treatment and disposal of Sewage to the prescribed Service and quality standards and the handling and disposal of sludge and screenings originating from such processes;
  - (ii) the Maintenance and Repair of the Assets;
  - (iii) the development and management of programmes for the advancement of the skills and competencies of Persons employed within the water and Sewage sector within the Area;
  - (iv) the establishment of mechanisms for promoting Customer relations including the development of Contracts with Customers and the publication of each Code as provided for in this Contract;
  - (v) the provision and replacement of Operating Equipment;
  - (vi) the replacement of Small Equipment;
  - (vii) its responsibilities for Capital Works, as set out in Article 18;
  - (viii) its responsibilities for connections, as set out in Articles 17 and 22; and
  - (ix) the provision, Maintenance and routine upgrading of any proprietary software or systems required.

#### 4.3 Insurance

- (a) Subject to the provisions of Article 5, throughout the duration of this Contract, the Operator shall be liable for any and all claims, losses, damages, and liabilities relating to the Assets, works and the Services and its responsibilities under this Contract, and shall keep the Lessor fully indemnified against any and all claims and other legal actions for damages arising there from; provided, [however that nothing in this Contract shall impose any liability upon the Operator in respect of any proceedings or claims arising from the acts of a third party, except if such acts arise, directly or indirectly from the Operator's negligence]<sup>7</sup>.
- (b) On an annual basis on the Commencement Date or on the anniversary of the Commencement Date the Operator shall obtain appropriate insurance coverage for

<sup>7</sup> it is more usual for indemnification under insurance for 3<sup>rd</sup> party liability to cover all loss arising from operations, whether due to operator negligence or not – insurance usually covers this – local advice should be sought to determine what cover is available



the following Contract Year with an insurance company of international repute against:

- (i) claims, losses, damages or destruction relating to the Assets, works and the Services and its responsibilities under the Contract; and
  - (ii) accidents, injury or death occasioned to persons lawfully being provided services by the Operator; and
  - (iii) such other liabilities that may be occasioned to persons in the performance of the Services by the Operator as provided for in this Contract.
- (c) Before entering into any such insurance arrangements, the Operator shall submit all relevant information to the Lessor for its approval and the Lessor retains the right to grant or withhold such approval (with or without conditions) as may be necessary to ensure that its interests are adequately and properly protected. The Operator shall only enter into insurance arrangements which have been approved by the Lessor.
- (d) All insurance policies relating to Assets (or appropriate endorsements, certifications or other satisfactory evidence of insurance) required to be take out by the Operator under the terms of the Contract shall be in the joint names of the Lessor and the Operator<sup>8</sup>.
- (e) Particulars and proof of the existence of the insurance which the Operator is required to take out shall be provided to the Lessor periodically, including, without limitation, on the Commencement Date and within seven (7) Days of any request from the Lessor.
- (f) Where damage to property occurs, proceeds from property insurance cover shall be utilised to repair, reconstruct or replace the property which has been damaged or destroyed in order to restore it to its condition immediately prior to the event which occasioned the loss or damage. In no case shall the insured amount limit the responsibilities of the Operator under this Contract to make good the loss or damage.

#### 4.4 Indemnities and Liabilities<sup>9</sup>

- (a) Without prejudice to other appropriate provisions of this Contract, and in particular Article 16, and subject as provided in this Article 4.4 and Article 5.4, the Operator hereby covenants to indemnify and hold harmless the Lessor and its Personnel and keep it and them fully and effectively indemnified from and [against all liability and expenditure for which it is responsible]<sup>10</sup> (whether arising during the continuance or after the period of this Contract) (including, without prejudice to the generality of the foregoing, all costs, charges, demands, fines, legal fees, penalties and proceedings and expenses incurred in disputing any action, proceeding or claim of any nature) and any damages, payments, claims or other liabilities suffered or incurred by the Lessor and its Personnel arising as a result of or in connection with any loss, injury (including death) or damage to any member of the public or any personnel or other workman or other Person in the employment of, or seconded to, the Operator;
- (b) Save to the extent provided above, the Lessor covenants to indemnify and hold harmless the Operator and its Personnel and keep it and them fully and effectively indemnified from and against all liability and expenditure for which it is responsible (whether from the public or the private sector, and whenever arising, namely before, during or after the continuance of the provisions of this Contract) (including, without prejudice to the

<sup>8</sup> local insurance advice should be taken to find if this is possible

<sup>9</sup> it is not clear whether indemnity by Operator which is recoverable under insurance is covered by the limitation of liability set out in 47.

<sup>10</sup> this is not very clear – may be appropriate to state arising from the acts or omissions of the Operator



generality of the foregoing, all costs, charges, demands, fines, legal fees, penalties and proceedings and expenses incurred in disputing any action, proceeding or claim of any nature).

#### 4.5 Technical Assistance

- (a) In the event that the Operator decides that it does not have the necessary or adequate expertise or resources to comply with all the requirements for the performance of its obligations under this Contract, and it considers that such provision may be obtained from third parties, it may enter into technical assistance agreements or sub contracts as required.
- (b) Where necessary and appropriate, it shall be the obligation of all parties involved in any such technical assistance agreement or sub contracts to obtain all necessary consents and approvals from the relevant authorities.

#### 4.6 Duties in Respect of Nature Conservation

- (a) In formulating or considering any proposals relating to the discharge of any of its powers, duties and functions, the Operator shall have regard to any applicable environmental legislation relating to the preservation of natural beauty, and the conservation of flora, fauna and geological and physiological features of special interest and the protection of Buildings and other objects of architectural, archaeological, or historic interest.
- (b) In determination of the proposals referred to in paragraph (a) above, after consultation with the Lessor, the Operator shall consult with the relevant Government Institutions and with such other organisations and Persons as the Lessor may reasonably so direct or as appears to the Operator to be appropriate.

### 5 **LESSOR'S OBLIGATIONS**

5.1 With the exception of the works that are the responsibility of the Operator by virtue of this Contract, and subject to the provisions of Article 18, all works concerning the extension and rehabilitation of the system shall be the responsibility of the Lessor.

5.2 The Lessor shall:

- (a) make available the Assets to the Operator. If the Operator does not use the Assets made available by the Lessor in the provision of the Services, the Operator shall make his own arrangements at his own expense and shall give written notice to the Lessor of such arrangements;
- (b) obtain and keep in force (as far as is reasonably possible) all necessary and appropriate licences, permits and warranties which are outside the responsibility of the Operator to obtain or keep in force;
- (c) ensure the delegation and provision of all necessary legal powers and authorities for the Operator and its Personnel that are or may be necessary for the provisions of the Services;
- (d) give all necessary and appropriate co-operation to the Operator to ensure the proper performance of its responsibilities under this Contract and ensure that its Personnel shall not hinder or interfere with the performance of such obligations or with the Operator's Personnel in the execution of their duties or in the day to day management of the Operator;
- (e) give reasonable, speedy and timely consideration to any proposals made to it by the Operator or the Operator's Authorised Representative. All approvals to be given by the Lessor to the Operator pursuant to this Contract shall not be unreasonably withheld. In the event that the Lessor withholds such approval, the Lessor shall notify the Operator in

writing of the reasons which have led the Lessor not to grant such approval;

- (f) give the Operator full access to all necessary and appropriate information, plans, policies, papers, reports and data in order to enable the Operator to carry out the Services;
- (g) co-operate in all respects and, to the extent as is appropriate and necessary, to procure the execution of any Capital Works for which the Operator may be responsible, and for such purpose, enter into any such funding agreement, construction contract or other documentation in respect thereof as may be reasonably required;
- (h) communicate prior to the Commencement Date with the employees of the Lessor to advise them of the new arrangements with the Operator;
- (i) subject to the provisions of Article 4.3, arrange all necessary insurances whether by way of new policies of insurance or extension of existing policies of insurance, provided that the Operator shall be responsible for all appropriate insurance in respect of the Assets and its own assets, and any liabilities arising from its obligations under Article 4.3, and its own operational liabilities (including its Personnel and vehicles);
- (j) assist the Operator to obtain, from the Government, local government or statutory bodies, all necessary consents and permits as required by law to enable the Operator to perform its obligations under this Contract and, if appropriate, such as are necessary to enable the Operator to Abstract water from the existing and any future required sources of supply of Raw Water (whether from surface sources or underground) and also obtain all necessary consents and discharge permits to discharge used water (including treated Sewage and Sewage overflows to surface water systems);
- (k) subject to statutory requirements, consult the Operator (or ensure that the Operator is consulted by the appropriate issuing authority) in relation to any and every application which may be made to such authority for the issue of a new licence or for the renewal or alteration of an existing licence by any Person, body or organisation for the carriage and transportation, (including the licensing of new or substitute vehicles by new carriers or by organisations which have existing licences for carriage), collection and disposal of Sewage and liquid waste and effluent (including trade waste) within the Operator's Area and in particular for the disposal of such collected waste at the waste stabilisation ponds (part of the Sewage treatment facilities which are included in the Assets leased by the Lessor to the Operator) where the granting or with-holding of the necessary consent to discharge at the stabilisation ponds is not within the control of the Operator. The Lessor shall ensure that no such consent or permission is granted by itself or any other authority over which it has control or influence which would have a detrimental effect on the operation of such stabilisation ponds;
- (l) supply all necessary information to the Operator to ensure that the Operator may consider the possible effects of any application made under Article 5.3 (k). If the Operator reasonably considers that the quantity or quality of the waste which would be the subject of such licence would adversely affect the performance of the stabilisation ponds, the Lessor shall use its best endeavours to ensure that such a licence is not granted or shall ensure that appropriate special conditions are applied to such licence which relate to the quality or quantity of the waste in order to protect the stabilisation ponds and their operation. In the event that such a licence is granted or renewed or that appropriate conditions (as required by the Operator) are not so imposed, and the Operator can show that the waste does or might have a deleterious effect on the performance of the stabilisation ponds, the Operator shall not be liable or responsible for failing to comply with the levels of Service and Performance Targets and Key Performance Targets that are applicable to such stabilisation ponds or for not maintaining the required quality of effluent discharged from such stabilisation ponds.

5.3 The Lessor agrees and covenants that it will take all such reasonable steps within an appropriate time as are, or will in the future be, necessary to control or regulate the performance of any necessary functions in relation to the matters for which the Operator does

not have responsibility (as set out in Article 6.3) and will ensure that the same do not impact adversely on the performance or attempted performance by the Operator of its obligations under this Contract or cause additional difficulty or expense to the Operator.

- 5.5 No provision herein will impose upon the Operator an obligation to supply water from Standpipes or water kiosks, free of charge, except as provided in Article 30, Fire Fighting Measures.

## **6 SCOPE OF SERVICES OF THE OPERATOR**

6.1 Subject to the provisions of Articles 11 and 67, the Operator has the exclusive right for the duration of this Contract, to deliver piped Potable Water and Sewerage Services for the benefit of Customers, within the Operator's Area in conformity with the terms of this Contract. For the avoidance of doubt, the Operator is obliged to receive into its Sewers and Sewage treatment works and tipping stations at certain stabilisation ponds, Sewage and wastewater under the conditions stated in this Contract. The Operator shall not be obliged to receive any such discharges where the discharges would or might have a detrimental effect or cause damage to the Assets or the activities or Personnel of the Operator. The powers of control and monitoring in relation to such functions are vested in the Operator.

6.2 The Operator has the exclusive right to Maintain, and exercise all necessary statutory powers within the Area, in relation to any works, Assets, pipework and appurtenances of the water supply and Sewerage systems whether constructed above or below public or private land (and any associated Buildings and public roads).

6.3 The Operator shall not be obliged to accept the disposal of any waste which is conveyed by tankers or other vehicles at any location on the Sewerage system or at any treatment or pumping site or station other than those specifically designated by the Operator and agreed by the Lessor for the reception of waste and Sewage, and any such reception of waste and Sewage shall be on such conditions and terms as authorised under Article 33.4 (including charges and tariffs) as may be agreed between the Operator and the Person wishing to make such a discharge, subject to the necessary consents and approvals being obtained from the Lessor and the Regulator as the case may be.

6.4 <sup>11</sup>[The following provisions of this Article 6.4 shall apply to the reception and treatment of waste and Sewage which is transported by Persons other than the Operator in tankers or other vehicles and collected from domestic and other waste disposal sites within the Designated Area (in this Article called "Tankered Waste").

- (a) For a period of twelve (12) months from the Commencement Date, the Operator shall be obliged to accept tankered waste only at any one or more of the following stabilisation ponds:

[ ]

in accordance with the terms and conditions of any disposal licences which have previously been issued by the Lessor or any of its predecessors;

- (b) Prior to the Commencement Date, the Lessor shall supply to the Operator a full and comprehensive list of all disposal licences, together with full information relating to (and copies of) such licences;
- (c) Notwithstanding the terms of any existing disposal licences, for the first Contract Year, the following further conditions shall apply:-
- (i) The Operator shall only be obliged to accept tankered waste at periods to be agreed between the Parties. The Operator will take all necessary steps to

<sup>11</sup> relevant where some waste is tankered

prevent discharges outside those agreed periods, and to control access to the stabilisation ponds in order to prevent unauthorised access or discharges;

- (ii) The Operator shall not be obliged to accept any tankered waste which might have a deleterious effect on the Sewage treatment processes in the stabilisation ponds or which might give rise to the effluent from such ponds not complying with the applicable discharge standards. In the event that the Operator refuses to accept any tankered waste for these reasons, it shall inform the Ministry responsible for Water Affairs;
- (iii) The Operator shall have the right to take samples (at such times and in accordance with such parameters as may be decided by the Operator) and analyse such samples from any tankers containing tankered waste which are seeking to discharge at such stabilisation ponds.

6.5 The Operator shall undertake a review and assessment of all matters relating to the discharge and treatment of tankered waste with the intention that, all arrangements relating to the discharge of tankered waste and all licences relating to such discharges shall be reviewed by the Operator and the Lessor, and, after an agreement has been reached, the Parties shall cooperate in taking all necessary action to:

- (i) regularise the position so that the stabilisation ponds work more effectively and that an acceptable effluent shall be produced from such ponds;
- (ii) introduce a new licencing system;
- (iii) introduce a new procedure for the treatment and disposal of tankered waste;
- (iv) introduce a new charging system; and
- (v) present their agreed findings to the appropriate licencing authorities and to the Regulator.

If appropriate, alternative arrangements may be made for the reception of the tankered waste. It is accepted that any such settlement made may be of an interim nature and that it may be necessary for the position to be reviewed again at the Major Review.]

## **7 AREA**

### **7.1 Definition of Area**

- (a) For the avoidance of doubt, this Contract applies to the Operator's Area, which is shown on the Map 2 in Appendix A. At the Commencement Date, the Operator's Area covers the same area as the Water Supply Area (as mentioned later) and includes the whole of the Sewerage Area (as also mentioned later). Within the Operator's Area, water is now supplied to a limited part of such Designated Area, (which area is called "the Water Supply Area", and which is shown on Map 2 in Appendix A). Similarly, within the Designated Area, Sewerage and Sewage disposal Services are provided within a limited part of such Designated Area, (which area is called "the Sewerage Area" and which is shown on Map 3 in Appendix A).

### **7.2 Extent of responsibility in the Area**

- (a) Pursuant to the provisions of Section 7 of the Act, the Lessor confirms that the Operator has the exclusive right (subject to existing exceptions now carried out by communities, Persons or companies other than the Lessor) to provide public water supply and Sewerage Services within the Operator's Area.
- (b) In respect of those parts of the Designated Area which are not included within the Operator's Area, the Lessor retains the powers to perform its functions and discharge its

responsibilities unless and until it extends the rights and obligations of the Operator to perform those functions and responsibilities within that extended part of the Designated Area.

### 7.3 Alteration of Area

Where technical or economic considerations so require, with the agreement of both Parties, the Operator's Area may be altered (by variations of the boundaries of that part of the Designated Area which at the Commencement Date is retained by the Lessor). In the case of any alteration, the powers, duties and functions of the Lessor shall be exercised and performed by the Operator in such extended Area. For the avoidance of doubt, any such changes in the area shall be subject to the provisions of Article 61 and shall be shown and recorded on a new plan or new plans (which shall be signed by or on behalf of both Parties and such substituted plans shall be kept and retained by both Parties with their respective copies of this Contract). The new plan or plans shall then be substituted for the plans attached to this Contract and shall have force and effect in their place. In the event that the Operator does not agree to exercise the powers, duties and functions of the Lessor in such extended Area on the then existing tariff levels, the Lessor may appoint another contractor to operate such powers, duties and functions in the proposed extended Area. The Lessor shall give at least twenty eight (28) days written and formal notice of its intention to make such appointment.

### 7.4 Involvement of the Regulator in any change to the Area.

No changes shall be made to, or in connection with, the Area unless and until the Regulator has been consulted and its agreement obtained on the practical and financial implications of any such change.

## 8 **HAND OVER OF ASSETS AND INSTALLATIONS**

### 8.1 General

From the Commencement Date until the Contract terminates the Lessor hereby agrees to lease the Assets to the Operator.

### 8.2 Hand Over of Installations and Assets on the Commencement Date

- (a) The parties shall execute the Deed of Handover to have effect as of the Commencement Date and the Lessor will hand over the Assets listed in Appendix B to the Operator and the Operator will accept such Assets. For the avoidance of doubt, << handing over >> or << hand over >> in this context, means the right to use and the duty to Maintain such Assets. The Lessor gives no warranty as to the completeness of Appendix B, nor as to the condition or operational capacity of the items listed therein.
- (b) Within twelve (12) months of the Commencement Date the Parties shall establish the Agreed Physical Asset Register.
- (c) For the avoidance of doubt, the ownership of the Assets, including Small Equipment, shall remain vested in the Lessor and the Operator hereby covenants with the Lessor to Maintain and Repair the Assets, and Customer Meters, in accordance with the provisions of this Contract, and, at the end of this Contract, the Operator shall hand back the Assets to the Lessor in accordance with the provisions of this Contract.
- (d) The Lessor shall provide the Operator with all plans, drawings and other records, in whatever format and condition they are maintained, relating to the Assets, Operating Equipment and Works.
- (e) During Mobilisation the Lessor shall offer to sell to the Operator any items necessary as Operating Equipment or consumables such as chemicals, fuels and lubricants which the Lessor has available for such sale. The Lessor shall not sell to a third party or otherwise



dispose of such items until the Operator has had twenty one (21) days to accept the offer.

- (f) The Operator shall review and within four (4) weeks of receipts of preliminary or detailed designs prepared on the Lessor's behalf for new Assets to be created as part of the Capital Investment Programme provide written comments upon such designs to the Lessor.
- (g) The Lessor and the Operator shall comply with Appendix D in respect of Employees of the Lessor.

### 8.3 Maintenance of Agreed Physical Asset Register

- (a) The Operator shall, subject to Articles 57 and 58, maintain at all times an up to date and comprehensive version of the Agreed Physical Asset Register, which shall record the existence, location, and state and condition of the Assets, (being an update of the Register of Assets). The Operator shall (when reasonably so required by the Lessor) provide the Lessor with a copy of the Agreed Physical Asset Register (whether in physical or electronic form as appropriate) and the Lessor shall have the right to verify such information and records by itself or through its appointed auditors.

### 8.4 Hand Over of new Capital Works During the Contract

- a) Subject to the provisions of Division IV ( Articles 18-20), new Capital Works instigated by the Lessor shall be carried out as follows:
  - (i) all new Capital Works will be undertaken at the expense of the Lessor by a contractor of its choice (which may include the Operator) by competitive tendering in accordance with Article 18.4;
  - (ii) on completion, these new Capital Works shall be handed over by the Lessor to the Operator and shall form part of the Assets; and
  - (iii) the Operator shall participate in the acceptance and hand over of new Capital Works keeping a proper record of all relevant matters, and shall notify the Lessor in advance of hand over of new Capital Works of any comments it may have regarding such Capital Works, provided that the Lessor shall not be obliged to take account of any such comments by the Operator

### 8.5 Use of Public and Private Roads

- (a) In carrying out its contractual duties of operation and management and other obligations provided herein, the Operator shall abide by the terms stipulated in this Contract and in Regulations relating to work in public highways and shall collaborate with other service providers.
- (b) To enable the Operator to carry out its prescribed functions in private roads and other restricted areas, the Lessor shall obtain, on its behalf, all necessary prior approvals from the competent authorities.
- (c) On handing over responsibility for the ongoing obligations referred to in this Article 8.5(b), the Lessor shall provide the Operator with copies of all servitudes or easements for pipework, including Sewers in private land.

### 8.6 Return of the Assets on Termination

- (a) On termination of this Contract the Operator shall return the Assets to the Lessor or if the Lessor so elects to a successor operator (<<**Successor Operator**>>) in the condition that Assets which have been installed, managed, operated and Maintained in accordance with Good Industry Practice should exist, the Operator having exercised all due diligence in the carrying out of the operations, the provision of Services and the handover of the

Assets.

- (b) Pending handing back of the Assets the Operator shall maintain insurance policies in accordance with Articles 4.3 and 4.4.(a) throughout the life of the Contract (unless such cover is no longer available or is no longer available at commercially acceptable rates, unless the Lessor or successor Operator (as applicable) requests the Lessor to obtain such cover in which case the Lessor or Successor Operator (as applicable) shall pay any additional premium)) in respect of the Assets.
- (c) The Operator shall apply any proceeds of the insurance policies received by it in so far as they relate to the Repair or restoration of any loss or damage to the Assets caused during the period of this Contract. Provided always that if the Operator incurs any cost or expense in connection with any such Repair and/or restoration during the relevant period and in respect of which as at the date of handover the Operator
- (i) has not been fully reimbursed by the proceeds of the insurance policies; or
  - (ii) any amounts that the Operator is properly due to fund itself then the residual amount for Repair, restoration or upgrades requested by the Lessor over and above Good Industry Practice following inspection and report of the technical consultant in accordance with Article 53.5,
- then at handover such residual amount as determined under (i) and (ii) above shall be repaid by the Lessor to the Operator.
- (d) The Operator shall in accordance with Article 3.4 return to the Lessor or the Successor Operator the information, Assets, software and other data each as identified in Article 3.4.

## **9 ACCESS TO LAND**

- 9.1 <sup>12</sup>Subject to the provision of reasonable notice to the occupiers of land, the Lessor shall ensure the granting to the Operator (which expression includes its Authorised Representatives) of all necessary legal right of access to land, property and water sources of supply within the Operator's Area in order to discharge its functions and provide the Services under this Contract.
- 9.2 The Operator shall exercise its rights of access to land, property and Sources of Supply, and disposal of Sewage and effluent in accordance with the [rules of public security]<sup>13</sup> having regard to the convenience of the residents.
- 9.3 In exercising its functions under this Article 9, the Operator shall observe the Legal Requirements in respect of any injury caused to Persons, and damage to the land or property or Persons.
- 9.4 Where the Operator can demonstrate to the Lessor that it has been unable to perform the duties and responsibilities entrusted to it under this Contract because it (through its Employees and with or without the necessary plant and equipment) has been unable to gain physical access to the Assets or to land on which it is required to exercise its duties, owing to the physical condition of such land or the necessary access routes to such land or where access has been denied by the actions of other Persons or organisations which own or are responsible for such land or the access to it, the Lessor shall make all reasonable efforts to assist the Operator to gain such access. Such assistance may involve assistance in overcoming such physical difficulties or in obtaining the necessary consents from other bodies or organisations (including Government Institutions). In the event that the necessary and appropriate access cannot be obtained and there is no fault or negligence on the part of the Operator, and provided that the Operator has made all reasonable attempts to obtain such

<sup>12</sup> important provision to ensure that the Operator has right to enter land to repair pipes etc – obtain local advice to ensure that these rights can be delegated to Operator

<sup>13</sup> it is not clear what these rules entail – may want to refer to specific Regulations or Legislation



access, the Operator shall not be considered to be in default of its obligations under this Contract to perform its duties in relation to such Assets or land.

## **10 DISPOSAL OF THE ASSETS**

- 10.1 The Operator shall not sell, hand over, transfer or otherwise dispose of any Assets, without the prior approval in writing of the Lessor.
- 10.2 The Operator, in its Annual Report, shall list all Assets, if any, that have been sold, handed over, transferred or otherwise disposed of during the Contract Year in question and shall provide audited details of all such transactions. The proceeds of sale shall be paid to the Lessor, less the Operator's reasonable costs of disposal.
- 10.3 Any Asset which is handed over by the Lessor to the Operator shall only be used for or in connection with the performance of the duties of the Operator under this Contract, and shall not be used for any other purpose without the prior written agreement of the Lessor. In particular, the Operator shall not attempt to sell, mortgage, lease or sub-let or franchise (or otherwise part with the possession to any other Person or company) any of the Assets handed over, except in accordance with the provisions of this Contract.
- 10.4 Notwithstanding any other Article, with the prior written approval of the Lessor, (which approval shall be deemed to be given automatically if no refusal to such disposal has been given by the Lessor to the Operator within thirty (30) days of the Operator giving written notice of its intention to dispose of such items), the Operator may dispose of any item which has been handed over to it or which is on any site or in any Building entrusted to the Operator where the Operator considers that such item has no economic or operational value or is causing hindrance or obstruction to the proper operations of the Operator. In such a case, the Operator shall not be required to sell or obtain financial compensation for such disposal and, if no such payment is obtained, the Operator may recover from the Lessor the reasonable costs of such removal and disposal.

## **11 BULK SUPPLY ARRANGEMENTS**

- 11.1 Subject to the prior approval of the Lessor (such approval not to be unreasonably withheld or delayed), the Operator may enter into an agreement with any Person to supply Water in Bulk to that other Person on such terms and conditions as may be agreed by the Regulator.
- 11.2 The Lessor shall not give its approval under Article 11.1 if the Lessor has reasonable grounds to believe that such supply by the Operator would be likely to have deleterious consequences for the supply of water for any purpose within the Area.

## **DIVISION II – CONDITIONS OF SUPPLY AND PERSONNEL**

### **12 SUPPLY OF SERVICE**

- 12.1 General
- (a) The Operator shall publish standard Customer Contracts and issue Customer Contracts to all Customers within the Operator's Area provided that the comments and consent of the Regulator shall have been obtained.
- (b) Customer Contracts shall be substantially in the Model Form set out in Appendix G, subject to such amendments as shall be agreed between the Operator and the Lessor prior to such publication and issue and approval by the Regulator. For the avoidance of doubt, it is agreed that the model form as set out in Appendix G is for general purposes only, and that where special circumstances so demand (especially in the case of discharge of effluents to the Sewer for other than domestic purposes) a new model form appropriate for such circumstances shall be agreed between the Lessor and the Operator before such form is brought into use.

- (c) Once the Code of Practice for Customers has been formulated and published, the attention of Customers shall be drawn to such Code and the fulfilment of the terms of such Code shall be an obligation of such Customer Contract.
- (d) Prior to the issue of the Customer Contracts, it shall be the duty of the Operator to consult with the Regulator and with such other organisations or Persons as either the Regulator may so direct or as the Operator considers to be representative of groups of Customers or as otherwise appropriate with a view to the establishment of such Customer Contracts. In framing the contracts, the Operator shall pay due regard to the inputs made during this consultative process.
- (e) The Operator shall publish the existence of such Customer Contracts in such manner as in the opinion of the Operator will secure adequate publicity for them.
- (f) The Operator shall treat all classes of Persons with whom it has Customer Contracts in a similar manner, having regard to the peculiar characteristics of each such class of Persons.
- (g) Unless an existing Customer with an existing Customer Contract (by whatever name it may be called) serves notice on the Operator within fourteen (14) days of receipt of the Customer Contract to the effect that he rejects the said Contract, he shall be deemed to have accepted the Customer Contract.

## 12.2 Application for Water Supply and Sewerage Services

Applications for water supply and Sewerage Services to Customers shall be made in accordance with the Model Customer Application Form substantially in the form set out in Appendix F and shall be signed by the Customer. At the time of such application for supply, the Operator shall inform the potential Customer of the obligations to which he will be subject on receiving such a supply. Any modifications made to the Model Customer Application Form or to the Model Customer Contract shall be agreed between the Operator and the Lessor, with the consent of the Regulator.

## 12.3 Obligation to Accept Applications for Water and Sewerage Services

- (a) Subject to the terms of this Contract provided that it is reasonably possible for the Operator acting in accordance with Sound Water and Sewerage Engineering Practices to make such service possible, having regard to the then existing status of water distribution and Sewerage, the Operator is required to supply water and Sewerage Services to any Customer in the Operator's Area who applies for such Service.
- (b) The Operator will ensure that connections are made as follows:
  - (i) reconnection of an existing service connection shall be made within eight (8) days of receipt of payment from the Customer;
  - (ii) Service Pipe or Drain lengths up to [fifty (50) metres] shall be made within six (6) weeks of receipt of a deposit from the Customer;
  - (iii) new connections requiring Service Pipe or Drain lengths of between [fifty (50) and two hundred (200) metres], the connection will be made within three (3) months of receipt of a deposit from the Customer.
  - (iv) new connections requiring Service Pipe and Drain lengths greater than [two hundred (200) metres], provision of water supply and Sewerage Services will require special consideration, and shall be based on Sound Water and Sewerage Engineering Practices. The time for completion of the connection in this case shall be agreed with the applicant in writing.
- (c) The Operator shall not be obliged to make any connection until the Customers' pipework

has been installed, inspected and approved by the Operator's Personnel. Such inspections shall ensure that the Customer's plumbing and supply pipe shall not lead to waste or pollution, and comply with any Regulations relating to water supply and Sewerage services (including, without limitation the [RELEVANT LEGISLATION AND REGULATIONS] or any replacement thereof.)

- (d) Where the applicant is required to fund all or part of the cost of any new connection or chooses to provide (subject to the consent and approval of the Operator) its own materials, the Operator shall not be required to commence any work until the required payment or materials are received in full by the Operator from the applicant. The periods stated in Article 12.3(b) shall then apply from the date that the payments or materials were received.
- (e) Upon making an application for a new connection, the Person making such an application shall pay a deposit of [AMOUNT AND CURRENCY] to the Operator. The deposit shall be held by the Operator for the duration of the Customer Contract.

#### 12.4 Supply Contracts and Reception of Sewerage Contracts with Third Parties

- (a) From the Commencement Date, the Operator will undertake all of the obligations previously accepted by the Lessor under the existing Supply Contracts and Reception of Sewerage Contracts with regard to the operation of the Service and of which details shall be made known to it or the Lessor before the commencement of this Contract.
- (b) All new Supply Contracts and Reception of Sewerage Contracts between the Operator and third parties, which are necessary for provision of the Services, shall include a provision reassigning the contract to the Lessor or another party which is authorised to provide the Services, in the event of a default by the Operator resulting in termination of the Contract.
- (c) The Operator (in its Annual Report) shall provide appropriate particulars of all such contracts (which may be on a summary or composite basis if necessary) and shall provide the Lessor with all such information as the Lessor may reasonably require.

### 13 **CODES OF PRACTICE**

13.1 Within twelve (12) months from the Commencement Date of this Contract, (or other longer period as shall be agreed between the Parties provided that the same shall have been agreed with the Lessor and authorised by the Regulator), the Operator shall formulate and publish in English and [LOCAL LANGUAGE]:-

- (a) the Code of Practice for Customers;
- (b) the Customer Service Standards;
- (c) the Code of Practice and Procedures on Leakage Control;
- (d) the Code of Practice and Procedures on Disconnections;
- (e) the Customer Complaints Procedures;
- (f) the Code of Conduct in respect of entry onto land (which expression includes Buildings); and
- (g) the Code of Practice and Procedures on Pollution Prevention.

13.2 The Operator shall periodically review such Codes of Practice and in its Annual Report shall provide details of the effectiveness (as perceived by the general public) of such Codes. The Operator shall periodically advise the public, through the media and by such other means as the Operator may elect that the publications listed in Article 13.1 above shall be available for inspection during normal business hours at the offices of the Operator. All revisions shall be

agreed with the Lessor, and approved by the Regulator.

- 13.3 The Code of Practice for Customers shall,
- (a) describe the nature of the Services to its Customers provided by the Operator under the provisions of this Contract;
  - (b) describe the terms and conditions on which those Services are provided or are to be provided;
  - (c) describe the arrangements for the payment of accounts by its Customers, including the payment of advance deposits;
  - (d) provide information as to the availability of facilities for, and any amount payable in respect of, the testing of Customer Meters and describing the method for the determination of proof of readings, including the permitted tolerances in respect thereof; the effect of a Customer Meter reading in the measurement and the determination of the associated charges and the liability for charges after ceasing to occupy metered premises;
  - (e) explain the procedure for a Customer who disputes either the liability or the quantum of an invoice; and
  - (f) explain the various payment options available to a Customer including the associated discounts (if any) for early payments, that is to say, payments before the payment date as specified.
- 13.4 The Customer Service Standards shall describe the levels that have been determined for measuring the capability of providing and improving on its service to its Customers.
- 13.5 The Code of Practice and Procedures on Leakage Control shall,
- (a) define the responsibilities of the Customer in respect of leaks from any pipe or storage unit vested in the Customer;
  - (b) define the liabilities of the Customer in respect of,
    - (i) financial costs due to leaks after water has passed through the Customer Meter; and
    - (ii) the potential liabilities where the Customer was aware of the leak or should have been aware if he were managing the water supply and plumbing systems on the premises in a prudent manner and so avoid any potential action in respect of waste of water under any Regulations.
- 13.6 The Code of Practice and Procedures on Disconnections shall inform a Customer or a potential Customer of the rights of the Operator to disconnect or otherwise not to provide a water or Sewerage Service when the Customer has failed to make payment by the due dates for the Services provided to the premises concerned.
- 13.7 Customer Complaints Procedures shall advise the Customer as to the method of making a complaint (which shall include facilities for accepting written complaints, telephone complaints and personal visits) including the appropriate contact Person to whom, in the first instance, the complaint should be made.
- 13.8 The Code of Conduct in respect of entry onto land shall include such matters as,
- (a) prior notice to be served except in an emergency;

- (b) the requirements for all officers, Employees or agents of the Operator effecting entry to carry appropriate identification and to produce such identification;
- (c) the circumstances in which an occupier or owner may claim compensation for any damage or loss of beneficial use arising from or otherwise caused by the entry.

13.9 The Code of Practice and Procedures on Pollution Prevention shall comply with environmental legislation.

## 14 **PERSONNEL**

### 14.1 Employment

<sup>14</sup>The use and employment of the transferred Employees is subject to the provisions of the Act, and all such matters shall be governed by the prior arrangement referred to in the Act.

### 14.2 Operator's Personnel

- (a) Subject to the laws of [COUNTRY], the Operator's Personnel will have free access to Customer installations for reading, verification and other tasks associated with provision of the Services.
- (b) The Operator shall ensure that any of its Personnel, including officers, or Employees or agents who, in the course of their employment, have contact with members of the public are issued with an appropriate identification document. Such an identification document shall be produced to any Person who has reasonable grounds to request the identification of the officer, Employee or agent.
- (c) At the termination of an Employee's employment with the Operator, such identification documents shall be returned to the Operator.

### 14.3 Development of Human Resources

- (a) The Operator shall adopt such methods as are reasonable for enhancing the skills and competencies of its officers and Employees, and ensure that only qualified and certified Personnel are employed for tasks of potential risk to health or to the safety of the Person.
- (b) The requirements contained in Article 14.3.(a) above shall apply *mutatis mutandis* to Employees of agents or of contractors of the Operator acting on the Operator's behalf in respect of work or Services including tasks of potential risk. It shall be the duty of the Operator to satisfy itself that only such qualified and certified Personnel are so employed by the agents and contractors on such tasks of potential risk.
- (c) For purpose of this Article, "tasks of potential risk" means activities or work which contain an inherent risk to the physical or mental health of an individual.
- (d) After consultation with such authorities or bodies as the Lessor may direct or with such other parties as the Operator may consider being appropriate, the Operator shall make provision for advancing the skills and competencies of Persons employed by it for the purposes of providing Services under this Contract within the Area.

### 14.4 Restricted Operations

- (a) Restricted Operations Personnel shall be subject to periodic medical examinations (at intervals of not more than three (3) years or as may be required by the circumstances) in order to ascertain

<sup>14</sup> Employees of Lessor are to be transferred to Operator under the relevant legislation. Local laws often do not allow for transfer and something short of transfer such as secondment may only be possible. Terms on which such employees may be employed may also be limited as they may be subject to civil service pay conditions. Local advice should be sought.

- (i) whether he is a carrier of a water or sewage-borne disease or infection;
  - (ii) whether he is suffering from any water or sewage-borne or water-related disease.
- (b) Any officer or other Employee of the Operator, who works on Restricted Operations who has been absent from work due to a water or Sewage-borne disease or a water-related disease or has suffered from any diarrhoea disease or any form of dehydration, upon return to work shall not resume his normal duties in respect of Restricted Operations until he has been examined by a registered medical practitioner who shall certify whether he is then fit to return to his previous work or whether he should be transferred to non-Restricted Operations.
- (c) Any medical examination undertaken under the provisions of this Article shall be confidential to
  - (i) the individual officer or Employee having the examination;
  - (ii) the medical practitioner who undertakes the examination;
  - (iii) any staff of the medical practitioner or other Persons assisting the medical practitioner; and
  - (iv) any authorised officer of the Operator, who has been designated to receive such reports of the medical examination.
- (d) The Operator shall take all practicable steps to ensure the confidentiality of any medical report which it receives.
- (e) The Operator shall prepare and follow procedures aimed at preventing the contamination of water supply by the use of plant, equipment, tools, vehicles or Personnel which have previously been involved in Sewage activities. Precautions shall include, but not be restricted to, the segregation of equipment etc, for two purposes and provision for the disinfection or cleaning of equipment.
- (f) The Operator shall train all Restricted Operations Personnel in respect of preventing water supply contamination and ensuring all necessary safety measures are taken with respect to contact with Sewage.

### **DIVISION III – OPERATING SERVICES AND CONNECTIONS**

#### **15 OPERATING AND MANAGEMENT SERVICES**

##### **15.1 Guiding Principles for the Discharge of Operator's Functions, Powers and Duties**

In discharging any of its functions, powers and duties, the Operator shall comply with, and shall take all reasonable steps to ensure adherence to:

- (a) Sound Water and Sewerage Engineering Practices;
- (b) Approved Technical Standards; and
- (c) Good Industry Practice.

The Operator is responsible for carrying out all necessary Maintenance and Repairs to the Assets, including without limitation Repairs to treatment plants, rising mains and pumping stations in accordance with this Article and Article 16.

##### **15.2 Technical Management**



The Operator's responsibility in connection with technical activities includes the following:-

- (a) operation of the Network Assets;
- (b) procurement and supply of chemicals;
- (c) procurement, rehabilitation, Maintenance, Repair and replacement of the Assets, Small Equipment and operating equipment where required for the Capital Investment Programme;
- (d) procurement and supply of energy, fuels and oils;
- (e) Maintenance of Network Assets, including mechanical and electrical equipment;
- (f) survey and quantification of the Assets in order to prepare and implement a Maintenance and replacement schedule of Assets (which will form an Asset Management Plan and which will be updated annually);
- (g) definition of technical procedures;
- (h) the measurement of levels of Service and the attainment of Service and Quality Standards and Performance Targets and Key Performance Targets as defined in Appendix H and Appendix N respectively;
- (i) leakage detection and control;
- (j) provision of new connections including Customer Meters;
- (k) Immediate and Medium Term Capital Investment Programme planning, covering rehabilitation and renewal of Assets to be included in Strategic Business Plans and Capital Investment Programme Planning as described in Article 18.2. The Operator shall provide a copy of all such information to the Lessor, who is ultimately responsible for the development and implementation of investment programmes for the Assets;
- (l) metering of existing registered Customers and new Customers.

### 15.3 Commercial Management

The Operator's responsibilities in relation to commercial management include without limitation:

- (a) management of applications for new connections to the water and Sewerage system;
- (b) management of its own accounts in respect of its Customers;
- (c) billing, including Customer Meter reading;
- (d) collection of sums due for the provision of the Services;
- (e) management of Customer files;
- (f) management of Customer disconnections;
- (g) identification, rationalisation, legitimisation and removal of Unregistered Connections (as the circumstances may require);
- (h) management of complaints from and disputes with Customers;
- (i) definition and establishment of commercial procedures; and



- (j) within six (6) months of the Commencement Date to establish and thereafter maintain a list of all Services supplied by the Operator to Government Institutions.

#### 15.4 Administrative and Financial Management

The Operator's responsibilities in relation to administration and financial management include without limitation the following:

- (a) employment, training and development of Personnel;
- (b) creation and Maintenance of Information Technology systems and databases;
- (c) definition and establishment of accounting procedures, and preparation of accounts;
- (d) preparation and submission of reports to the Lessor;
- (e) preparation of Codes of Practice; and
- (f) preparation of Financial Budgets, Strategic Plans and Annual Business Plans.

### 16 **MAINTENANCE AND REPAIRS**

#### 16.1 General

All constructions, equipment and materials used in the delivery of the Services shall be kept in good working order, in accordance with Approved Technical Standards, Good Industry Practice and Sound Water and Sewerage Engineering Practices and Maintained and Repaired by the Operator at its own expense.

#### 16.2 Maintenance and Repair Work Arising from Operator's Default

Notwithstanding the provisions of Article 48, in the event that the Operator fails to Maintain or Repair the works necessary for the provision of the Water and Sewerage Services, and where the Lessor considers it appropriate for reasons of public safety or for the efficient delivery of the Services, the Lessor may undertake, at the Operator's expense, any works required to remedy the situation, subject to giving 48 hours notice by the Lessor to the Operator. The same arrangements shall be applied in the case of reinstatements in highways and footpaths.

#### 16.3 Maintenance and Repair Work on Private Property

##### (a) Water Connections

- (i) In respect of each Customer's premises the Operator shall be responsible for the Maintenance and Repair of the Service Pipe, Accessories and Customer Meter up to the property boundary unless a Customer Meter or a stoptap is installed within the property boundary, in which case the Operator shall be responsible for the Maintenance and Repair of the Service Pipe and Accessories up to and including the Customer Meter or stoptap, whichever is located furthest downstream in the Service Pipe. Except in an emergency, the Operator shall give at least two (2) Days written notice to the Customer before entry into its premises to undertake such Maintenance or Repairs.

##### (b) Sewerage Connections

- (i) The Customer shall be responsible for the Maintenance (including the removal of blockages), and Repair of that portion of his Drain which is within the boundary of his property (but he may request the Operator to undertake any such work at the Customer's own cost). The Operator shall be

responsible for the Maintenance (including the removal of blockages), and Repair or renewal of that portion of the Customer's Drain which is outside the boundary of the Customer's property and which is not on private land but is within the highway and connected to the public Sewer.

- (ii) Where there is a fault with the Operator's portion of the Drain, the Operator shall use its best endeavours to restore the functionality of the Drain within a period of eight (8) Days from the date of the fault being reported to the Operator. This shall apply in all cases except where substantial renewal of the Drain is required in which case the time for completion shall be agreed with the Customer.
- (iii) Where there is fault with the Customer's portion of the Drain, the Customer may request the Operator (or another contractor) to restore the functionality of the Drain. In instances where the Operator is requested to Repair the fault, the Operator shall provide the Customer with a written estimate of the cost of Repairing the Drain within seven (7) Days of the date of receipt of the request. The Operator shall agree with the Customer the timescale during which the Repairs shall be completed. The Operator shall not be obliged to commence any work on the Drain until payment has been received in full from the Customer.

#### 16.4 Major Repairs and Replacements<sup>15</sup>

- (a) In the case of any major or substantial breakdown or structural failures of Assets causing failure to deliver the Services including those of the water supply, Sewerage and Sewage treatment disposal systems, all necessary Repairs shall be carried out by the Operator with all due diligence and speed to minimise the inconvenience to Customers. For the avoidance of doubt, this includes any work for which the Operator is not liable for the cost. Where the Operator is not responsible for the cost of works it undertakes, such costs shall be reimbursed by the Lessor on the basis of Direct Costs incurred by the Operator in undertaking such works plus a margin of fifteen per cent (15%). The Operator's Direct Costs shall be determined in accordance with the following procedure:
  - (i) within seven (7) Days of the works being completed the Operator shall provide the Lessor with a detailed breakdown of the costs incurred in carrying out the works. The Lessor will assess the detailed breakdown.
  - (ii) if the costs set out in the detailed breakdown are, in the opinion of the Lessor, unreasonable the Lessor shall determine the reasonable amount of costs recoverable by the operator based on its own assessment of the works carried out. In the event of disagreement on costs recoverable between the parties, the parties shall seek independent opinion.
  - (iii) The Operator shall not be entitled to recover any costs in excess of the amount determined as reasonable by the Lessor unless it is those determined by independent parties as in (ii) above. Subject to the respective responsibilities of the Operator and the Lessor as mentioned in Articles 4 and 5 (and in particular Article 5.3), the responsibility for the costs of any Repair in connection with the Network Assets shall be as follows:-
    - (A) all water mains up to and including three hundred millimetres (300mm) in diameter and of a length of six (6) metres or less and their associated plant, equipment and Accessories within the six (6) metre limit, and any associated plant, equipment and Accessories requiring Repair (up to 300mm diameter) irrespective of a mains failure shall be Repaired at the Operator's cost. Any water mains, associated plant, equipment and Accessories exceeding these limits

<sup>15</sup> useful to have clear delineation as to responsibility for major repairs/ replacement as this can be source of dispute

shall be Repaired at the Lessor's cost

- (B) all Sewers up to and including three hundred millimetres (300mm) in diameter and of a length of four (4) metres or less and their associated plant, equipment and Accessories within the four (4) metre limit, and any associated plant, equipment and Accessories requiring Repair (up to 300mm diameter) irrespective of a Sewer failure shall be Repaired at the Operator's cost. Any sewers, associated plant, equipment and Accessories exceeding these limits shall be Repaired at the Lessor's cost.
  - (C) All other network assets within a site boundary or where there is no site boundary within a building or structure, including all pipework up to three hundred millimetres (300mm) in diameter for water mains and three hundred millimetres (300mm) in diameter for sewers and their associated plant, equipment and Accessories shall be Repaired at the Operator's cost. Other network assets, associated plant, equipment and Accessories exceeding these limits shall be Repaired at the Lessor's cost.
  - (D) structural failures of the structure of any of the Assets not covered in Article 16.4 (a) shall be Repaired at the Lessor's total cost. For the purposes of this paragraph, structural failure means the failure of civil engineering components and Building sub and super structures
- (iv) For the avoidance of doubt, where any cost of any single repair or replacement is greater than [AMOUNT AND CURRENCY] as indexed in line with Appendix K6.1 'Indexation Adjustment Formulae, the Lessor shall be responsible for paying any excess costs above this amount.
- (b) Notwithstanding the provisions of Article 16.4 (a), the Operator is responsible for all Small Equipment which would routinely be replaced in the usual course of Good Industry Practice and Sound Water and Sewerage Engineering Practices.
  - (c) The restrictions to the Operator's responsibilities for major Repairs and replacements as stated in this Article shall not apply where it can be shown that (and where the Lessor and the Regulator are reasonably satisfied) these are necessary due to the failure of the Operator to fulfil its obligations for Maintenance or Repair of those relevant Assets as stated in this Contract.

#### 16.5 Maintenance of Ocean Outfall

- (a) The Operator shall be responsible for the Maintenance and Repair of any of the protection facilities (including timber fendering, beacons and marker posts) of the ocean outfall once they have been rehabilitated and replaced as part of the Non Delegated Works and have been handed over to the Operator in the finished condition envisaged by the rehabilitation contract. Prior to the handover, the Operator shall have no responsibility for the Maintenance and Repair of the Protection facilities. If any work is required prior to the rehabilitation, it shall be funded by and undertaken at the discretion of the Lessor.
- (b) The Operator shall be responsible for the Maintenance of the ocean outfall pipe and associated Accessories after it has been rehabilitated as part of the Non Delegated Works and has been handed over to the Operator in the finished condition envisaged by the rehabilitation contract. Prior to the handover, the Operator shall have no responsibility for Maintenance or Repair of the ocean outfall pipe. Following rehabilitation and handover, any Repairs necessary to the ocean outfall pipe including any associated Accessories (but excluding the protection devices described in Article 16.5 (a) unless they have been handed over to the Operator in accordance with Article 16.5 (a)) shall be the responsibility of the Operator to carry out but funded by the Lessor. No such works shall be undertaken without the prior written consent of the Lessor. However, where it can be

shown that damage to the pipe is due to missing, damaged or otherwise faulty protection devices and that, if these devices were present in their proper state (after becoming the responsibility of the Operator), the damage would have been prevented, or the damage was due to the Operator not fulfilling its obligations for Maintenance of the ocean outfall pipe and Accessories, the Operator shall undertake the necessary Repairs or Replacement to the pipeline at its own cost.

- (c) This Article 16.5 shall take precedence over any other Articles in this Contract which would otherwise reduce the Operator's responsibility for the Maintenance or Repair of the ocean outfall.

## **17 CONNECTIONS TO THE SYSTEM**

### **17.1 Provision of Customer Meters**

- (a) <sup>16</sup>All Customers shall be separately metered in accordance with this Contract, except as otherwise agreed between the Operator or the Lessor.
- (b) All Customer Meters which are installed in connection with this Contract shall be installed in accordance with specifications agreed between the Parties and in places easily accessible to the Operator's Personnel or agents.
- (c) The Operator shall be responsible for obtaining all Customer Meters to be installed in connection with this Contract. Funding of the Customer Meters is described in Appendix C. All Customer Meters obtained by the Operator will be consistent with Good Industry Practice.
- (d) The Operator shall be responsible for providing suitable storage for all Customer Meters awaiting installation. The responsibility shall include all costs including insurance or other measures necessary to protect the items whilst being stored. The place of storage provided by the Operator may be one or more of the Assets.

### **17.2 Verification of Customer Meters**

- (a) All new Customer Meters obtained by the Operator shall be inspected and tested in accordance with Good Industry Practice.
- (b) The Operator shall test installed Customer Meters during the period of the Contract at its own expense, in accordance with Good Industry Practice relative to the technology of the Customer Meter.
- (c) The Operator shall grant to the Customer the right, in the Customer Contract, to request verification of his Customer Meter at any time. In such a case, or in the case of a dispute relating to a Customer Meter, such matter shall be referred by the Operator to the appropriate and relevant independent authority for determination. Such determination shall be accepted as final and binding on all parties to the Customer Contract. If it is found by the aforementioned authority that the Customer Meter complies with Approved Technical Standards, the Customer shall be responsible for all costs incurred.

### **17.3 First Time New Domestic Water Supply Connections**

- (a) Within the context of this Contract, water connections shall include the connection to the distribution main, stopcock, Service Pipe to the property, isolation valve, Customer Meter and Meter box (if required).
- (b) The Operator shall be responsible for the construction of first-time connections including the Customer Meter, except where connections are specifically included in contracts for

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<sup>16</sup> this may be an expensive and time-consuming process if most customers are not already metered at commencement – may be appropriate to set out a schedule of meter installation – and give clear specification on costing

the Immediate Capital Investment Programme.

The cost of installing non-domestic connections will be borne by the Customer but installation of such connections remains the responsibility of the Operator.

The cost of installing domestic connections with more than three water points in the property will be borne by the Customer but installation of such connections remains the responsibility of the Operator.

(c) First Time New Domestic Water Supply Connections

(i) The Operator shall be responsible for the construction of First Time New Domestic Water Supply Connections. Save as otherwise provided in this Article 17.3, such connections shall be made by the Operator without charge to the Customer receiving such first time connection and the Operator shall finance the construction of such connections from the First Time New Domestic Water Supply Connection Fund. The Operator will be paid for the construction of First Time New Domestic Water Supply Connections in line with the Operator Fee as detailed in Appendix K4.

(ii) The Operator shall only be required to make First Time New Domestic Water Supply Connections pursuant to this Article 17.3 where the length of Service Pipe and Accessories necessary to reach the boundary of the Customer's property from the connection to the water main in order to effect the First Time New Domestic Water Supply Connection is no greater than twenty (20) metres.

(d) All new Customers will have to pay a security deposit, the details of which are contained in Appendix G.

(e) Materials and workmanship of all water connections installed after the Commencement Date shall comply with the specifications agreed by both parties.

(f) Where the distance from the nearest suitable distribution main to the point of connection with the Customer's service is more than twenty (20) metres, the Customer may elect to use a contractor of his own choice to install the Service Pipe subject to the prior agreement of the Operator (which may not be unreasonably withheld) in respect of the materials to be used and the method and location of the connection.

(g) Subject to the prior approval of the Operator, all connections to a distribution main shall comply with any specification previously approved or prescribed by the Operator and shall be subject to inspection by the Operator.

17.4 Unregistered Connections

(a) Within twelve (12) months of the Commencement Date the Operator may fund, organise, manage and publicise a six (6) month amnesty<sup>17</sup> for all existing Unregistered Connections in the Area. The Operator shall determine the best means of publicity of such amnesty but as a minimum the amnesty will be published in at least one English and one [LOCAL LANGUAGE] newspaper in circulation in [LOCATION]. Further amnesties may be funded, organised, managed and publicised by the Operator after agreement with the Lessor.

(b) Unregistered Connections will be declared by the potential Customer by the completion of an Application Form substantially similar to that set out in Appendix F of this Contract.

(c) The Operator shall inspect any Unregistered Connection within two (2) months of receipt

<sup>17</sup> unregistered connections are a source of difficulty for operators – providing an amnesty for declared potential customers is one way or dealing with the issue as the incentive for declaration within the amnesty is no fine or penalties



of the Application Form relating to such Unregistered Connection declared during an amnesty. The purpose of such an inspection will be to:

- (i) ascertain the suitability of the existing Service Pipe to be adopted without modification or whether the Service Pipe requires remedial action or replacement before it can be adopted; and
  - (ii) ascertain the condition of the existing Drain.
- (d) If, as a result of the inspection, the Service Pipe is found to be suitable for adoption (to the satisfaction of the Operator) without modification then the Customer shall be deemed to be governed by the terms of the Customer Contract and the Operator may make charges to the Customer for the water supply provided from the date of inspection in accordance with such Customer Contract. The Operator shall not charge for water supplied prior to the date of inspection. The Operator shall install a Customer Meter in accordance with this Contract which shall be funded in accordance with Appendix C of this Contract and the Customer shall pay a deposit equal to that which would be paid if the Applicant was applying for a new connection.
- (e) If, as a result of the inspection, the Service Pipe is found to be unsuitable for adoption without modification then the Application will be treated as if it were a new connection except in the case where the connection would have qualified as a First Time New Domestic Water Supply Connection.
- (f) If upon inspection the Service Pipe is found to pose a significant risk of pollution to the water supply or endanger public health then the water supply shall be disconnected at the expense of the Operator and no expense to the Applicant. Any water supply disconnected under this provision shall then be dealt with in accordance with Article 17.4(e). In these circumstances, no deposit shall be due to the Operator from the Customer until such time as the water supply is resumed.
- (g) Persons who declare their Unregistered Connection during an amnesty shall not be liable for any fine, penalties or any other recovery of charges relating to their Unregistered Connection preceding the date of the inspection. If an Unregistered Connection is discovered outside of any amnesty, the Operator may disconnect the Unregistered Connection without notice and seek any recompense from the owner of the Unregistered Connection through the legal means available to the Operator. Notwithstanding any action taken by the Operator in this respect, the owner of the Unregistered Connection shall be offered the opportunity of making their Unregistered Connection legitimate under the same conditions as if it were declared during an amnesty.
- (h) If at any time the legitimisation of an Unregistered Water Supply Connection declared during an amnesty cannot be completed due to non-fulfilment of the Customer's obligation the water supply may be disconnected by the Operator under the same terms as provided in the Customer Contract.
- (i) In the case of Unregistered Sewerage Connections, the existing Drain will be adopted by the Operator and considered to be legitimate following the inspection and the Customer shall be deemed to be governed by the terms of the Customer Contract and the Operator may make charges to the Customer for the Sewerage Services provided from the date of inspection. The Operator shall not charge for Sewerage Services prior to the date of inspection. The Customer shall pay a deposit equal to that which would be paid if the Applicant was applying for a new Sewerage Connection. If the Operator considers the existing Drain to be in a condition which seriously threatens public health or pollution of the water supply, then such matter shall be referred to the Lessor which shall give due consideration to funding replacement or Repair of the existing Drain.

#### 17.5 Maintenance and Replacement of Customer Meters

- (a) Any existing Customer Meters which are inoperable for any reason at or after the



Commencement Date shall be replaced by the Operator in accordance with this Contract.

- (b) When replacing any existing inoperative Customer Meters the Operator shall consider the necessity for rehabilitation of the Customer connection as part of the connection rehabilitation programme to avoid any duplication of effort on the same Customer connection.
- (c) The Operator is responsible for the Maintenance and Repair of all Customer Meters using Good Industry Practice and Sound Water and Sewerage Engineering Practices to ensure functionality and accuracy of the Customer Meters. Repair of the Customer Meters shall be at the Operator's cost where the faulty Customer Meter was previously installed by the Operator. For the avoidance of doubt this provision applies to all Customer Meters provided through the Procurement of Goods Contract. The Operator shall not use Customer Meters provided through the Procurement of Goods Contract for the Repair or replacement of any faulty Customer Meters other than as specifically provided in the Contract.
- (d) Once the Operator has installed or replaced a Customer Meter the Operator's responsibility for Maintenance and Repair of Customer Meters does not extend to the Repair of Customer Meters that have been misused, damaged or tampered with if the Customer Meter is located within the boundary of the Customer's property. Such costs shall be borne by the Customer.

#### 17.6 Security of Customer Meters

- (a) The Customer shall be responsible for the security of any installed Customer Meter located within the boundary of the Customer's property.
- (b) The Operator shall take all reasonable measures to ensure the security of any Customer Meter, and any associated pipework, located outside the boundary of the Customer's property.

#### 17.7 New Connections to the Sewerage System

- (a) All properties shall have separate connections to the Sewerage system, via a Drain.
- (b) Sewer Connections shall be installed in accordance with Sound Water and Sewerage Engineering Practices. Each Drain shall have an inspection chamber placed at or near the boundary to the property which it serves.
- (c) The provision of the Drain and inspection chamber shall be the responsibility and at the cost of the Customer, subject to the prior agreement of the Operator (which may not be unreasonably withheld) in respect of the materials to be used and the method and location of the Drain.
- (d) The Operator shall be responsible for the final connection of the Drain to the Sewerage system, which shall be at the cost of the Customer. The Operator may elect to allow the use of the Customer's contractor to install the connection, subject to method approval (which may not be unreasonably withheld) and supervision of the actual connection operation. The Operator may make a reasonable charge to the Customer for the approval and supervisory services, with such typical charges being published on a regular basis.
- (e) Where the applicant makes a request in writing to the Operator to install the connection, the Operator shall be obliged to do so, notwithstanding the restrictions to providing the connection as stated elsewhere in this Contract. In these cases, the Operator shall, within seven (7) Days from the date of receipt of the signed application, visit the location of the proposed new connection and shall provide the applicant with a written estimate of the cost of providing the connection together with details of the materials required.

- (f) The applicant may choose to provide its own materials for a connection (provided the Operator considers them to be of a suitable quality and quantity) for the Operator to utilise, provided it gives full details in writing to the Operator and supplies all necessary relevant information on making the request for the connection or within seven (7) Days of receiving the estimate from the Operator.
- (g) If the applicant exercises its right under Article 17.7.(f), the estimate provided to the applicant shall be amended accordingly and re-issued by the Operator within a period of seven (7) Days from the date of the receipt of the Customer's intentions.

## **DIVISION IV – CAPITAL WORKS REGIME**

### **18 RESPONSIBILITIES FOR CAPITAL WORKS**

#### **18.1 General Principles<sup>18</sup>**

- (a) The Lessor shall be financially responsible for the procurement of works for the Immediate Capital Investment Programme through the award of contracts for works described in the agreed Capital Investment Programme in accordance with the provisions of this Article and as shown in Appendix J. The Lessor shall delegate either
  - the financing and implementation; or
  - implementation; or
  - construction
 of the works to the Operator in accordance with the provisions of this Article 18.
- (b) Where an international or bilateral financial institution has provided finance to the Lessor either by way of loan or by grant aid, provided that all necessary information has been supplied to the Operator prior to any required work being implemented, the Operator shall at all times comply with any conditions reasonably imposed by the Lessor in respect of the design, specification, procurement, supervision and commissioning of the works, where such conditions have been notified by the Lessor to the Operator as being required by the Person or organisation from which the Lessor is obtaining the finance necessary to carry out the work. In particular the Operator shall comply with the relevant procurement requirements of any international or bilateral financial institution providing such finance and shall ensure that at all times when such procurement rules are applicable it employs (by way of contract of employment or consultancy) advisers with relevant experience of the procurement rules being applied.
- (c) Subject to the provisions of Article 8.4, any Capital Works created under the Immediate Capital Works Programme will be handed over to the Operator by the Lessor on completion (together with all necessary or appropriate information, including drawings, operating instructions and technical details) and after such handing over, such Capital Works shall become part of the Assets and the Operator shall enter them in the Schedule of Assets. For the avoidance of doubt, the Operator shall be responsible at all times for any Maintenance or Repair of all Assets in accordance with the Asset Management Plan, except, in relation to any Asset, during any period in which the Lessor or a third party is undertaking Capital Works in respect of that Asset.
- (d) Subject to the approval of the Lessor, the Operator may construct at his own expense within the Operator's Area any works necessary in the provision of the Services. Once such works (which have been constructed by the Operator on behalf of the Lessor) have been completed, the ownership shall pass to the Lessor which shall then hand such

<sup>18</sup> there is no provision for excusing the Operator for failure to meet its performance obligations in the event that the Capital Works are not carried out] – this may be a cause for concern for Operator if meeting performance standards is dependent on certain capital works being carried out and the Operator may be forced to carry out the works at its own expense (18.1(d))

works back to the Operator for use in connection with the provisions of this Contract. These constructions shall be deemed part of the Assets.

- (e) Either Party shall assist the other in obtaining (or seeking to obtain) the necessary project finance to carry out any required Capital Works if requested to do so by the other Party.

#### 18.2 Operator's Responsibility for Capital Investment Programme Planning

Subject to Article 15, and having regard to the Planning and Investment Reports and other provisions of Article 59, the Operator shall collaborate with the Lessor in undertaking studies and investigations necessary for the planning of the Medium Term Capital Investment Programme. The Operator's areas of collaborations shall include:

- (a) the preparation of rehabilitation and renewal of Assets investment programmes;
- (b) the preparation of strategic business plans;
- (c) network modelling; and
- (d) the preparation of annual investment programmes for agreement with the Lessor in accordance with Articles 20 and 59.

#### 18.3 Operator's Responsibilities for Financing and Procurement

Financing of the Immediate Capital Investment Programme is the responsibility of the Lessor. However, the Operator shall be responsible for the financing of the following aspects of the Immediate Capital Investment;

- (a) the provision of miscellaneous operating equipment including vehicles, workshop and office equipment, computers with commercial and accounting software and a geographic information system;
- (b) the provision of leak detection equipment; and
- (c) the provision of cleansing equipment and safety devices for the orderly survey, Maintenance, Repair and management of the Sewerage network, including Sewer cleansing (jetting) vehicles, air compressors, pipe location and mobile high pressure cleansing units and CCTV cameras.

#### 18.4 Works Procured through Award of Contracts

- (a) The Immediate Capital Investment Programme comprises the following:
  - (i) Works financed and implemented by the Lessor (Non Delegated Works) associated with the following:
    - (A) water production ;
    - (B) water transmission;
    - (C) water storage;
    - (D) water distribution and mains reinforcement;
    - (E) wastewater stabilisation ponds;
    - (F) depots associated with Sewerage treatment;
    - (G) extension of Sewer network;

- (H) community water and sanitation;
- (I) rehabilitation of existing Sewers and marine outfall; and
- (J) rehabilitation of existing Sewage pumping stations.

Details of the Immediate Capital Investment Programme are given in Appendix J

- (ii) Works financed by the Lessor and implemented by the Operator (Delegated Capital Works) associated with the following:
  - (A) service lines;
  - (B) rehabilitation of connections.
  - (C) construction of kiosks
  - (D) supply of Customer Meters
- (b) Any award of Non Delegated Works shall be in accordance with the procurement rules of the international or bilateral financial institution funding the works concerned.

#### 18.5 Non Delegated Capital Works

- (a) The Lessor shall consult with the Operator in relation to both the design and the implementation of the Non Delegated Capital Works. The Operator shall have the right to inspect such designs and works and shall, where necessary maintain the network or implement the works in accordance with Good Industry Practice, suggest amendments to the design for reasonable changes to the works. The Lessor shall be obliged to make any such changes required by the Operator which do not require changes to the timetable or costs of the Non Delegated Capital Works and shall also carry out other changes which, in the Lessor view, are reasonable and prudent. The Operator shall provide its comments within four (4) weeks of receipt of such designs.
- (b) During the design, construction and implementation of any part of the Non Delegated Capital Works the Operator shall co-operate with the Lessor and its contractors to ensure that the construction and implementation of such Non Delegated Works causes the minimum possible disruption to the provision of the Services by the Operator.
- (c) the Operator shall (at its own cost) participate in the commissioning of any part of the Non Delegated Works, ensuring at all times that:
  - (i) such commissioning causes the minimum possible disruption to the provision of the Services by the Operator; and
  - (ii) the handover of the assets constructed to the Operator is achieved in a timely manner.

## 19 **EXTENSIONS TO THE NETWORK**

### 19.1 Extensions Funded by Third Parties

- (a) Any extensions funded by Customers shall be implemented by the Operator.
- (b) Extensions to the water supply and Sewerage systems may be undertaken by developers at their own expense. Design and implementation of such proposed water supply and Sewerage systems shall be subject to the prior approval, control and supervision of the Operator.

- (c) All proposals for extensions shall be submitted to the Operator, who has the right to accept, reject or modify them.
- (d) The works shall be designed and installed in accordance with Sound Water and Sewerage Engineering Practices and with such Regulations as may be applicable during the duration of this Contract.

## 19.2 Network Extensions to Meet Urban Demand Growth

The Lessor is financially responsible for any required extensions and Reinforcements to the network of water supply and Sewerage Services in order to meet urban demand or population growth. Any review of urban demand or population growth and its effect on the Network by the Lessor shall be carried out in consultation with the Operator.

## 20 **LESSOR'S ROLE AND DUTIES**

### 20.1 General Duties

- (a) In respect of the Immediate Capital Works Programme, the Lessor shall finance and implement such works, except where otherwise provided for in Article 18.
- (b) A proposed draft Medium Term Capital Investment Programme is included at Appendix J, in respect of which the Lessor shall:
  - (i) arrange for the carrying out of surveys and review and approve strategic business plans and the annual investment plans in accordance with the provisions of Articles 18 and 59;
  - (ii) use its best endeavours to secure adequate external finance to fund the Medium Term Capital Investment Programme and shall keep the Operator informed of the progress of such applications and negotiations for externally generated financing;
  - (iii) consult with those Customer groups and other interested parties which the Lessor and the Operator consider to be appropriate, and undertake market surveys in order to identify and to develop services to:
    - (A) improve the quality and the effectiveness of the water supplies and Sewerage system;
    - (B) maintain financial sustainability and ensure continued maintenance of investments;
    - (C) identify Customer preferences for types of connections such as, but not limited to, house connections, yard taps, shared yard taps, Standpipes and kiosks. In carrying out such market surveys and dealing with their results, regard shall be to the provisions of Article 59;
  - (iv) prepare demand forecasts for water and Sewerage Services and population studies as and when necessary or required; and
  - (v) prepare studies of the expansion of the water supply system, carry out an Environmental Assessment and prepare a strategic sanitation plan.

## **21 PIPEWORK IN PUBLIC HIGHWAYS AND CO-ORDINATION WITH OTHER SERVICE PROVIDERS**

- 21.1 The Lessor and the Operator shall comply with the Regulations applicable to pipework constructed in public highways. All laying and reinstatement shall be carried out in accordance with local Regulations in force.
- 21.2 The Operator shall consult with all relevant service providers prior to undertaking any work involving Network Assets, and shall take such measures as are necessary to minimise disruption to Customers and the general public.

## **22 METERING OF CUSTOMERS**

- 22.1 The Operator is responsible for the metering of water supply connections of all Customers in accordance with this Article 22 and the Key Performance Targets as set out in Appendix N. The Operator shall ensure that any Customer Meter installed is appropriate to Customer's demand requirement and is designed, manufactured and installed in accordance with the Supply and Installation of Plant and Equipment Contract and the Procurement of Goods Contract. No Customer shall be entitled to supply its own Customer Meter other than with the express prior written approval of the Operator and where the specification of the Meter is consistent with the requirement of this Contract.
- 22.2 The Operator shall be responsible for the programming of installing Customer Meters for existing Customers. All first time connections shall be metered by the Operator on initial provision of the Service.
- 22.3 The Operator shall ensure that all existing commercial, industrial and institutional consumers (including all Government Institutions ) existing at the Commencement Date are metered by the installation of new Customer Meters within one (1) year of the Commencement Date. The Operator shall ensure that all Customers within the Operator's Area are metered within five (5) years of the Commencement Date.
- 22.4 The financial responsibility for funding and installing Customer Meters and funding of work carried out on Customer connections is set out in Appendix C.

## **23 STANDPIPES AND WATER KIOSKS**

- 23.1 The construction of all new Standpipes and water kiosks is an element of the Delegated Capital Works.
- 23.2 The Operator shall, at its own cost, be responsible for the management, Maintenance and Repair of Standpipes and kiosks existing at the Commencement Date (subject to the provisions of any agreements made with the Standpipe Agents) and for Standpipes and kiosks which are installed as part of the Delegated Capital Works once they have been handed over to the Operator in the condition envisaged by the installation contract.
- 23.3 The Operator shall provide periodic reports to the Lessor at intervals of not greater than every six (6) months as to the condition and efficacy of the Standpipes within the Area.
- 23.4 Wherever it is practical, having regard to the terrain and local conditions, the Lessor shall arrange with the Operator to have Standpipes and water kiosks constructed at a distance no greater than two hundred metres (200m) from the people to be served.
- 23.5 In the discharge of its responsibilities under this Article 23, the Operator shall, whenever possible, subcontract local Standpipe and kiosk management to Standpipe Agents and to communities (as the case may be) and comply with the guidelines of the National Water Policy. No provision herein will impose upon the Operator an obligation to supply water from Standpipes or water kiosks, free of charge, except as provided in Article 30, (Fire Fighting Measures).



## **DIVISION V – SERVICE & QUALITY OBLIGATIONS**

### **24 ZONES OF SERVICE**

#### **24.1 Water Supply Zones**

- (a) The Operator shall delineate Water Supply Zones that shall collectively cover the whole of the Area. Plans of such Water Supply Zones shall be provided to the Lessor and copies shall be made available at the offices of the Operator for public inspection during normal business hours.
- (b) The Operator shall ensure that the water supply within such Zones is measured utilising the appropriate technology having regard to:
  - (i) compliance with the contractual quality and pressure standards; and
  - (ii) service standards in respect of the availability of supply and continuity of supply with regard to compliance with the standards in respect of Repairs to pipes caused by leaks or bursts where such pipes are vested in or are the responsibility of the Operator.
- (c) Planned Maintenance work (which includes, for this purpose, Repairs and up-grading) of the water Network Assets within the Zones shall be undertaken in accordance with the prior information published to the Customers directly affected by such works.
- (d) Emergency works within the Zones shall be undertaken with the minimum of disruption to the Customers or to the highway authority.
- (e) In its Annual Report the Operator shall report on the efficiency and effectiveness of water supply for domestic, commercial, industrial, municipal, Government and environmental purposes within each Zone and shall in particular identify specific issues that are or may be deleterious to the effective discharge of its functions, powers and duties in respect of water supply.

#### **24.2 Sewage Zones**

- (a) The Operator shall delineate Sewage drainage zones that will cover the zones where the Operator is responsible for the Sewerage network. Plans of such Sewage zones shall be provided to the Lessor and copies shall be made available at the offices of the Operator for public inspection during normal business hours.
- (b) The Operator shall ensure that the Sewerage Service provided within such Sewage zones is measured utilising the appropriate technology having regard to:
  - (i) compliance with the contractual waste water discharges and environmental standards; and
  - (ii) Service standards in respect of flooding from Sewers, Sewer restrictions and compliance with the standards in respect of Repairs to Sewers caused by collapses or burst where such pipes are vested in or are the responsibility of the Operator.
- (c) Planned Maintenance work (which includes, for this purpose, Repairs and up-grading) of the Sewerage Network Assets within the Sewage zones shall be undertaken in accordance with the prior information published to the Customers directly affected by such works.
- (d) Emergency works within the zones shall be undertaken with the minimum of disruption to

the Customers or to the highway authority.

- (e) In its Annual Report the Operator shall report on the efficiency and effectiveness of Sewerage Services within each Sewage zone and shall, in particular, identify specific issues that are or may be deleterious to the effective discharge of its functions, powers and duties in respect of Sewerage Services. Special reference should be included on industrial effluent discharges into the Sewerage system with regard to structural effect on the Sewers and treatment effectiveness together with health and safety of the Employees of the Lessor and the Operator and the public.

## **25 RAW WATER SOURCES**

### **25.1 Raw Water Sources for Abstraction**

- (a) The Operator may continue to Abstract from all Sources of Supply now used by or available to the Lessor, subject to the provisions of [RELEVANT LEGISLATION] and any existing Abstraction licences.
- (b) The Operator shall also make payment for water rights (or licences for Abstraction) to the Government.

### **25.2 Duty to Develop Raw Water Sources**

- (a) The Operator shall co-operate with the Lessor in the development of additional Sources of Supply by the Lessor for Potable Water production and supply. Exploitation of new Sources of Supply may be subject to the approval of the Central Water Board or its successor entities and the Ministry of Water and the provisions of any relevant legislation.
- (b) In the event of any changes in the existing Sources of Supply, the Lessor shall inform the Operator.

## **26 PROTECTION OF THE WORKS**

### **26.1 General**

In the discharge of its functions under this Article, the Operator may, in the Area, and on any land for which the Operator has obtained or been granted the necessary easements or servitudes or rights, construct and Maintain pipes, Drains, Sewers, watercourses, catchpits and other works for intercepting, treating, or disposing of foul water arising or flowing upon or into such lands, or for otherwise preventing water which is used by or available to the Operator, or which it is authorised to Abstract, from being polluted.

### **26.2 Pollution from Operator's Action**

The Operator, at his own cost, shall adopt the best available techniques to protect the Sources of Supply, treatment works, watercourses and the Network Assets from pollution caused by its own operations.

### **26.3 Pollution from Third Party's Action**

The Operator shall inform the Lessor and the Regulator of any pollution incidents affecting the Services of which it is aware caused by a third party as soon as possible and in any event within one (1) hour of becoming aware of such incident. The Lessor shall liaise with the Operator in order to prevent any further pollution incidents. The Operator shall be reimbursed all costs necessarily incurred by the Operator in the provision of any remedial action requested by the Lessor.

## 27 LEVELS OF SERVICE

### 27.1 General

It is understood and agreed by the Parties that water supply to any Customer shall be supplied under conditions that ensure its availability, continuity, and quality, as stated in Appendix H and Appendix N and that Sewerage Services shall be provided under conditions that ensure its availability, continuity and treated effluent quality so as to ensure efficient Service provision to Customers and the protection of the environment, within the terms of this Contract and the appropriate Regulations in force in [COUNTRY]. In all cases, Service shall be provided under the terms of a Customer Contract. In the case of the levels of Service, these shall be in accordance with the Performance Targets set out in Appendix H and Appendix N and the Key Performance Targets set out in Appendix N.

### 27.2 Water Quantities

- (a) Within the limits and assets available to it, and in accordance with the provisions of the Contract, the Operator is charged with supplying water quantities according to reasonable public and private demand within the Area.
- (b) Where the capacity of the water distribution system, or the authorised rate of Raw Water Abstraction, or capacity of treatment or pumping plant is not sufficient to satisfy Customer demand the Operator shall consult with the Lessor to determine:
  - (i) whether additional Sources of Supply can be made available;
  - (ii) what improvements can be made to the water distribution system in order to allow the distribution of additional water supplies; and
  - (iii) what improvements, if any, can be effected through upgrading pumps, treatment plant and other production equipment.

### 27.3 Water Pressures

- (a) The Operator shall ensure that water supply during normal supply conditions is maintained in accordance with the minimum pressure standards as are stated in Appendix N.
- (b) Where water installations do not comply with such requirements, the Operator shall, as soon as possible, submit to the Lessor recommendations for works, additional to the Immediate and Medium Term Capital Investment Programme, required to be carried out in order to improve the situation with sufficient safety margin.
- (c) The works referred to in Article 27.3 (b) shall be carried out when funds are in place, either by the Lessor or by delegation to the Operator by the Lessor.
- (d) Where due to particular characteristics of the designated Water Supply Zones Customers residing therein formally request from the Lessor a higher water pressure than the minimum pressure standard stated in Appendix N, the Lessor, after technical evaluation, may request this of the Operator. The Operator shall in response to this request, where possible, provide the equipment necessary to meet those requirements. Any additional costs necessarily incurred by the Operator shall be an allowance factor in calculating future Operator Tariff levels.
- (e) The Operator shall be responsible for controlling maximum water pressures in the system and imposing restrictive measures designed to ensure that excessive water pressure does not occur with a view to preventing harm to third parties, reducing leakage levels and Customer wastage.

## 28 WATER QUALITY

### 28.1 Water Quality and Monitoring

- (a) The Operator shall monitor the quality of Raw and Potable Water supplied in accordance with the Potable Water Quality Standards detailed in Appendix H. Such monitoring shall be on an on-going basis to ensure it is in strict compliance with the quality standards detailed in Appendix H.
- (b) Analysis of samples is to be carried out in the Operator's laboratory or any other laboratory approved by the Lessor. Results of such Analyses are to be submitted to the Lessor and Regulator on a monthly basis. Any failed samples shall be retaken, if applicable, in accordance with the procedures detailed in Appendix H. Any measures, whether emergency or otherwise, necessary in light of any failed samples shall be carried out in accordance with Article 28.4.
- (c) Should there be any challenge by the Lessor of any of the monthly results produced and submitted by the Operator, then the Operator shall appoint an independent testing laboratory, approved by the Lessor, to take and Analyse fresh samples from the failed source. The cost of carrying out such sampling and analysis will be borne by the Operator in the event of the independent analysis confirming the Lessor's challenge and by the Lessor should the independent test demonstrate the Operator to be in compliance with the standards.
- (d) Notwithstanding the above, the Lessor shall have the right to conduct spot checks or carry out such tests as may be necessary to monitor the quality of Raw or Potable Water. The Lessor shall have the right to install instrumentation to satisfy itself of the water quality of both Raw and Potable Water. Such instrumentation may be installed on a short term or long term basis. The results of such tests conducted by the Lessor shall be considered to be accurate unless proven otherwise by the Operator.
- (e) If the Lessor or the Regulator (as the case may be) require independent laboratory testing of samples of water or effluent, such testing shall be carried out at their expense and not at the expense of the Operator. In such a case the Lessor shall not use a laboratory owned or previously used by the Operator (except in the case of an emergency).

### 28.2 Raw Water

- (a) The Operator shall take every measure necessary for ascertaining that Raw Water, whether from surface water Abstraction or pumped from underground is of acceptable quality for the purposes of being subjected to the corresponding treatments. These measures shall include the implementation of an automatic or manual sampling and monitoring programme of Raw Water Abstraction as provided in Appendix H, for determining physical, chemical and microbiological parameters.
- (b) Should a pollution incident occur that may materially affect the treatment process, the Operator shall take all reasonable measures required for detecting and preventing such pollution from entering Raw Water sources Sources of Supply or treatment plants or the Network Assets as detailed in Article 26, and shall provide the Lessor and the Regulator with on-going information of measures taken or remaining to be taken. Reimbursement for such measures shall also be made in accordance with the provisions set out in Article 26. The Operator shall advise the Lessor of such incidents and of the remedial action adopted.

### 28.3 Potable Water

Water supplied to Customers shall meet the Potable Water Quality Standards stated in Appendix H for each of the Water Supply Zones. Within each of these zones, the Operator shall be responsible for the treated water quality compliance in respect of Potable Water delivered to the Customer (which expression includes for this purpose, but without limitation,

water supplied for the production of food) by collecting samples of such water and subjecting such samples to scientific Analysis in accordance with the appropriate Regulations.

Treated water from water treatment works and water from boreholes shall also meet the Potable Water Quality Standards stated in the provisions of Appendix H.

Subject to the provisions of Appendix H samples of water shall be taken at sampling points which are to be agreed between the Lessor and the Operator within three (3) months of the Commencement Date.

#### 28.4 Failure to Meet Potable Water Quality Standards

##### (a) Immediate Emergency Measures

(i) In the event that the Operator is or becomes aware of, or should be aware of, or a sample taken by the Operator discloses a failure to comply with either the Raw Water or Potable Water Quality Standards as prescribed in Appendix H and such failure is or may become a direct danger to public health in the relevant Water Supply Zone, the Operator shall immediately implement the following emergency measures:-

(A) with the minimum of delay, inform the Lessor, Regulator, Local Authorities, the health authorities and the medical profession, the press, the broadcasting media, (and after a policy has been agreed and so far as is reasonably practical) and the Customers directly affected, or likely to be affected, of the failure to comply with such quality standards; and

(B) take all necessary actions to protect the health of Customers.

##### (b) Non-Emergency Measures

(i) In the event that the Operator is or becomes aware or should be aware of a deterioration in water quality which might if left unremedied become a danger to public health the Operator shall submit to the Lessor its improvement proposals for supplementary works or new installations that it feels are necessary to raise water quality standards to meet the requirements set out in Appendix H.

(ii) The Lessor shall consider the Operator's proposals and may require the Operator to:

(A) execute works within a fixed period of time

(B) utilise supplementary water resources if required; or

(C) achieve or accept any technical solution permitting rehabilitation within the shortest time possible.

#### 28.5 Water Hygiene Policy and Associated Practices

(a) Within three (3) months of the Commencement Date, the Operator shall issue a provisional Guideline on Water Hygiene procedures, to all Employees who, in the normal course of their duty, could come into contact with treated water and within twelve (12) months from such date and following consultation with such Persons or bodies as the Operator considers to be appropriate, the Operator shall develop, publish and issue to all its Employees and to contractors (if any), a formal Water Hygiene Policy and associated practices, the objective of which is to control water-borne or water-related diseases.

- (b) The policy and its associated practices shall address the issues of;
  - (i) periodic medical examination of Personnel working on or to be available to work on Restricted Operations; and
  - (ii) the use of protective requirements in respect of plant, pipes (of any kind), machinery and vehicles which come into or may come into contact with treated water; and
  - (iii) the protection of Sources of Supply, water treatment plant, water mains (of whatever kind including canals and conduits) and the Repair and Maintenance of water supply installations.

## **29 RAW AND TREATED SEWAGE QUALITY**

### **29.1 Raw and Treated Sewage Quality Monitoring**

- (a) The Operator shall monitor raw Sewage and treated effluent in accordance with the sampling and monitoring programme set out in Appendix H, on an on-going basis to ensure strict compliance with the effluent quality standards as detailed in Appendix H.
- (b) Analysis of samples is to be carried out in a laboratory approved by the Lessor. The results of such analyses are to be submitted to the Lessor and Regulator on a monthly basis. Any failed samples shall be retaken, if applicable, in accordance with the procedures in Appendix H. Any measures, whether emergency or otherwise, necessary in light of any failed samples shall be carried out in accordance with Article 29.3.
- (c) Should there be any challenge by the Lessor on any of the monthly results produced and submitted by the Operator, then the Operator shall appoint an independent testing laboratory approved by the Lessor, to take and Analyse fresh samples taken from the same sample point as the failed sample. The cost of carrying out such sampling and analysis will be borne by the Operator in the event of the independent analysis confirming the Lessor's challenge and by the Lessor should the independent test demonstrate the Operator to be in compliance with the standards.
- (d) Notwithstanding the above, the Lessor shall have the right to conduct spot checks or carry out such tests as may be necessary to monitor the quality of raw Sewage or treated effluent. The Lessor shall have the right to install instrumentation to satisfy itself of the raw Sewage or effluent quality. Such instrumentation may be installed on a short term or long term basis. The results of such tests conducted by the Lessor shall be considered to be accurate unless proven otherwise by the Operator.

### **29.2 Effluent Discharged from Stabilisation Ponds**

Any effluent discharged from the Sewage stabilisation ponds shall meet the quality standards stated in Appendix H for each of the discharge points. This shall be determined by sampling of such effluent and subjecting such samples to Analysis in accordance with Appendix H.

### **29.3 Failure to Meet Effluent Standards**

- (a) Immediate Measures

In the event that the Operator is or becomes aware of or should be aware of, or a sample taken by the Operator discloses a failure to comply with quality standards as prescribed in Appendix H, and such a failure in quality standard(s) is a direct potential danger to public health for downstream Raw Water users and environmental standards, the Operator shall immediately:-

- (i) take measures necessary to rectify the situation and normalise it as quickly as possible;



- (ii) with the minimum of delay, inform the Lessor, Regulator and, if appropriate, the relevant local authorities to agree the actions necessary, with regard to the issue of appropriate warnings. Measures may involve the press, the broadcasting media, the health authorities and the medical profession, as well as the Raw Water users directly affected, or likely to be affected, by the failure to comply with such quality standards.

(b) Non-Emergency Measures

In the event that the Operator is or becomes aware or should be aware of a deterioration in effluent quality which might if left unremedied become a danger to public health, the Operator shall put forward its improvement proposals for supplementary works or new installations that it feels are necessary to raise effluent quality standards to meet the requirements detailed in Appendix H. Recommendations for such works are to be notified to the Lessor. When funding becomes available, implementation of such works is the financial and technical responsibility of the Lessor but may be delegated to the Operator.

The Lessor shall consider the Operator's proposals and may require the Operator to:

- (i) execute works within a fixed period of time and under Article 24; or
- (ii) achieve or accept any technical solution permitting improvement within the shortest time possible.

**30 FIRE FIGHTING MEASURES**

- 30.1 The Operator shall supply (free of charge) water used for fire fighting purposes or for reasonable training purposes by the public fire services, operating in the Area. The Lessor will provide the fixed fire hydrants, and the Operator will provide and maintain the portable fire extinguishers at the premises and facilities to be leased to the Operator under this Contract, except where suitable apparatus forms part of the Assets.
- 30.2 In case of fire, subject to the Operator's prior right of investigation (which shall not be unreasonably delayed) appropriate members of the Operator's qualified and available staff shall be mobilised, without charge, to operate network systems in support of the public fire services operating in the Area.
- 30.3 Network fire fighting conditions will be agreed upon by the Operator and the Lessor within twelve (12) months of the Commencement Date, or such other date as the Parties may agree, but the Operator has the right to advise the Lessor on measures to be taken by the public fire services and any other fire fighting authorities in the most efficient and effective use of water (in order to prevent waste of water) and the Lessor shall use its best endeavours to ensure that the recommendations and advice are implemented.
- 30.4 Special agreements will determine the conditions for installing, maintaining, operating and utilising fire fighting equipment located on private premises.
- 30.5 Fire fighting equipment shall be used only by the public fire services operating in the Area or the Operator's Personnel. Members of the public shall not be authorised to use such equipment, except in case of an emergency and only in the absence of the public fire fighters or under their supervision.
- 30.6 The Lessor is required to inform the Operator of fire fighting demonstrations to be conducted by the public fire services operating in the Area and the Operator may be represented at such demonstrations.
- 30.7 The Lessor shall ensure that the Operator is consulted in connection with the installation of fire hydrants.

- 30.8 Where activities have been undertaken by the public fire services or in connection with fire fighting exercises (and such circumstances are outside the reasonable control of the Operator), and this results in disruptions to the water services and the quality and condition of water in the mains (due to flow changes or other reasons), the obligations of the Operator in connection with the delivery of the Service shall be adjusted accordingly until the conditions shall have returned to normal.

### **31 CONTINUOUS SERVICE**

- 31.1 The Operator shall take all reasonable measures acting in accordance with Good Industry Practice to ensure that burst distribution mains or collapsed or blocked Sewers are repaired with the minimum of delay. In the event that a water Service interruption is or is likely to be longer than twenty four (24) hours, the Operator shall take all reasonable measures acting in accordance with Good Industry Practice to provide a basic alternative supply. Such basic alternative supply shall include (if necessary) the provision of water via water tankers.
- 31.2 The Operator shall maintain records of the number, duration, location and extent of all scheduled and unforeseen interruptions to water supplies and Sewerage Services together with Repairs undertaken.
- 31.3 Where planned Maintenance or renewal works will result in interruption, such works shall not be undertaken until all the affected Customers have had twenty four (24) hours notice of the planned interruption.

### **32 EXCEPTIONAL CONDITIONS OF SERVICE**

#### **32.1 Special Interruptions**

- (a) Subject to prior notification to the Lessor and to Article 32.1.(b), water supply may be interrupted in order to carry out planned Maintenance, rehabilitation, reinforcement, extension and installation of connections.
- (b) Any Customer likely to be affected shall be informed of such interruptions by the Operator at least twenty four (24) hours in advance.

#### **32.2 Emergency Interruptions**

During Repairs on the network or in case of accidents or emergencies requiring immediate interruption of water supply or Sewerage Services, the Operator shall take all necessary measures acting in accordance with Sound Water and Sewerage Engineering Practice, and shall inform the Lessor immediately of such interruption, including supplying details of all necessary measures undertaken.

#### **32.3 Interruptions beyond the Operator's control**

- (a) The Operator shall not be held responsible for Service interruptions, failure against Levels of Service or any other consequential obligation contained in this Contract as a direct result of events entirely beyond the Operator's control. Such an event includes, but is not restricted to, electrical power outages which are outside the control of the Operator and not the fault of the Operator.
- (b) In such an event the Operator is obliged to take all necessary measures using Good Industry Practice to limit the impact of the event and endeavour to maintain the Services, Levels of Service, contractual obligations and protect the Assets.
- (c) In such an event the Operator shall temporarily be excused from any penalty for failing to comply with relevant obligations under this Contract where such failure arises solely from the event and the failure is not preventable by the Operator taking action required by Article 32.3(b). The Operator will be relieved of such obligations for a period after the start of the event which is necessary to resume conformity with the obligations of this Contract

using Good Industry Practice.

- (d) If the Operator believes he has been subjected to such an event which has affected his ability to meet the obligations of this Contract, he shall inform the Lessor in writing within seven (7) Days of the start of the event giving details of the event and its cause, the obligations which were affected, for what period and any actions he took to mitigate the effects of this event.

## **DIVISION VI – TARIFFS AND PRICE REGIME**

### **33 BASIS OF CUSTOMER TARIFF**

33.1 The Customer Tariff consists of two parts and shall be charged to any Customer receiving the relevant Service, namely the Customer Tariff (Water Supply) which shall be charged to any customer who is provided with water supply Services and the Customer Tariff (Sewerage) which shall be charged to any Customer who is provided with Sewerage Services. Where any Customer receives both water supply and Sewerage Service, such Customer shall be charged with (and shall be liable to pay) both the Customer Tariff (Water Supply) and the Customer Tariff (Sewerage). Unless otherwise stated, the term “Customer Tariff” includes the Customer Tariff (Water Supply) and the Customer Tariff (Sewerage).

33.2 The Customer Tariff (Water Supply) is composed of the following three components:

- (a) the Operator Tariff (Water Supply) (as described in Article 35)
- (b) the First Time New Domestic Water Supply Connection Tariff (as described in Article 36); and
- (c) the Lessor Tariff (Water Supply) (as described in Article 38)

33.3 The Customer Tariff (Sewerage) is composed of the following two components :

- (a) The Operator Tariff (Sewerage) (as described in Article 35); and
- (b) The Lessor Tariff (Sewerage) (as described in Article 38).

Unless otherwise stated, the term “Lessor Tariff” includes both the Lessor Tariff (Water Supply) and the Lessor Tariff (Sewerage).

33.4 The Operator shall submit to the Lessor and Regulator for approval, its charges for the provision of services to the public or to individuals which are ancillary or incidental to the provision of Services under this Contract. By way of example such ancillary services might include Potable Water being made available by the Operator to the public or individuals by tanker or facilities being made available for the disposal of liquid or solid waste discharged from Sewage tankers to the Sewage treatment facilities provided by the Operator. The Operator shall account to the Lessor in respect of any income received for the provision of such ancillary Services on a previously agreed basis in the same way as it accounts for its income for the provision of the Water Supply and Sewerage Services.

33.5 Collection of Customer Tariff

- (a) The Operator shall collect the Customer Tariff from Customers assessed on the volume of water consumed on the Customers premises provided always unless and until a Customer Meter is installed on the premises of the Customer; the Customer shall be liable to pay the Customer Tariff on the current basis of assessment.
- (b) The Operator shall deposit all Customer Tariff collections into a bank account jointly owned by the Operator and the Lessor. For the avoidance of doubt, the Operator shall be collecting and depositing the Lessor Tariff and the First Time New Domestic Water

Supply Connection Tariff as trustee on behalf of the Lessor and the First Time New Domestic Water Supply Connection Fund, respectively. Each week, the Operator and the Lessor shall jointly instruct the bank to transfer amounts from the joint Customer Tariff collections account into bank accounts prescribed by the Operator and the Lessor to receive the Operator Tariff, Lessor Tariff and the First Time New Domestic Water Supply Connection Tariff.

- (c) The Operator shall use its best endeavours to collect all debt owing to the Lessor and the previous operator as at the Commencement Date, and will deduct from monies received ten percent (10%) of sums collected before the balance of collections is transferred to the Lessor.

### 33.6 Setting of the Customer Tariff

- (a) The Operator shall charge each Customer the applicable Customer Tariff as set out in Appendix K. Applicable tax shall be added, as required, to the accounts rendered to Customers. The quantum and structure of the tariff including the amount of volume related charge, and the proportional amounts to be paid by each category of Customers shall be determined by the Lessor, in accordance with Article 8 of the Development Contract. In accordance with the provisions of Article 17, connection charges shall be payable as therein stated or otherwise as instructed on a periodic basis by the Lessor pursuant to this Contract.
- (b) At least six (6) weeks prior to implementation of a proposed variation in tariff as a result of the application of the Indexation Formula, the Operator shall submit a schedule to the Lessor showing the detailed Operator Tariff increases applicable to each category of Customers, together with calculations demonstrating that the proposed variances applicable to each category of Customers, together with calculations demonstrating that the proposed increases in the Operator Tariff are consistent with the mechanism for tariff adjustment as contained in Appendix K.

### 33.7 Standpipe Rate

The Operator shall collect from any appropriate Standpipe Agent supplying water from the Standpipe a volume based Standpipe Rate (as referred to in Appendix K) which is deemed to be a component part of the Customer Tariff.

### 33.8 Government Loan

The Lessor and the Operator shall comply with the Government Loan Agreement (if entered into).

## 34 CUSTOMER TARIFF

### Levels of Customer Tariff (Water Supply)

The levels of Customer Tariff (Water Supply) at [DATE] prices for the first five Contract Years are shown in Table 1

**TABLE 1 –Levels of Customer Tariff (Water Supply)**

Prices as of [DATE]				
Year	Operators Tariff (WS)	First Time Connection Tariff	Lessors Tariff (WS)	Customer Tariff (WS)
	[CURRENCY]/m <sup>3</sup>	[CURRENCY]/m <sup>3</sup>	[CURRENCY]/m <sup>3</sup>	[CURRENCY]/m <sup>3</sup>
	3		3	3

1				
2				
3				
4				
5				
6				

### Levels of Customer Tariff (Sewerage)

The Levels of Customer Tariff (Sewerage) at [DATE] prices for the first five (5) Contract Years are shown in Table 2.

**TABLE 2 – Projected Future Customer Tariff (Sewerage) Levels**

Year	[DATE] Prices		
	Operators Tariff (Sewerage) [CURRENCY]/m <sup>3</sup>	Lessor Tariff (Sewerage) [CURRENCY]/m <sup>3</sup>	Customer Tariff (Sewerage) [CURRENCY]/m <sup>3</sup>
1			
2			
3			
4			
5			
6			

## 35 OPERATOR TARIFF (WATER SUPPLY / SEWERAGE)

### 35.1 Initial Operator Tariff

The initial Operator Tariff is shown in Appendix K. The Operator Tariff includes provision for the payment of a Rental Fee as set out in Article 38.4.

### 35.2 Indexation Formula Adjustment of the Operator Tariff

- (a) The Indexation Formula shall be applied to the Operator Tariff at the following times or events:
- (i) on the Commencement Date;
  - (ii) subject to Article 35.3 annually after the Commencement Date;
  - (iii) in accordance with Article 40; or
  - (iv) at the request of either Party, if at any time, the requesting Party has reason to believe that the application of the indexation formula would give rise to a five percent (5%) or greater increase or decrease to the Operator Tariff.

35.3 The prices resulting from the application of the Indexation Formula will be rounded up to the nearest [AMOUNT AND CURRENCY].

35.4 If any of the components in the Indexation Formula is no longer applicable, the Operator shall propose to the Lessor alternative equivalent indices indicating the value and mode of calculating the average coefficient between the old and the new components, for submission to, and consent of, the Regulator.

35.5 Any revision to the Operator Tariff resulting from the operation of this Article 35 will be

effective upon the earlier of the expiry of six weeks from the date of the request for substitution or approval of the change in Tariff being given by the Regulator.

### **36 FIRST TIME NEW DOMESTIC WATER SUPPLY CONNECTION FUND**

- 36.1 The Operator shall levy the First Time New Domestic Water Supply Connection Tariff on all its water supply Customers (including all domestic and all industrial and other Customers). The Operator shall establish and maintain during the whole period of this Contract the First Time New Domestic Water Supply Connection Fund and shall pay all amounts received by way of First Time New Domestic Water Supply Connection Tariff into the First Time New Domestic Water Supply Connection Fund.
- 36.2 The Operator shall ensure that the First Time New Domestic Water Supply Connection Fund is held in a separately identifiable bank account, and shall not use the First Time New Domestic Water Supply Connection Fund for any purpose other than the provision of First Time New Domestic Water Supply Connections (together with any associated Customer Meters or Accessories) to its domestic Customers.
- 36.3 The First Time New Domestic Water Supply Connection Fund shall be subject to separate accounting and independent audit in accordance with the provisions of Article 39. If following audit of the First Time New Domestic Water Supply Connection Fund it is determined by the Auditor that the First Time New Domestic Water Supply Connection Fund has been used for purposes other than the provision of First Time New Domestic Water Supply Connections to domestic Customers, the Operator shall immediately repay the amount that the Auditor determines has been misapplied into the First Time New Domestic Water Supply Connection Fund. Persistent misapplication of the First Time Domestic Water Supply Connection Fund by the Operator shall make the Operator liable to pay the amount set out in Article 46.1(f) and may be considered a material breach of this Contract leading to termination under Article 50.

### **37 REGULATORY LEVY**

- 37.1 The Operator will levy on and collect from its Customers the Regulatory Levy on its own behalf and on behalf of the Lessor. The Regulatory Levy will be calculated in accordance with the [LEGISLATION]t. The Operator shall pay all amounts that it collects by way of Regulatory Levy to the Regulator without deduction or set off.

### **38 LESSOR TARIFF (WATER SUPPLY / SEWERAGE)**

- 38.1 The Lessor will notify the Operator the amount of the Lessor Tariff to be charged as part of the Customer Tariff.
- 38.2 The Operator shall pay directly to the Lessor the amount of the Lessor Tariff, within seven (7) days of the date of collection by the Operator.
- 38.3 If following the Commencement Date the Customer Tariff (Water Supply) levied on any Customer is lower than the water supply tariff levied by the Lessor at the date immediately preceding the Commencement Date, the Customer Tariff (Water Supply) for those categories of Customer will be temporarily increased to the level of the water supply tariff levied by the Lessor at the date immediately preceding the Commencement Date, and the difference between the water supply tariff levied by the Lessor at the date immediately preceding the Commencement Date, and the Customer Tariff (Water Supply) will be paid by the Customers and handed over to the Lessor in addition to the standard Lessor Tariff.
- 38.4 The Rental Fee
- (a) The Rental Fee (which shall be paid out of the Operator Tariff) shall be paid by the Operator to the Lessor monthly in advance. The amount of the Rental Fee payable to the Lessor is:
- (i) Contract Year 1 [CURRENCY AND AMOUNT] per calendar month



- (ii) Contract Year 2 [CURRENCY AND AMOUNT] per calendar month
- (iii) Contract Year 3 to 10 [CURRENCY AND AMOUNT] per calendar month
- (b) Additional Rental Fee may be paid by the Operator to the Lessor in accordance with Appendix K. Any Additional Rental Fee will be paid monthly in advance.
- (c) The indexation formula set out in Appendix K applies to both the Rental Fee and the Additional Rental Fee.
- (d) The Operator shall be liable for the payment of a financial penalty pursuant to Article 46 in the event of failure to pay the monthly instalments of the Rental Fee or Additional Rental Fee.

### **39 AUDIT AND VERIFICATION OF INFORMATION**

#### **39.1 General Functions of Auditors**

The general functions of the Auditors (whether appointed by or on behalf of the Lessor or the Operator as the case may be) shall include:

- (a) monitoring Service standards and water quality Regulations;
- (b) monitoring compliance with any statutory or contractual duties attaching to the Parties, and in particular to the Operator or its agents or contractors under the terms of any contract in which there is a legitimate public interest in respect of the services of the Operator or pursuant to any legal requirement; and
- (c) The Auditor is to be paid by the Party upon whose behalf it is acting.

#### **39.2 Specific Duties of Auditors**

In addition to the general duties ascribed to the Auditors under Article 39.1, the Auditors shall have the following specific functions:

- (a) monitoring the application of the First Time New Domestic Water Supply Connection Fund in accordance with Article 39.5;
- (b) monitoring the performance of the Operator in the provision of the Services in accordance with Article 39.6;
- (c) monitoring the application of the Government Loan in accordance with Article 39.7.

#### **39.3 Lessor's right to Verify**

In addition to the obligations and rights set out in Division X, the Lessor has the right to verify all of the information provided by the Operator in financial documents, and in particular any information required for calculation of adjustment of Tariffs. Through its authorised agent or Auditor, the Lessor may require to see all documents necessary to support financial information and in particular in connection with Tariffs or proposed Tariffs.

#### **39.4 Bills**

The Lessor has the right to carry out audits on a quarterly basis of collection of water and sewerage services bills by the Operator to:

- (a) ensure that the basis for payment to the Lessor of the Lessor Tariff has been clearly established and payments correctly made;

- (b) establish the collection rate for bills collected by the Operator;
- (c) ensure that bills have been properly raised; and
- (d) to monitor the collection from Customers of debts owed to the Lessor.

39.5 Audit of First Time New Domestic Water Supply Connection Fund

- (a) The Lessor shall appoint Auditors to audit the:
  - (i) implementation of the First Time New Domestic Water Supply Connections in accordance with relevant engineering and technical standards; and
  - (ii) the financial management and use of the First Time New Domestic Water Supply Connection Fund.
- (b) Such audit shall take place annually.

39.6 Audit of the performance of the Operator in the provision of the Services

- (a) The Lessor shall appoint Auditors to carry out an annual audit of the performance of the Operator in the provision of the Services. In carrying out such audit the Auditors shall review the Reports and shall without limitation:
  - (i) conduct any verification to ensure that the Service is being provided and is being managed in conformity with the provisions of this Contract;
  - (ii) take information, and take copies, of all the documents, technical or otherwise, deemed necessary for execution of their duties.
  - (iii) carry out such investigations as the Lessor may require and shall advise the Lessor whether and, if so, in what manner any powers vested in the Lessor should be exercised in relation to:-
    - (A) securing compliance by the Operator in respect of any duties for which the Operator is responsible, and
    - (B) the manner in which the Operator discharges its duties in respect of its Services activities.

39.7 The Lessor shall appoint Auditors to audit the application of the Government Loan. The audit shall be carried out in accordance with the auditing provision of the Government Loan.

39.8 It shall be the duty of the Operator to co-operate with the Auditors and to provide them with all such assistance and information as they may reasonably require for the purpose of carrying out any investigation that they may be lawfully charged by the Lessor so to do.

39.9 The reports of the Auditors shall be in writing to the Lessor and shall be copied to the Operator at the same time. Copies of such reports shall be placed in the public domain and shall be made available for public inspection at the offices of both the Lessor and of the Operator. Such public inspection shall be during normal business hours.

39.10 The Lessor, its duly authorised officers, Employees, agents and Auditors appointed by the Lessor shall be granted free access by the Operator during normal working hours to the Operator's premises, works and sites, and, to relevant records, documents and drawings, for the purposes of verifying the accuracy of information provided by the Operator under this Article 39 or any other provision of this Contract.

39.11 If an Auditor identifies any failure of the Operator to comply with the provisions of this

Contract, the Lessor may, if it has not already done so, apply penalties, as provided in Article 46, such penalties being applied from the date on which the non-compliance occurred.

#### **40 REVIEW OF OPERATOR TARIFF**

##### **40.1 Objective of the review of the Operator Tariff**

- (a) The Lessor shall review the Operator Tariff and the Indexation Formula in order to: -
- (i) take account of the changes and trends in economic and technical conditions;
  - (ii) reflect the data to be established during the "Enhanced Monitoring Period" as described in Appendix N hereto; and
  - (iii) ensure that the Indexation Formula is representative of actual cost changes.

The Lessor shall recommend any changes to the Operator Tariff resulting from such a review, to the Regulator for approval under the Act.

- (b) Subject to Article 35.3 any review of the Operator Tariff, is without prejudice to the Operator's right to require the application of the indexation formula adjustment in accordance with Article 35.2.

##### **40.2 Procedure and Frequency of Operator Tariff Reviews and Criteria for Determination**

- (a) A review of the Operator Tariff shall occur only as a result of any of the following events:
- (i) the Major Review;
  - (ii) an Interim Review;
  - (iii) an Annual Review; or
  - (iv) at the direction of the Regulator pursuant to Article 40.4(b).
- (b) Where it is reasonably possible, a tariff review shall include as a benchmark the performance of similar water service providers operating within East Africa or other developing countries.
- (c) A tariff review shall take into account any findings of operational or technical performance reviewed by the Auditors and any specific issues identified in their report.
- (d) Regard shall also be had to:
- (i) the level of inflation as measured by the appropriate published price index; and
  - (ii) any of the following:
    - (A) the level of and basis on which the Customer Tariff is set;
    - (B) the level of and basis on which the Operator Tariff is set;
    - (C) the level of and basis on which the Lessor Tariff is set;
    - (D) the level of the First Time New Domestic Water Supply Connection Tariff; and
    - (E) the level of the Regulatory Levy.

- (e) With regard to any tariff review initiated through an event described in Article 41.1(a)(vii), consideration will be only be given to the specific impact on the Operator Tariff of the element or elements of the Performance Targets and the Key Performance Targets under Appendix J that have not been achieved. The onus will be on the Operator to demonstrate and quantify the loss or disadvantage suffered.

#### 40.3 The Major Review

- (a) The Major Review shall have the following objectives:
  - (i) setting the Tariffs to apply for Contract Years six to ten;
  - (ii) setting the Performance Targets to apply to the Operator's performance of its obligations under this Contract;
  - (iii) reviewing the status of the Capital Investment Programme and in particular determining the status of the medium term Capital Investment Programme;
  - (iv) sharing the benefit of efficiency gains made by the Operator between the Operator, the Lessor and the Customers; and
  - (v) determining, in the reasonable opinion of the Lessor, the Government and the Regulator the amendments required to the Development Contract arising from the Major Review.
- (b) The Major Review shall be undertaken by both Parties and shall involve the Regulator. The audited Reports for the first four years of the Contract shall be taken into account. In addition six (6) months prior to the Major Review, the Lessor may instruct a Technical Auditor, to undertake any necessary investigations in respect of the proposed Major Review.
- (c) The proposed changes arising as a result of the Major Review shall be subject to the approval of the Regulator.
- (d) The introduction of an annual efficiency factor will be considered for Contract years six to ten.

#### 40.4 An Interim Review of the Operator Tariff

- (a) Subject to Article 40.4(e), an Interim Review may be undertaken at the request of either the Lessor or the Operator where either Party can demonstrate that an event of a Material Change of Circumstances has occurred. Any proposed changes as a result of such an Interim Review shall be subject to the approval of the Regulator.
- (b) The Regulator may direct the Parties to undertake an Interim Review where the Regulator has reasonable grounds to believe that the Operator Tariff needs revision or can demonstrate that a Material Change of Circumstances has occurred.
- (c) Within six (6) weeks of the receipt of a request for an Interim Review, the Lessor shall appoint a Technical Auditor to investigate and report to the Lessor, the Regulator and the Operator.
- (d) Upon receipt of the report from such Auditor, after applying to the Regulator for its approval the Lessor shall make its determination with all reasonable expedition. If the Lessor, acting reasonably, concludes that there has been a Material Change of Circumstances, the Lessor shall authorise appropriate specific modifications or variations to the levels of the Operator Tariff or to the Indexation Formula, following approval by the Regulator.

- (e) There shall be no more than two (2) Interim Reviews in any continuous period of twelve (12) months.
- (f) The Lessor shall provide the Regulator with copies of:
  - (i) all relevant documents and supporting financial statements;
  - (ii) reports of the Technical Auditors; and
  - (iii) information relating to the Material Change of Circumstance.

#### 40.5 Annual Review of the Operator Tariff

Either Party may request an Annual Review of the Operator Tariff or other contract terms as a result of any of the following events occurring:

- (a) either Party having reason to believe that the Indexation Formula needs revision in respect of the weightings of the various components, provided that the initiating Party can demonstrate that the percentage weightings of the various components of the Indexation Formula have changed by five per cent (5%) or more, from the time of the last Review, where such Review altered the level of the Operator Tariff, or amended the Indexation Formula, and where such a change of weightings is through no fault of the initiating Party; or
- (b) As a result of the establishment of the Base Values and Performance Targets and Key Performance Targets as described in Appendix N hereto, and with particular reference to the Enhanced Monitoring Period, and provided that the initiating Party can demonstrate that the assumptions used in the formulation of the Bid and as submitted with the Bid, (subject to the Enhanced Monitoring Period), are materially different from the actual Base Values determined during the Enhanced Monitoring Period. In this context, materially different shall be deemed to mean a change in one or more the assumptions submitted with the Bid, resulting in a variation in the Operator Tariff of plus / minus five percent (+/-5 %).
- (c) Only one Annual Review may occur during the first two (2) years of the Contract, to reflect the timing of the Enhanced Monitoring Period.
- (d) An Annual Review cannot be held within twelve (12) months of an Interim Review, pursuant to a Material Change of Circumstances, where such an Interim Review either altered the level of the Operator Tariff, or amended the Indexation Formula.

40.6 If any change in Tariff is determined by the Regulator to be unreasonable or unenforceable ("The Disavowed Tariff") against Customers then the Parties shall seek to agree appropriate changes to the contract terms (including service levels) to enable a rebasing of tariffs at an acceptable level and to allow the Operator to achieve its anticipated financial performance on the basis of the Disavowed Tariff.

## 41 **MATERIAL CHANGE OF CIRCUMSTANCES**

### 41.1 Definition

- (a) A Material Change of Circumstances<sup>19</sup> may arise to the benefit or detriment of either the Lessor or Operator (as applicable) from any of the following circumstances arising after the date when the Operator's Tariffs were last determined, where such circumstances are outside of the control or the ability to avoid or mitigate of either the Lessor or of the Operator:

<sup>19</sup> useful for parties to have this mechanism to adjust tariffs – provided that it is able to be fairly implemented

- (i) A variation of more than [ten per cent (10%)] of the total annual volume of Raw Water made available to the Operator, taken at the Sources of Supply, calculated on the basis of the average volume of the previous three (3) years.
- (ii) In the event of a change of more than [ten per cent (10%)] in the following assumptions when compared with the assumptions submitted by the Bidder:
  - (A) water available for billing;
  - (B) unit cost of water supply production;
  - (C) electricity consumption for provision of Services; and
  - (D) consumption of chemicals for water and Sewerage treatment.

Provided that in the event of dispute in relation to such assumption the matter shall be determined by an Independent Assessor whose decision shall be binding.

- (iii) Any increase or decrease in the amount of taxes, duties, levies, and charges to be paid by the Operator, other than charges on income.
- (iv) In the case of long term changes in Raw Water quality that affect the unit cost of treatment by more than [twelve per cent (12%)].
- (v) any judgment given by a court or tribunal of competent jurisdiction (in respect of which the period for making an appeal has expired) which requires any Legal Requirement to have effect in a way, different to that in which it previously had effect or, different to that in which it was taken to have effect:
  - (A) for the purposes of determining the adjustments to the Operator Tariff and prices;
  - (B) in determining whether the above adjustments should be changed.
- (vi) Where there has been a change in professional accounting standards or financial practice outside of the control of the Operator in the generally accepted accounting standards that the Operator is under a duty to adopt.
- (vii) Where any of the events itemised in Appendix J, "Key Completion Dates for the Lessor's Implementation of the Immediate Capital Works Programme", fails to occur within a period of six (6) months of the specified date.

Provided that a Material Change in Circumstances shall only arise where the circumstances arising:

- (A) impact adversely upon the capability of the Operator to discharge its future obligations in respect of the Services;
  - (B) create reasonable grounds to believe that such circumstances will place an unduly onerous burden upon the Operator in respect of the provision of the Services; or
  - (C) render the performance of the functions, powers and duties of the Operator in the performance of the Services impossible in respect of a material part, or the whole, of the Area and, as a result thereof, prohibit the Operator from complying with some or all of its obligations under this Contract.
- (b) Where a change in circumstance is caused by circumstances or a combination of circumstances or events which are outside the control of the Lessor or Operator (as applicable), then the Operator or the Lessor (the "Affected Party") shall be entitled to an adjustment of the tariff to cover the additional costs, subject to Article 40.6. For the



avoidance of doubt, the provision will not apply if the change in circumstance has been caused by, or significantly contributed to, by the acts, omissions or default of the Affected Party.

- (c) In respect of any of the items arising from the above items, no account shall be taken of:
  - (i) deviations in the Operator Tariff of less than two per cent (2%); or
  - (ii) any costs, to the extent that they would have been or would be, avoided by the exercise of Good Industry Practice at the relevant time.
- (d) If a combination of circumstances described in Clause 41.1 would result in the need to adjust the Operator Tariff by [seven and a half per cent (7.5%)] or more then each of those circumstances taken together shall be a "Material Change in Circumstances" entitling a variation of the Operator Tariff or (if necessary) contract terms to allow a rebalancing of the contractual agreement between the Lessor and the Operator.

41.2 In the event of a Material Change in Circumstances, either Party may request an Interim Review of the Operator Tariff, in accordance with Article 40.4.

41.3 Where a change in Operator Tariff is required as a consequence of a Material Change of circumstance, it shall take effect from the earlier date of either:

- (a) the date on which either Party has notified the other of the Material Change of Circumstance event; or
- (b) the date on which the Expert Panel determines is the appropriate date for the tariff adjustment.

## **DIVISION VII: FINANCING AND PAYMENT FOR SERVICES**

### **42 PAYMENT OF ACCOUNTS FOR SERVICES PROVIDED**

42.1 Payment for Customer Services Provided

- (a) Where applicable, payment for Services provided shall be in accordance with the provisions of this Contract and the Customer Contract.
- (b) The Operator is authorised by the Lessor to collect charges (as approved by the Regulator) from Customers in respect of the Services provided, and in particular, in accordance with the provisions of Customer Contracts. In this regard the Operator shall also collect any Customer deposits in respect of the Services provided, and shall have transferred to it any deposits held by the Lessor. All such deposits held by the Operator shall be returned to the Lessor immediately upon the termination or expiry of this Contract.

42.2 Non Payment of Bills

Failure by a Customer (including a Government Institution) to pay amounts due for either the water or Sewerage bill may result in a Service suspension of the water supply or Sewerage Services to the Customer (including a Government Institution). The Service may be terminated and reconnected in accordance with the provisions of the Customer Contract (or

the relevant agreement in respect of provision of Services to the Government Institution, as the case may be).<sup>20</sup>

#### 42.3 Payment of Bills for Government Institutions

For each Government Institution provided with Services, the Operator shall provide annually to the Lessor the estimated or predicated consumption and charges at least three (3) months before the Government's annual budget is finalised (the date of which will be provided by the Lessor in good time for the Operator to meet his obligations under this Article 42.3.

### **43 PAYMENT FOR PRIVATE EXTENSIONS**

#### 43.1 Case of Simultaneous Applicants

In addition to performing its obligations in relation to the Capital Investment Programme the Operator may enter into agreements with Customers for the execution of works. Upon completion of such works, the works shall become Assets.

#### 43.2 Case of Applications Submitted after Completion of the Works

Where the Operator has installed an extension to a water main or Sewer pursuant to an agreement under Article 43.1, the Operator will only make a connection to such extension upon receipt, from the potential Customer requesting such extension, of the following payments:

- (a) the normal payment applicable for such connection; and
- (b) the sum which would have been payable by such potential Customer for the connection at the time of the installation of the extension, less [twenty per cent (20%)] for each full year of Service from the extension.

The sum payable under paragraph (b) shall be apportioned amongst, and paid or credited (at the option of the Operator) to, the Customers who were party to the agreement for the installation of the extension, proportionally to their contributions to the original cost of the extension.

### **44 EXTERNAL FINANCING**

#### 44.1 Finance Provided by the Lessor

In addition to any obligations expressly set out in this Contract, the Lessor may pass on to the Operator any requirements imposed by a financier linked to the provision of funding for purposes connected to performance of this Contract, including without limitation any requirement to account to the Lessor for expenditure arising from specific identified works.

## **DIVISION VIII – DEFAULTS AND PENALTIES**

### **45 PERFORMANCE GUARANTEE**

- 45.1 The Operator shall procure the maintenance of the Performance Guarantee to satisfaction of the Lessor in full force and effect for the duration of this Contract. The Performance Guarantee shall be renewed annually in the amount stated in Schedule 4. The Operator must present evidence of renewal at least 30 (thirty) days prior to expiry and failure to do so may result in calling the Performance Guarantee. Such Performance Guarantee shall constitute a full payment and performance guarantee of all the Operator's obligations under this Contract including without limitation those under Article 46 (Financial Penalties). The Operator shall (at least once a year or at such greater frequency as the Lessor may reasonably require) furnish

<sup>20</sup> operator with right to disconnect for non-payment – need to check local laws as to whether this is permissible. Government needs to determine whether this is desirable

the Lessor with documentary evidence of the financial status of the guarantor. In the event the Lessor (acting reasonably) is not satisfied that the guarantor's financial status is such that it is able to provide a satisfactory guarantee of the Operator's obligations, it may require the Operator to procure a further guarantee or alternative form of performance security. For the avoidance of doubt such performance guarantee shall not apply in the circumstances provided for at Article 46.1(e).

- 45.1 For the avoidance of doubt Article 64 is not applicable against the Lessor in the event of the Lessor exercising its right to demand and be paid out of the Performance Guarantee. After the payment to the Lessor where the Operator is of the opinion that the demand and the entire payment or any part thereof was not due and payable it may invoke the dispute resolution process under Article 64 to seek for refund as appropriate.

#### **46 FINANCIAL PENALTIES<sup>21</sup>**

- 46.1 Subject to Article 46.7 and without prejudice to the Operator's liability for damages to third parties, if the Operator:

- (a) fails to pay the Lessor Tariff to the Lessor as provided in Article 38 within two (2) weeks of the due date, it shall pay to the Lessor a penalty equal to [point five per cent(0.5%)] of the Weekly Revenue for each week of delay or part thereof after the due date.
- (b) fails to pay the Rental Fee or any Additional Rental Fee to the Lessor as provided in Article 38 within two (2) weeks of the due date, it shall pay to the Lessor a penalty equal to [point five per cent (0.5%)] of the Weekly Revenue for each week of delay or part thereof after the due date.
- (c) fails to produce documents for financial and accounting provisions (as prescribed by Article 57), within fifteen (15) Days of being required to do so, its shall pay to the Lessor a penalty equal to [point five cent (0.5%)] of the Weekly Revenue for each week of delay or part thereof after the request to produce the documents was made;
- (d) fails to indemnify the Lessor in accordance with Article 48.2, it shall pay to the Lessor a penalty equal to [point five per cent (0.5%)] of the Weekly Revenue for each week of delay or part thereof occurring after the due date for payment as set out in Article 48.2;
- (e) fails to meet the Key Performance Targets it shall be liable for the penalties contained in Table 3 of Appendix N. The Lessor will determine (based upon information provided by the Operator, and if necessary his own audits) within three (3) months of each Contract Year whether the Key Performance Targets have been met and whether penalties shall apply. The Lessor shall inform the Operator of penalties to be applied. Any penalties shall be in the form of the liquidated damages set out in Appendix N - Table 3. Liquidated damages shall be claimed by the Lessor and notified to the Operator who shall meet the payment obligations within one month of notification.
- (f) persistently misapplies the First Time New Domestic Water Supply Connection Fund, it shall, upon the first written notification by the Lessor and upon each subsequent written notification by the Lessor of misapplication of the First Time New Domestic Water Supply Connection Fund pay to the Lessor a penalty equal to point five per cent (0.5%) of the Weekly Revenue for each week of delay or part thereof from the date of notice until the misapplication is remedied.

- 46.2 Notwithstanding the provisions of Article 46.1 failure by the Operator to meet the number of Key Performance Targets as detailed in Table 3 of Appendix N may lead to termination of the Contract in accordance with Article 49.

- 46.3 The provisions of this Article are without prejudice to (and in addition to) any other remedy or

<sup>21</sup> in some jurisdictions (especially common law) penalties are not permitted, and damages need to be commensurate with loss – local advice should be sought

action available to the Lessor.

- 46.4 In the event that the Lessor considers that the Operator is liable to pay a penalty under this Article 46, the Lessor shall so inform the Operator and if the Operator does not agree that it is so liable to such penalty, the Operator shall inform the Lessor, and, if appropriate, the provisions of Article 64 shall apply.
- 46.5 The Operator shall temporarily be relieved from relevant performance obligations imposed by this Contract and no penalties shall be applied under this Article 46 on the occurrence of an Event of Force Majeure as set out in Article 51 and in the event of interruptions under Article 32.3.
- 46.6 Neither the Lessor nor the Operator shall have the right to claim compensation from the other Party under this Agreement for indirect or consequential loss or damages.
- 46.7 The maximum liability of the Operator in any one Contract Year under this Article 46 shall be limited to [seven and a half per cent (7.5%)] of its income under this Contract in that Contract Year.<sup>22</sup>
- 46.8 Notwithstanding any other provision of this Lease Contract, if any sum due from the Operator to the Lessor is not paid on or before the due date for payment the Lessor shall be entitled to deduct such sum by way of set-off from any sums due from the Lessor to the Operator until the Lessor has recovered the full amount due to it. The Operator shall make all payments due in connection with the Project without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise.

#### **47 LIMIT OF LIABILITY**

- 47.1 Notwithstanding the rights of the Lessor to claim damages, penalties, indemnities or other legal remedies for the Operator's failure it is agreed that in no circumstance shall the overall liability of the Operator in any one Contract Year under the whole of this Contract exceed [ten per cent (10%)]<sup>23</sup> of its income under this Contract in that Contract Year.
- 47.2 In no circumstances shall the Operator be liable to indirect liabilities or to any claims which arise as a consequence of services provided after termination of the Contract other than as may be provided pursuant to Article 53.6.
- 47.3 For the avoidance of doubt, the Operator shall not be liable in any circumstances for any acts, omissions or defaults which have been caused by the Lessor and which the Operator could not have avoided by the exercise of Good Industry Practice.
- 47.4 Notwithstanding the rights of the Operator to claim damages arising from the acts, omissions or defaults of the Lessor, it is agreed that in no circumstances shall the liability of the Lessor in any one Contract Year under the whole of this Contract exceed ten per cent (10%) of the Operator's Income under this Contract in that Contract Year.

#### **48 CURE NOTICE**

- 48.1 Subject to any indemnity which may be given by the Lessor to the Operator and notwithstanding any other remedies available to the Lessor under this Agreement, if the Lessor becomes aware of any circumstances where the Operator is in breach of its obligations then the Lessor shall be entitled to issue a Cure Notice requesting the Operator to cure or remedy the breach.
- 48.2 If the Operator fails to cure the breach within the time period stated in the Cure Notice then, if practicable, the Lessor shall be entitled to appoint a third party to cure the breach or it may

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<sup>22</sup> operator will be concerned to ensure that liability is limited

<sup>23</sup> operator will be concerned to ensure that liability is limited

cure such breach itself. In each such circumstance the Operator shall pay the third party or Lessor (as applicable) for the costs of any such curing of a breach of this Contract within fourteen (14) Days of receipt of an invoice for such costs. If the Operator fails to make such payment within this time limit it shall also be liable to pay the amount set out in Article 46.1(d).

- 48.3 If a third party or the Lessor steps in to cure any breach pursuant to a Cure Notice then it shall immediately on completing such task handback all responsibilities to the Operator. The Operator shall be bound by any such works as though it had either performed them itself or sub-contracted these works to the third party or Lessor (as applicable).
- 48.4 If the Operator fails to cure the breach within the time period stated in the Cure Notice and the Lessor deems that it is not reasonably practicable or that it does not wish to take the action set out in Article 48.2, or the Operator fails to indemnify the Lessor in accordance with Article 4.4, then the Lessor may terminate this Contract in accordance with Article 49.2(g).

## **DIVISION IX –TERMINATION OF THE CONTRACT**

### **49 TERMINATION**

- 49.1 This Agreement shall terminate automatically if the Operator goes into liquidation.
- 49.2 This Contract may be terminated:
- (a) by effluxion of time and the said Contract had not been renewed in accordance with the provisions of Article 3 above;
  - (b) by agreement between the Parties;
  - (c) as a result of a material breach of the Contract under Article 50;
  - (d) by the determination of an arbitration held pursuant to Article 64;
  - (e) in accordance with Article 51.5 or 51.7;
  - (f) by the insolvency of the Operator under Article 52;
  - (g) by the Lessor exercising its rights under Articles 46 or 48;
  - (h) by the failure of the Operator to comply with its obligations under Article 45; or
- 49.3 Where the Lessor becomes entitled to terminate this Contract pursuant to Article 49.2 (c), (f), (g), or (h) the Lessor shall give written notice of termination to the Operator stating the nature and the extent of the default or circumstance giving notice to the rights of termination and, if such notice is given and the default is not remedied to the reasonable satisfaction of the Lessor within period of thirty (30) Days of the date of such notice, this Contract shall be terminated with effect from the end of the said thirty (30) Days period by notice of the Lessor to the Operator.
- 49.4 Subject to Article 47.4, if the Lessor is in material breach of the Contract pursuant to Article 50, and such material breach is not remedied in accordance with such Article, then the Operator shall be entitled to receive compensation which shall be limited to the loss of profit of the Operator which would be lost over the remaining period of the Contract or a period of five (5) years (which ever is the lesser).

### **50 MATERIAL BREACH OF THE CONTRACT**

- 50.1 If one of the Parties commits a material breach of this Contract, and does not take responsibility for this breach, or fails to correct or take substantial steps to correct a situation of non-compliance or defective compliance with its obligations, within a maximum period of 30

(thirty) Days, after receipt of notification of the breach, non-compliance or defective compliance, the injured Party, without prejudice to any right that may result from this breach, reserves the right to terminate this Contract, and for this purpose, shall inform the Party in breach in writing.

50.2 This Contract may also be terminated under the following circumstances (but always after having sought to settle any dispute under the procedures established in Article 64):

- (a) at any moment, if both Parties agree;
- (b) when there is serious and material breach or non-compliance with obligations or violation of the rights established in this Contract which occurs in a serious and repeated form that causes financial losses to either Party.

## 51 **FORCE MAJEURE**

51.1 Force Majeure means circumstances arising and completely outside of the control and beyond the contemplation of the Parties to this Contract which renders its performance impossible and frees the Parties hereto from their respective obligations under this Contract, and as set out hereunder. Force Majeure events shall include, but be not limited to:

- (a) any act of war, declared or not, or hostilities or belligerence, blockade or revolution;
- (b) insurrection, public disorder or riot;
- (c) explosion, fire, earthquake, excessive and extraordinary floods, volcanic eruption;
- (d) pollution of Raw Water where such pollution has not been caused by an act or omission of the Party invoking such an Event of Force Majeure and where such pollution cannot be rectified by the exercise of Sound Water and Sewerage Engineering Practices;
- (e) with respect to the Operator, any significant shortage of Raw Water where such shortage is caused by circumstances outside of the reasonable control of the Operator; and
- (f) an electrical power failure, where such failure is not within the control of the Operator or the fault of the Operator, and the duration of any one single continuous occurrence is over twenty four (24) hours, and the effect of the failure is the such that the Operator is unable to provide the Services. Nothing herein shall relieve the Operator of any obligation arising from Articles 28, 29, 31, and 32, and any other obligations under this Contract not directly dependent on power supply.<sup>24</sup>

51.2 The Parties shall consult with each other in respect of the event of Force Majeure and shall take all reasonable steps to minimise the losses of either Party resulting from an event of Force Majeure.

51.3 Either Party shall be excused from performance of, and shall not be construed to be in default in respect of, any obligation hereunder (other than any payment obligation) where the failure to perform such an obligation is due to an event of Force Majeure. Where an event of Force Majeure has been declared pursuant to Article 51.4.(a) below, the obligation of the Parties hereunder (other than payment obligations) shall be suspended to such extent as may be necessary for the duration of the event of Force Majeure provided that such suspension shall not affect any rights or obligations which may have accrued prior to the occurrence of the event of Force Majeure.

51.4 The Party encountering an Event of Force Majeure shall:

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<sup>24</sup> in some countries power failure is of particular concern to the operator – in some cases operator will be required to ensure that there is a back up generator to ensure continuity of service but this is unlikely to be able to be continuous and so a power failure continuing beyond the reasonable service time of a back up generator will need to be included in the terms of force majeure. Cost of back up generator will also need to be considered



- (a) as soon as practicable give written notice to the other Party of the occurrence of the event which the affected Party claims to constitute an event of Force Majeure, such notice to include information about the circumstances, the likely duration of such circumstances (if known), the extent to which the affected Party will be prevented from or impeded in carrying out any of its obligations under this Contract and a statement of steps necessary to remedy such occurrence;
  - (b) provide to the other Party reasonable facilities for examining such circumstances, including facilities for a site inspection by a representative of the other Party and at the expense and risk of such other Party; and
  - (c) advise the other Party regularly of relevant information relating to such circumstances and the effect of such circumstances upon the affected Party's obligations under this Contract.
- 51.5 If the effects of the event of Force Majeure are of such a catastrophic magnitude that the Sources of Supply, the Production Facilities, the Distribution Facilities or the Sewerage and Sewage treatment facilities are substantially destroyed or damaged to such an extent that they are not capable of economic repair then the Party serving Notice of the Event of Force Majeure may terminate this Contract by giving written notice of termination to the other Party such notice to be given no earlier than six (6) months from the date on which the Event of Force Majeure is disclosed under Article 51.4(a), such notice to be effective immediately.
- 51.6 The Parties hereto shall (unless this Contract is terminated pursuant to 51.5 above), resume performance of this Contract as soon as practicable after any Event of Force Majeure has ceased.
- 51.7 In the event that either Party is excused from performance of its obligations under this Contract pursuant to this Article 51 for a continuous period of six (6) months or more, either Party may terminate this Contract by giving written notice to the other, such notice to be given no earlier than six (6) months from the date on which the event of Force Majeure is disclosed under Article 51.4(a) and to be effective immediately.

## **52 INSOLVENCY OF THE OPERATOR**

- 52.1 The Operator, shall be in breach of this Contract if any of the following events should occur:
- (a) where the Operator has made an arrangement for the benefit of creditors, petition or applied to any Court or Tribunal of lawful jurisdiction for the appointment of a receiver or a trustee for itself or of any substantial part of its property;
  - (b) where the Operator has commenced any judicial or other legal proceedings by reason of its financial difficulties under any reorganisation, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect;
  - (c) there shall be commenced against the Operator any such proceedings as listed in Articles 52.1(a) or 52.1(b) which shall remain un-dismissed for a period of sixty (60) Days or more or the Operator shall by any act indicate its consent to, approval of, or acquiescence in, any such proceeding or the appointment of any receiver, or trustee for, the Operator or any substantial part of its property;
  - (d) where the Operator shall suffer any such receivership or trusteeship to continue undischarged for a period of sixty (60) Days or more; or there shall be any reorganisation, arrangement, readjustment of debt, dissolution or liquidation with respect to the Operator which does not involve a judicial hearing; or
  - (e) where the Operator calls a meeting for the purpose of taking steps to wind it up, or presents, or has presented against it, a petition for a winding up order.

### **53 CONTINUITY OF SERVICE ON EXPIRY AND TERMINATION**

- 53.1 Within the period of two (2) years before the anticipated termination of this Contract under Article 3, the Lessor and the Operator shall agree a procedure to be adopted and followed by both Parties relating to the transfer of the Services on such termination.
- 53.2 The Operator and Lessor may discuss during the first six (6) months of the ninth (9<sup>th</sup>) Contract Year the possibility of continuing the Service on either existing or revised terms.
- 53.3 The Lessor has the right, without compensation, but at its own expense, to take any measures during the last six (6) months of this Contract (or as the case may be, upon early termination) necessary to ensure continuity of water supply and Sewerage Services and to facilitate the progressive change from the provisions of this Contract to a new system of management. The Operator shall use its best endeavours and Good Industry Practice to facilitate such change.
- 53.4 Upon expiry or early termination of this Contract, the rights of the Operator will be subrogated to the rights of the Lessor, but subject to the relevant provisions of this Contract, including any right to compensation.
- 53.5 During the ninth (9<sup>th</sup>) and tenth (10<sup>th</sup>) Contract Year the Lessor shall have the right to appoint a technical consultant to examine the condition of the Assets. The technical consultant shall draw up a program of works required to put the Assets into the appropriate condition necessary that the Assets be available for handback, if necessary at the end of the Contract in accordance with Article 8.6. The technical consultant shall also identify the cost of such works. If the Operator fails to carry out the works, or any part, it shall be liable on termination to pay the Lessor the costs it shall incur in putting the Assets into good working order.
- 53.6 Upon termination of this Contract for any reason whatsoever:
- (a) the relationship between the Parties shall cease save as (and to the extent) expressly provided for in this Article 53;
  - (b) the provisions of Articles 3, 8, 6, 46, 53, 54, 55, 62, 63, 64, 67 and 72 and any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect.
- 53.7 Subject to Article 46.8, following expiry or early termination of this Lease Contract, the Lessor shall remit to the Operator any sums it receives from Customers which are properly due to the Operator.

### **54 RETURN OF ASSETS, WORKS AND INSTALLATIONS**

- 54.1 Upon expiry or early termination or breach of this Contract, the Operator shall hand back to the Lessor, in good working order, all of the Assets, works and equipment used in the performance of the Services, subject to the other relevant provisions of this Contract. If the Assets are not in good working order at hand back the Operator shall be liable to pay the Lessor the reinstatement costs in full.
- 54.2 In addition to the provisions previously set out, the arrangements for handing over responsibilities by the Operator to the Lessor, in the event of termination for whatever reason (including suspension, temporary withdrawal, or other interruption as a consequence of Force Majeure) shall be on the basis of good faith of both Parties. Best endeavours shall be made by the Parties to minimise disruption to the day to day operations of the Operator and the performance of the Services. It is agreed that the responsibility for the costs incurred pursuant in connection with such handing over shall be as agreed between the Parties, but, in the absence of agreement, shall be divided equally between the Operator and the Lessor.
- 54.3 The Operator shall, on the termination of this Contract for whatever cause, deliver up to the Lessor all appropriate and necessary materials, documents, records (including the then

current Agreed Physical Asset Register), data, intellectual property and other information of whatever nature (with the exception of those dealing solely with the Operator's Foreign Personnel) in the possession, custody or power of the Operator relating to the operations of the Operator or to the Assets and necessary for the performance of the Services and in all cases such items shall be in such condition as reflects full compliance with the Operator's obligations under this Contract.

- 54.4 The Operator shall take all reasonable care and precautions to ensure that such matter handed over is accurate and in such reasonable order as can be operated by the Lessor or its successor as operator of the Services.
- 54.5 On the termination of this Contract, all relevant Contracts and agreements and obligations made by or with the Operator shall be assigned (whether directly or shall be deemed to be so assigned) from the Operator to the Lessor so that the Lessor shall, from the date of such termination have all necessary rights and duties in relation to such matters shall be vested in the Lessor and not in the Operator.
- 54.6 On expiry or early termination of this Contract the Parties shall co-operate in good faith and using Good Industry Practice, and both Parties shall consult with each other, with any replacement operator and with relevant workers' representative organisations to ensure that the transfer of personnel to the Lessor is conducted in a proper manner.
- 54.7 (a) Notwithstanding any contrary provisions of this Contract, the Operator shall not be required to make any payment on termination of this Contract arising as a consequence of any transfer of employees and in relation to termination of employment, redundancy or any other similar circumstances arising solely by operation of law, statute, regulation or similar instruments.
- (b) For the avoidance of doubt, Article 54.7 (a) shall not apply to any special contractual rights of employment which are over and above the statutory termination or transfer benefits offered to employees by the Operator relating to payments on termination of employment, redundancy or other similar circumstances or other payment obligations.

## **55 ACQUISITION OF PROPERTY FUNDED BY OPERATOR**

- 55.1 Upon expiry or early termination of this Contract, the Lessor will have the right to acquire from the Operator, subject to compensation, any property, totally or partially funded by the Operator, which is not part of the Contract.
- 55.2 The value of any equipment, intellectual property and supplies will be fixed by agreement or by independent valuation, and will be reflected and annually updated at the Financial Report referred in Article 58.
- 55.3 The Lessor will have a pre-emptive right over any equipment referred to in Article 55.1, intellectual property and supplies which are not transferred to the Lessor under Article 54.5 above. If the Lessor exercises its right of pre-emption, under this Article 55.3, the amount payable by the Lessor to the Operator will be the value of the equipment, intellectual property and supplies over which the Lessor is exercising its right of pre-emption, as assessed in accordance with Article 55.2.
- 55.4 Compensation made will be subject to amortisation, to take account of any possible renovation charges.
- 55.5 Any delay in the payment of the sums due will accrue interest calculated at the rate of [LIBOR +2%].

## **DIVISION X – RECORDS AND REPORTS**

## 56 PRACTICE OF ASSET MANAGEMENT AND RECORDING OF INFORMATION

- 56.1 The Operator shall use or create registers, books and records and other means of recording information in the quality and quantity required for facilitating efficient management and supervision of this Contract, for providing information to the Lessor, and for informing Customers and third parties about service quality and performance.
- 56.2 The Operator shall establish and maintain suitable and complete accounting and non-accounting records that summarise technical, commercial, financial and Personnel information. All such information shall be kept and separately related and accounted for in connection with water supply on the one hand and Sewerage Services on the other. All financial, technical and commercial information shall be held in a format that shall permit regular audit. Financial records and accounts shall be maintained in accordance with the approved International Accounting Standards. Technical records, (which expression includes engineering design and drawings), shall be maintained in accordance with Good Industry Practice).
- 56.3 The Operator shall implement appropriate Asset Management techniques, create and develop an Asset Management Plan and in particular create and maintain up to date records of all surface and underground Assets in an appropriate Schedule of Assets in sufficient detail to make possible a full understanding of the extent, location and operational state and condition of such Assets. Such records shall comprise physical drawings, computer models, asset databases and calculation sheets, together with historical records relating to construction, Repairs, and Maintenance, including all works carried out as replacement, rehabilitation and Maintenance.
- 56.4 Physical plans shall clearly identify and show the as-laid routes of mains and other pipes and Sewers, together with the location of pumping stations and zonal Meters.
- 56.5 The Lessor shall have a right of access to such information at all times, and the Operator shall co-operate fully with the Lessor with respect to future Asset replacement and infrastructure development programmes.
- 56.7 All registers, books, records and other recorded information shall be in English.

## 57 REPORTING REGIME

- 57.1 The Operator shall submit such reports as are requested from time to time by the Lessor. As a minimum, the following routine reports shall be submitted to the Lessor:-

<b>Title</b>	<b>Frequency</b>
Annual operating budget, Annual Detailed Investment Plan, Strategic Business Plan and five year rolling investment budget	Three (3) months prior to the commencement of the Operator's Financial Year
Annual Reports	Three (3) months after the end of the Operator's Financial Year
Collection & Costs summary tables	Quarterly
Financial Statements	Quarterly

All the above reports shall be submitted in the English language.

- 57.2 A copy of all reports submitted to the Lessor shall be provided simultaneously to the Regulator.

57.3 The format and content of all reports shall be as agreed with the Lessor particularly with regard to the monitoring and reporting of Performance Targets and Key Performance Targets.

57.4 In addition, the Operator shall produce a summary of the information in the Annual Report to the Lessor for the purpose of making such summary available for distribution to the Customers and other interested organisations.

57.5 The Operator shall provide such clarification of the reports as is requested by the Lessor.

#### 57.6 Auditing of Reports

- (a) Within six (6) months of the Commencement Date, the Operator shall, at its own cost and expense, appoint and contract with its own independent Auditor to perform such duties as it may require, including the duties listed in Article 40. The appointment shall be subject to the Lessor's approval, which shall not be reasonably withheld or delayed.
- (b) The Lessor shall have power under this Contract to appoint at its own cost and expense its own independent Auditor to undertake the duties listed in Article 39.
- (c) Failure to produce relevant reports to the Lessor constitutes a breach of Contract and may give rise to the imposition of Financial Penalties as stipulated in Article 46 of this Contract.

### 58 **ANNUAL REPORTS AND AUDITING**

#### 58.1 Structure

Annual Reports are a statutory requirement within the [RELEVANT LEGISLATION] but in addition to such statutory requirements, the provisions of this Article shall apply.

- (a) In order to facilitate the auditing of its financial and technical operations, the Operator will present, on a yearly basis, an Annual Report comprising a Technical Report and a Financial Report. The reports shall include as a minimum the information required under this Article 58.
- (b) In its Annual Report, the Operator will be required to indicate any circumstance having an impact on the revision of financial mechanisms of this Contract. In addition, the Operator shall report (inter alia) on any matters arising from or otherwise falling within the scope of, the Codes and on the need, if any, for modifications to any of the Codes that have been identified.
- (c) Copies of the Annual Report shall be made available at the Operator's head offices to any Person or organisation requesting a copy on payment of a reasonable fee.

#### 58.2 Technical Report

Not later than three (3) months following the end of the Financial Year, the Operator shall provide the Lessor with a Technical Report.

- (a) The format and content of the Technical Report shall be as agreed from time to time with the Lessor. As a minimum, the Operator shall include relevant information relating to water and Sewerage Services as follows:
  - (i) volume of water (Abstracted, produced, distributed and sold);
  - (ii) volume of Sewage carried in the Sewers and treated in the Sewage treatment works;
  - (iii) numbers and categories of Customers, and of Personnel employed;

- (iv) levels of Service performance and commentary with specific reference to the Performance Targets and the Key Performance Targets;
  - (v) water quality compliance results and commentary;
  - (vi) treated Sewage quality compliance results and commentary;
  - (vii) profitability, billing ratio;
  - (viii) general development of works;
  - (ix) renovation works and Repairs carried out or to be carried out; and
  - (x) exceptional events eg water shortages, major bursts, pollution incidents.
- (b) An environment statement which shall account for the measures, if any, taken by the Operator during the year in respect of its environmental duties imposed by this Contract or by any Statute.

### 58.3 Financial Report

Not later than three (3) months following the end of the Financial Year, the Operator shall provide the Lessor with:-

- (c) an audited set of accounts, prepared in accordance with the formats and generally accepted principles of international accounting practices using International Accounting Standards and the segmental information as follows:
- (i) an analysis of total operating costs (including interest and taxation) of the business showing separately for each of the water and Sewerage cost centres, as set out below:
    - (ii) manpower costs;
    - (iii) other costs of employment;
    - (iv) power;
    - (v) local taxation, including property taxes (if any);
    - (vi) water charges (including Abstraction charges and discharge consent charges);
    - (vii) materials and Consumables;
    - (viii) hired or contracted services;
    - (ix) charges for bad and doubtful debts;
    - (x) depreciation and amortisation (where charged);
    - (xi) intangible assets and written-off infrastructure expenditure (analysed by - Repairs, renovations, and replacements);
    - (xii) exceptional items; and
    - (xiii) all other operating costs (on an aggregated basis)
- (d) an analysis of the total turnover under the following headings:



- (i) water supply Abstraction, treatment, transmission and distribution;
  - (ii) Sewage collection, treatment and disposal; and
  - (iii) on an aggregated basis.
- (e) all other sources of income and an analysis of the total tangible fixed assets attributable to the Services business, including the operational assets funded by the Operator, described on an updated report/list of the property totally or partially funded by the Operator, as well as the payments estimated to be paid in accordance with Article 55;
- (f) certificate to the effect that, in the opinion of the Board of Directors of the Operator, the Operator shall have available to it for at least the next twelve (12) months:
- (i) sufficient financial resources and facilities to discharge the activities and functions, powers and duties relating to the Services business; and
  - (ii) the management resources which are sufficient to enable it to carry out such activities and functions.
- 58.4 In addition to its obligation to prepare Annual Reports, on such occasions as the Lessor may reasonably request, the Operator shall provide (in the report formats and layouts reasonably specified by the Lessor from time to time) updates of information required to be set out in its Annual Reports, so as to enable the Lessor to monitor on an ongoing basis the performance of the Operator under this Contract.

## **59 PLANNING AND INVESTMENT REPORTS**

### **59.1 Market Surveys**

- (a) The Lessor shall arrange for undertaking surveys of existing and potential Customers to establish:-
- (i) priority areas for the expansion of the Service where willingness and ability to pay is strongest; and
  - (ii) the degree of Customer demand for improved levels of Service; and Customer priorities for Service improvements.
- (b) Such surveys shall be used by the Lessor and the Operator for identifying priorities in the Capital Investment Programme.

### **59.2 Annual Business Plans**

The Operator shall prepare an Annual Business Plan in the form and content as agreed by the Lessor, but shall include, as a minimum, the following:-

- (c) forecast profit & loss statement;
- (d) forecast balance sheet;
- (e) forecast cash flow;
- (f) forecast demand projections;
- (g) annual capital investment plan;

- (h) Immediate Capital Investment Programme detailing Assets to be replaced or rehabilitated and suggested areas for expansion of the Service. The projects to be separately identified as those to be:
  - (i) implemented and financed by the Operator;
  - (ii) implemented by the Operator but financed by the Lessor; and
  - (iii) implemented and financed by the Lessor.
- (i) Proposals for improving Service levels; and
- (j) Human Resources proposals.

When completed, the Annual Business Plan shall be submitted to the Lessor for its approval.

### 59.3 Approvals by the Lessor

The Lessor shall (within a period of eight (8) weeks from the receipt of the documents), approve, modify or reject the Annual Business Plan. Where the Lessor is of the mind to modify or reject such plans, the Lessor shall so advise the Operator and shall state his reasons in writing. The Operator shall then have a period of four (4) weeks to consider the reasons and either agree to the proposed modifications or submit revised proposals, or advise the Lessor that the issues in dispute shall be resolved in accordance with Article 64.

## 60 **SUPERVISION BY THE LESSOR**

- 60.1 The Lessor shall have the right to appoint Auditors to verify details given in the provision of information Reports.

## **DIVISION XI – MISCELLANEOUS**

### 61 **AMENDMENTS TO CONTRACT**

- 61.1 This Contract, including the Schedules and the Appendices, shall not be amended except by an instrument in writing agreed to and signed on behalf of each of the Parties hereto after due consultation with all the appropriate Persons who may be affected by such an amendment, including the Regulator.

### 62 **CONFIDENTIALITY**

- 62.1 The Operator shall keep confidential all of the information relating to customers, the Lessor, the Assets and this Contract and, in particular, having regard to Article 70. All such confidential information shall be called <<Confidential Information >>.
- 62.2 In this regard, the Operator may only divulge Confidential Information to its officers, directors, Employees and/or agents on a need-to-know basis. The Operator shall obtain assurances from the Persons to which Confidential Information is to be disclosed pursuant to the above that confidential treatment will be accorded to Confidential Information.
- 62.3 Similarly, the Lessor shall keep confidential all relevant information relating to the Operator and, in particular, commercially sensitive information.
- 62.4 The confidentiality obligations of the Parties shall remain and be in force for a period of three (3) years after the expiry or termination of this Contract.

## **63**     **LEGAL MATTERS**

### **63.1**    Governing Law

This Contract shall be governed by, and construed in accordance with, the Laws of [COUNTRY].

Subject to Article 64.4, the Parties hereby submit to the exclusive jurisdiction of the laws of [COUNTRY].

### **63.2**    Taxes

All Government and local taxes and duties due in respect of the Services are the responsibility of, and shall be paid and levied by, the Operator in accordance with the Laws of [COUNTRY].

## **64**     **SETTLEMENT OF DISPUTES**

### **64.1**    Amicable Settlement

In the event of any dispute, or difference arising out of or relating to the Contract or any breach thereof, the Parties hereto shall use their best endeavours to settle such disputes or differences amicably; to this end they shall consult and negotiate with each other, in good faith and understanding of their mutual interests, and in the event that it is not possible to reach a just and equitable solution satisfactory to all Parties, they shall submit the dispute or difference to an Expert Panel for determination.

### **64.2**    Submission to an Expert Panel

- (a)    If the Parties fail to find an amicable solution to a dispute they shall refer the dispute to an Expert Panel consisting of three (3) members, as described in this Article, for resolution.
- (b)    Unless appointments to the Expert Panel have been previously mutually agreed upon by the Parties, then within twenty eight (28) Days of the decision to refer the matter to an Expert Panel pursuant to Article 64.2 (a):
  - (i)     the Lessor shall appoint one suitably qualified Person to the Expert Panel;
  - (ii)    the Operator shall appoint one suitably qualified Person to the Expert Panel, and
  - (iii)   the Lessor and the Operator shall mutually agree upon the appointment of one suitably qualified Person to the Expert Panel.
- (c)    The Expert Panel shall be deemed to be appointed on the date the third member is appointed. Each Expert shall be (and the terms of his appointment shall so provide) that he is independent of the Parties and shall act impartially. The terms of the remuneration of the Expert Panel, including the remuneration of any specialist from whom the Expert Panel may seek advice, shall be mutually agreed upon among the Parties. Subject to Article 64.2 (j), the Lessor and the Operator shall each pay one-half of the Expert Panel's remuneration. The Expert Panel's appointment may be terminated only by mutual agreement between the Lessor and the Operator. The Expert Panel's terms of appointment shall expire as the Parties may mutually agree.
- (d)    Each Expert to be appointed, except the Expert to be appointed under Article 64.2 (b) (iii) above, in connection with any dispute arising out of a review of the Operator Tariff, or the value of any termination settlement, will be a partner from an internationally renowned firm or practice of chartered accountants experienced in accounting for water projects.

- (e) Each Expert to be appointed, except the Expert to be appointed under Article 64.2 (b) (iii) above, in connection with any dispute arising out of the operator's performance, or the application of penalties, or the payment for any works undertaken by the Operator, will be a senior representative from an internationally renowned firm or practice of water consultants.
- (f) A Party may appoint a suitably qualified Person to replace any Expert that that Party may have appointed and, in case of an Expert appointed by mutual agreement between the Lessor and the Operator, the Parties may by mutual agreement replace such Expert, provided that no Party may replace any Expert during the period when the Expert Panel is determining a dispute.
- (g) If the Lessor and the Operator cannot agree upon the third Expert to be appointed pursuant to article 64.2.(a) (iii) above, within a period of ten (10) Days after the date of receipt of the notice of the decision to refer the matter to an Expert Panel, the two Experts appointed pursuant to Article 64.2. (a) (i) and (ii), shall appoint such third Expert, after due consultation with the Parties. If the two Experts fail to appoint the third Expert within seven (7) more Days, the chairman of the [Institute of Engineers] shall appoint the third Expert and such appointment shall be final and conclusive. Any Expert appointed pursuant to this Article 64.2. (g) shall be independent of the Parties and shall act impartially.
- (h) Every dispute notified to the Expert Panel shall be reviewed by the Expert Panel which shall indicate to the Parties in writing within two (2) months from receipt of the notice of a dispute its conclusions concerning the dispute. The Parties shall promptly make available to the Expert Panel any information that the Expert Panel may require for the purposes of rendering its decision. A majority decision of the Expert Panel shall be in the form of recommendation to the Parties. If the Expert Panel cannot by majority vote give such a recommendation in writing within two (2) months from the date of appointment of the last member of the Expert Panel, then the Expert Panel shall declare itself deadlocked, and shall cease to function with regards to the dispute in question, and the dispute shall be referred to the Regulator in accordance with Article 64.3 or to arbitration in accordance with Article 64.4 (as appropriate).
- (i) Upon receipt of the recommendation of the Expert Panel, the Parties shall immediately abide by the recommendation, and shall confirm in writing their agreement to do so, and acceptance of the recommendation, within seven (7) Days of the notification of the Expert Panel's recommendation.
- (j) If either Party refuses to abide by the Expert Panel's recommendation, or fails to confirm their acceptance in accordance with Article 64.2 (i), then that Party shall bear the full cost of the Expert Panel proceedings in relation to the dispute in question, save that if the Party refusing to abide or failing to confirm exercises its rights under Article 64.3 or 64.4 (as applicable) and the Regulator or arbitrator (as applicable) determines the dispute in its favour, then the provision of Article 64.2 (i) shall apply;
- (k) Unless this Contract has already been terminated the Parties shall in every case continue to proceed with the performance of their rights and obligations under this Contract with all due diligence whilst the Expert Panel is reviewing the dispute.
- (l) Subject to Article 64.2 (j) each Party shall bear its own costs in respect of any Expert determination. Upon appointment of the Expert Panel each Party shall pay [AMOUNT AND CURRENCY] into an escrow account. Following the Expert Panel's determination such sum of money shall be applied in satisfaction of the Expert Panel's costs.

#### 64.3 Submission to the Regulator

In the event that the Parties cannot resolve a dispute relating to the level at or basis on which a Tariff is set through amicable means, then such dispute shall be referred to the Regulator

for resolution. If either of the Parties are not satisfied with the Regulator's decision, such dispute, controversy or claim shall be settled finally under arbitration under Article 64.4.

#### 64.4 Arbitration

- (a) In the event that the Parties cannot resolve a dispute which relates to a matter other than the level at or basis on which a Tariff is set such dispute may be referred to arbitration in accordance with the following provisions of this Article.
- (b) Any dispute, controversy or claim arising out of or relating to this Contract or the breach and any termination or invalidity which cannot be settled amicably shall be settled by Arbitration in accordance with [ARBITRATION LAWS]. The decision of the Arbitrator shall be final and conclusive.
- (c) The Arbitration shall take place in [LOCATION] and each party shall be responsible for the costs incurred during the Arbitration.

#### **65 INDEPENDENT ASSESSOR**

65.1 An Independent Assessor shall be appointed by agreement between the Parties. Each potential assessor shall be either a senior representative from an internationally renowned firm or practice of water consultants, or a partner from an internationally renowned firm or practice of chartered accountants experienced in accounting for water projects, who is not in either case in any way connected with either of the Parties and who has not had any previous dealings with either of the Parties in relation to the Project.

65.2 Where none of the potential assessors is available, or in the absence of agreement between the Parties within seven (7) days of the decision by either Party to refer a matter to an Independent Assessor, as to which assessor should be appointed the chairman of the Institute of Engineers in [COUNTRY] shall appoint an Independent Assessor, and such appointment shall be final and conclusive;

#### **66 SUPERVISION BY THE LESSOR AND REGULATOR**

##### 66.1 Regulator

The functions of the Regulator are as provided in the [legislation] and the Act. Both Parties agree to exercise their responsibilities in accordance with such provisions.

##### 66.2 Co-operation with the Lessor and the Regulator

The Operator shall co-operate with the Lessor and the Regulator so as to enable the Lessor and the Regulator to perform their duties in connection with the exercise of their respective powers and duties under this Contract and under the Act.

#### **67 ASSIGNMENT**

67.1 Neither Party may assign this Contract, whether in whole or in part, without the prior approval in writing of the other Party (such prior approval shall not be unreasonably withheld) and the approval of the Regulator. Any purported assignment (in the absence of such written approval) shall be void.

67.2 The issuance of such written approval referred to in Article 67.1 above shall not release the Party seeking the assignment from its own continuing obligations pursuant to this Contract.

#### **68 NOTICES AND COMMUNICATIONS**

68.1 Except as otherwise specified herein, any notice or communication between the Parties shall be both in English and [LOCAL LANGUAGE] and shall be sent to the address stated in this

Contract or to such other address as the Parties may specify.

68.2 Any communication between the Operator and the general public shall be both in English and in [LOCAL LANGUAGE].

## **69 LEGAL INTERESTS IN LAND**

69.1 It shall be the duty of both Parties to make available to the other Party all information that is material to the ownership of land or any interest in land and the registration of legal interests in land.

## **70 INTELLECTUAL PROPERTY RIGHTS**

70.1 All plans, drawings, specifications, designs, reports and other documents (whether in physical or electronic form) prepared by the Operator during the period of this Contract and used by the Operator in connection with its obligations under this Contract shall be supplied to the Lessor and shall become and remain the property and copyright of the Lessor. The Operator shall deliver the same to the Lessor at appropriate times during this Contract and no later than the termination of the Contract, the Operator shall ensure that it has delivered to the Lessor all such material, and shall also provided a detailed inventory of such material.

70.2 In addition to the above obligations, the Operator shall prepare operation and Maintenance manuals, guides of best practice and safety and emergency plans, together with any as-built drawings relating to the Assets, for all the key activities in connection with the Services (together with all necessary up-dating and revisions during the continuance of this Contract) and shall provide and distribute the same to relevant Personnel, who shall be trained appropriately. For the avoidance of doubt, it is declared that the Lessor shall be free to make such use of the same information and documents as it deems necessary in connection with the provision of water and Sewerage Services within the Area, together with the making of any necessary copies, and the making of the same available to any Person who may provide such Services after the end of this Contract.

70.3 Where any Asset or item is made available by the Lessor to the Operator during the continuance of this Contract, the Lessor will make all necessary associated intellectual property rights and available to the Operator at the same time on the same basis as set out above.

## **71 REMEDIES AND WAIVER**

71.1 No delay or omission on the part of any Party in exercising any right, power or remedy provided by law or under this Agreement shall:

- (a) impair such right, power or remedy; or
- (b) operate as a waiver thereof.

71.2 The single or partial exercise of any right, power or remedy provided by law or under this Contract shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

71.3 The rights, powers and remedies provided in this Contract are cumulative and not exclusive of any rights, powers and remedies provided by law.

## **72 SEVERABILITY**

72.1 If at any time any provision of this Contract is or becomes illegal, invalid or unenforceable in any respect, such provision shall be considered severable, so that it shall not, in any way, affect or impair the legality, validity or enforceability of any other provision of this Contract.



72.2 If any provision of this Contract becomes illegal, invalid or unenforceable as provided in Article 72.1, the Parties shall use all reasonable endeavours to agree an alternative provision which is not illegal, invalid or unenforceable but which has equivalent or as similar as possible effect as the original provision.

### **73 FURTHER ASSURANCES/NO COMPETITION**

73.1 The Operator undertakes with the Lessor that:

- (a) During the term of this Contract, it shall not engage in any activities which could be construed to be in competition with the performance of this Contract.
- (b) For a period of five (5) years commencing on the date of termination of this Contract for whatever reason, it shall not engage in any water supply or Sewerage services activities within the Area, except as provided for by any contractual arrangement entered into with the Lessor or its successors.

Each Party to this Contract shall, from time to time on being required to do so by any other Party now or at any time in the future, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to such other Party as that Party may reasonably consider necessary for giving full effect to this Contract and securing to such other Party the full benefit of the rights, powers and remedies conferred upon that Party in this Contract.

### **74 CONFLICT OF INTEREST**

74.1 The Operator shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of its obligations hereunder, and the Operator shall use its best efforts to ensure that any sub consultants, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration

74.2 Wherever the Operator as part of the Services, has the responsibility of advising the Lessor on the procurement of goods, works or services, the Operator shall comply with any applicable procurement guidelines of relevant international and financial institutions, as the case may be, and shall at all times exercise such responsibility in the best interest of the Lessor. Any discounts or commissions obtained by the Operator in the exercise of such procurement responsibility shall be for the account of the Lessor.

74.3 During the term of this Contract the Operator shall not engage, and shall cause their Personnel as well as their sub consultants and their Personnel not to engage, either directly or indirectly, in any business or professional activities in [COUNTRY] which would conflict with the activities assigned to them under this Contract.

**IN WITNESS THEREOF** the Parties hereto have executed this Contract the Day and year before written.

**SIGNED BY THE [AUTHORITY] REPRESENTED BY**

**Signature:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Qualification:** \_\_\_\_\_

**WITNESSED BY**

**Signature:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Qualification:** \_\_\_\_\_

and

**SIGNED BY [OPERATOR] REPRESENTED BY**

**Signature:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Qualification:** \_\_\_\_\_

**WITNESSED BY**

**Signature:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Qualification:** \_\_\_\_\_

SAMPLE

**SCHEDULE 1**

**TECHNICAL AND FINANCIAL ASSUMPTIONS**

SAMPLE

**SCHEDULE 2**

**NOT USED**

SAMPLE

## SCHEDULE 3

### PRICING ASSUMPTIONS

SAMPLE

**SCHEDULE 4**

**AMOUNT OF ANNUAL PERFORMANCE GUARANTEE**

SAMPLE