

This document has been prepared for the purposes of the **PPP IN INFRASTRUCTURE RESOURCE CENTER FOR CONTRACTS, LAWS AND REGULATIONS (PPIRC)** website. It is a sample document FOR REFERENCE PURPOSES ONLY and SHOULD NOT BE used as a "model". The inclusion of any legal materials on the PPIRC website does not mean that they are in any way approved, endorsed or recommended by the World Bank Group or its affiliates. Legal advice should be sought to determine whether a particular legal document is appropriate for any given project, and how the specific terms of the document should be adapted to fit the circumstances of that project

WATER AND SEWERAGE COMPANY

MANAGEMENT CONTRACT FOR THE PROVISION OF WATER AND WASTEWATER SERVICES

GENERAL CONDITIONS

ARTICLE 1 - CONTRACT AND INTERPRETATION

1.1 Definitions

Unless the context otherwise requires, the following terms wherever used in this Contract have the following meanings:

“**Applicable Law**” means the laws and any other instruments having the force of law in the [], as they may be issued and in force from time to time including, but not limited to any decree of the President or government of the [country];

“**Authorities**” means [];

“**Contract**” means the agreement between the Employer and the Operator which consists of the Contract Documents;

“**Contract Documents**” means the Form of Contract, General Conditions and all Appendices to the General Conditions;

“**Contract Year**” means a continuous period covering a full 365 days, 366 days in leap years, the first Contract Year to begin on the Starting Date;

“**Effective Date**” means the date on which this Contract comes into force and effect pursuant to GC Section 2.1;

“**Foreign Currency**” means any currency other than the currency that constitutes legal tender in [];

“**Local Currency**” means the [];

“**Management Fixed Fee**” is defined in GC Section 6.2.1;

“**Management Staff**” mean those persons directly employed by the Operator to carry out the Services as set out in the Management Staff Appendix;

“**Member**” means, any one of the entities forming the joint venture if the Operator is a joint venture;

“**Operations Staff**” is defined in GC Section 4.4;

“**Operator**” means the water and wastewater operator retained by the Employer to carry out the Services and is the party named as the Operator in the Form of Contract.

“**Party**” means the Employer or the Operator, as the case may be, and “**Parties**” means both of them;

[Note: For all joint venture participants to be “parties” this definition will be amended.]

“**Performance Standards**” is defined in the Performance Standards Appendix;

“**Services**” means the work to be performed by the Operator pursuant to this Contract, as described in the Services Appendix;

“**Starting Date**” is defined in GC Section 2.3.1 and the Contract Particulars Appendix;

“**Subcontractor**” means any entity to which the Operator subcontracts any part of the Services in accordance with the provisions of GC Section 3.8 and, for the purpose of this Contract, also includes any entity which the Operator enters into contracts with on behalf of the Employer in accordance with the Contract;

“**Subsequent Operator**” means the operator which is to assume the provision of the Services upon termination or completion of the Contract and may include one of the Authorities; and

“**Third Party**” means any person or entity other than the Employer, or the Operator.

[Note: For joint venture participants to be “parties” this definition will be amended.]

1.2 Contract Documents

(1) Subject to the Form of Contract provisions, all documents forming part of the Contract, and all parts thereof, are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.¹

(2) The following appendices which are incorporated by reference into the Contract shall be referred to as follows:

Appendix “1” – Contract Particulars (the “Contract Particulars Appendix”)

Appendix “2” – Description of the Services (the “Services Appendix”)

Appendix “3” – Description of the Facilities (the “Facilities Appendix”)

Appendix “4” – Description of the Service Area (the “Service Area Appendix”)

Appendix “5” – Procurement Policies (the “Procurement Appendix”)

Appendix “6” – Performance Standards (the “Performance Standards Appendix”)

Appendix “7” – Management, Supervisory and Technical Staff (the “Management Staff Appendix”)

Appendix “8” – Staffing Policy (the “Staffing Policy Appendix”)

Appendix “9” – Performance Incentive Compensation (the “Incentive Compensation Appendix”)

Appendix “10” – Operator’s Proposal (the “Proposal”)

Appendix “11” – Performance Security (the “Performance Security Appendix”)

Appendix “12” – Operating Investment Fund Program (the “Operating Investment Fund Appendix”)

Appendix “13” – Bank Guarantee for the Management Fixed Fee Advanced Payment (the “Bank Guarantee Appendix”)

Appendix “14” – Charter of the Water and Sewerage Joint Stock Closed Company (the “Employer Charter”)

¹ there is no indication as to priority of documents in the event that there is an inconsistency between any of the contract documents

1.3 Interpretation

1.3.1 Language

This Contract has been executed in both the English language and the []n language. The binding and controlling language for all matters relating to the meaning or interpretation of this Contract shall be the English language. Notwithstanding that the language of the Contract is English, the Operator shall have a full and complete ability to communicate, orally and in writing, in []n either by itself or through translators or interpreters paid for by the Operator.

1.3.2 Persons

Words importing persons or parties shall include firms, corporations, and government entities.

1.3.3 Headings

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

1.3.4 Singular or Plural

In these Contract Documents the singular shall include the plural and the plural shall include the singular except where the context otherwise requires.

1.3.5 Entire Agreement

This Contract constitutes the entire agreement between the Employer and the Operator and supersedes all communications, negotiations and agreements, whether written or oral, made by either the Operator or the Employer prior to the Effective Date.

1.3.6 Amendment

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, has been approved by the body legally authorized in accordance with the Applicable Law to make such an amendment or variation on behalf of the Employer, and is signed by a duly authorized representative of each Party to the Contract.

1.3.7 Independent Contractor

(1) The Operator shall be an independent contractor in its performance of the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the Parties hereto.

(2) Subject to the provisions of the Contract, the Operator shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Operator in connection with the performance of the Contract shall be under the complete control of the Operator and nothing contained in the Contract, or in any subcontract awarded by the Operator, shall be construed to create any contractual relationship between the Operator's representatives or Subcontractors and the Employer. The relationship between the Operator, Employer and the Operations Staff shall be governed by the Staffing Policy Appendix.

(3) Notwithstanding that the Operator is an independent contractor, the parties acknowledge that,

(a) when the Operator incurs expenditures to be paid, in accordance with the Contract, for day to day operations and maintenance of the

Facilities in the Service Area or with respect to the Operating Investment Fund, it does so on the Employer's behalf; and

- (b) When the Operator is carrying out the Services it does so on the Employer's behalf.

1.3.8 Joint Venture or Consortium

If the Operator is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfilment of the provisions of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture shall not be altered without the prior written consent of the Employer.

1.3.9 Non-waiver

(1) Subject to GC Section 1.3.9(2), no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under the Contract, nor shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

(2) To be a valid waiver, any waiver of a Party's rights, powers or remedies under the Contract shall,

- (a) be in writing;
- (b) be dated and signed by a duly authorized representative of the Party granting such waiver;
- (c) specify the right, power or remedy being waived and the extent to which it is being waived; and
- (d) where the waiver is given by the Employer, be approved by the body legally authorized in accordance with the Applicable Law to waive the Employer's rights, powers or remedies under the Contract.

1.3.10 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

1.3.11 Number of Days

Except as expressly stated to the contrary elsewhere herein, in computing the number of days for the purposes of the Contract all days shall be counted, including Saturdays, Sundays and legal holidays, provided, however, that if the final day of any period shall fall on a Saturday, Sunday, or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

1.3.12 References to Currency

Except where provided otherwise in the Contract, for the purpose of the Contract, all references to currency or money shall mean the Local Currency.

1.3.13 Rate of Interest

Wherever a reference to the payment of interest is made in the Contract Documents, the rate of interest shall be the borrowing rate set by the Central Bank of [] which is applicable at the relevant time.

1.3.14 Survival of Obligations

Upon the termination or expiration of the Contract pursuant to the Contract, all rights and obligations of the Parties hereunder shall cease, except,

- (1) such rights and obligations as may have accrued or to which the Parties may be entitled on the date of termination or completion;
- (2) the Operator's obligation of confidentiality set forth in GC Section 3.4;
- (3) the Operator's obligation with respect to Contract Records, Accounting and Auditing set forth in GC Section 3.7;
- (4) any right which a Party may have under the Applicable Law;
- (5) the Operator's obligation to co-operate with the Employer on the matter of the transition arrangements in the event of termination or on completion; and
- (6) any duty of the Operator to make its Management Staff available for a period of up to 60 days after the End Date to ensure a smooth transition to a Subsequent Operator.

1.3.15 Section References

(1) Section and subsection references in the Contract Documents which refer to the General Conditions shall be preceded by the letters "GC" such that a reference to "GC Section", followed by a number, shall refer to that section or subsection number in the General Conditions.

(2) Section and subsection references in the Contract Documents which refer to the Form of Contract shall be preceded by the letters "FC" such that a reference to "FC Section", followed by a number, shall refer to that section or subsection number in the Form of Contract.

(3) Section and subsection references in the Contract Documents which refer to the Services Appendix shall be preceded by the letters "SA" such that a reference the "SA Section", followed by a number, shall refer to that section or subsection number in the Services Appendix.

(4) Section and subsection references in the Contract Documents which refer to the Performance Standards Appendix shall be preceded by the letters "PSA" such that a reference to "PSA Section", followed by a number, shall refer to that section or subsection number in the Performance Standards Appendix.

1.4 Notices

(1) Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be considered to have been given or made when delivered in person to the Authorized Representative of the Party to whom the communication is addressed, or when sent by courier to such Party at the addresses for notice set out in the Contract Particulars Appendix.

(2) Notice will be considered to be effective in the case of both personal delivery and delivery by courier, upon delivery to and acknowledgement of receipt in writing by the receiving Party.

(3) A Party may change its address for notice pursuant to this Contract by giving the other Party notice of change in accordance with this GC Section 1.4.

(4) The Operator's address for the purpose of giving notice pursuant to this GC Section 1.4 shall be in [].

(5) Notice to the Operator pursuant to GC Section 1.4 shall be deemed to be notice to all Parties, excluding the Employer.

1.5 Law Governing Contract

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

1.6 Location

The Operator shall perform the Services at such locations in the Service Area as are specified in the Contract Documents and, where the location of a particular task is not so specified, at such locations in the Service Area as the Employer may approve.

1.7 Authority of Member in Charge

If the Operator consists of a joint venture of more than one entity, the Members hereby authorize the Member named in the Contract Particulars Appendix to act on their behalf in exercising all the Operator's rights and obligations toward the Employer under this Contract, including, without limitation, the receiving of instructions and payments from the Employer.

1.8 Authorized Representatives

(1) Prior to the Starting Date, the Operator and the Employer shall each identify,

- (a) an individual to act as its contract liaison and coordinator (the "Authorized Representatives"); and
- (b) an individual to be the official designate to act in the stead of its Authorized Representative in the event that its Authorized Representative is unavailable or unable to perform its obligations under the Contract.

(2) The Authorized Representatives and their designates may take any action required or permitted by the Contract and may execute any document required or permitted to be executed under the Contract.

(3) The Operator shall not change its Authorized Representative or its designate without the prior written consent of the Employer.

(4) For the purpose of the Contract, the Authorized Representatives and their designates shall be those individuals named as Authorized Representatives in the Contract Particulars Appendix.

1.9 Taxes, Duties, Customs, Levies and Charges

1.9.1 Management Fixed Fee and Performance Incentive Compensation

(1) Except as provided in GC Section 1.9.1(2), the Operator shall be exempt from the payment of all taxes and all duties, fees, customs, levies and charges assessed by all municipal state or national authorities in [] (the "Taxes") with respect to the Management

Staff costs and expenses, the Management Fixed Fee and the Performance Incentive Compensation.

(2) The Operator and its Management Staff shall, in accordance with the Applicable Law, pay all income and profit taxes assessed by all municipal, state or national authorities in [] with respect to the Incentive Compensation and all salary and wages paid to Management Staff .

1.9.2 Procurement by the Operator

(1) If the Operator procures goods, works or services pursuant to GC Section 3.12.1(a) all Taxes related to that procurement shall be paid by the Employer.

(2) If the Operator procures goods, works or services pursuant to GC Section 3.12.1(b) all Taxes related to that procurement shall be paid by the Employer. The Parties acknowledge that the amounts set out in the Operating Investment Fund Appendix do not include any costs related to Taxes.

1.10 **Assignment**

(1) ²The Operator shall not assign to any third party the Contract, or any part thereof, or any right, benefit, obligation, or interest therein, without the prior written consent of the Employer[, except that the Operator shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that become due and payable to it under the Contract³].

(2) To be a valid assignment which has been approved by the Employer pursuant to GC Section 1.10(1), the assignment must,

- (a) be in writing;
- (b) be dated and signed by a duly authorized representative of the Employer;
- (c) state the specific details of the assignment; and
- (d) be approved by the body legally authorized in accordance with the Applicable Law to exercise the necessary authority.

ARTICLE 2 - TERM COMMENCEMENT, COMPLETION, AND TERMINATION OF CONTRACT

2.1 Effectiveness of Contract

The Contract shall come into force and effect on the date the Form of Contract of this Contract is executed by the Parties (the “Effective Date”) contingent on final approval by the IDA⁴.

² there is no statement as to whether the employer can assign the rights under the contract.

³ this may not be appropriate in all circumstances.

⁴ it may be that only certain provisions of the contract should come into force on the Effective Date and that others should come into force once the condition precedent has been met.

2.2 Expiration of Contract

Unless terminated earlier pursuant to GC Section 2.8 or extended pursuant to GC Section 2.5, this Contract shall terminate on the fourth anniversary of the Starting Date (the “End Date”).

2.3 Commencement of Services

2.3.1 Starting Date

(1) The Starting Date shall be established by the Employer⁵ and shall be a date no later than 60 days after the Effective Date or on such later date as the Parties may agree in writing (the “Starting Date”).

(2) Except as provided in GC Section 2.3.1(3), the Operator shall carry out all Services commencing on the Starting Date.

(3) The Operator shall not take over the day to day operations and maintenance of the water and wastewater systems in the Service Area, as set out in the Services Appendix, until 30 days after the Starting Date (the “Takeover Date”).

2.4 Services After the End Date

(1) The Operator, upon written request by the Employer no later than 30 days prior to the End Date, shall provide assistance to the Employer during a transitional period of up to 60 days after the End Date (the “Transition Assistance”). The purpose of the Transition Assistance is to ensure a smooth transition between the Operator and a Subsequent Operator of the Facilities. The Transition Assistance shall be related to only transition services and shall not be the full range of services as set out in the Services Appendix.

(2) The Employer shall pay the Operator an amount equal to 1/48 of the Management Fixed Fee for each month the Operator provides Transition Assistance as payment for the Transition Assistance provided by the Operator.

(3) If the Employer makes a request for assistance pursuant to GC Section 2.4(1), the Transition Assistance shall be provided by those Management Staff identified by the Employer and the identified Management Staff shall be resident in [] until the completion of the Transition Assistance. If the Employer does not identify all members of the Management Staff to provide Transition Assistance, the payment identified in GC Section 2.4 shall be reduced in proportion to the number of Management Staff which are not providing Transition Assistance.

2.5 Extension of the Contract

(1) If both Parties agree, this Contract may be extended for a period of up to 12 months after the End Date. The Employer shall notify the Operator three months prior to the End Date if it wishes to enter into negotiations regarding an extension to the Contract.

(2) The Parties acknowledge that there is no obligation on the part of the IDA to provide any funding beyond the term of the Contract and the Parties shall not rely on further funding by the IDA when discussing an extension to the Contract.

⁵ the Employer is to determine the start date – however, there are a number of actions that need to take place prior to or on the start date, such as making available facilities, ensuring staff have visas etc, and it may be appropriate to make these conditions precedent to the start date

2.6 Force Majeure

2.6.1 General

- (1) For the purposes of this Contract, “Force Majeure” means an event with is,
 - (a) beyond the reasonable control of a Party; and
 - (b) makes a Party’s performance of its obligations⁶ under the Contract impossible or so impractical as reasonably to be considered impossible in the circumstances.
- (2) Force Majeure includes, but is not limited to,
 - (a) war, riots and civil disorder;
 - (b) storm, flood, earthquake or other severely adverse weather conditions;
 - (c) confiscation or other similar action by government agencies; and
 - (d) strikes, lockouts and other industrial actions except where such strikes, lockouts and other industrial actions are within the power of the Party invoking Force Majeure to prevent,if such events meet the test set out in GC Section 2.6.1(1)(b).
- (3) Force Majeure shall not include,
 - (a) any event which is caused by the negligence or intentional action of a Party or such Party’s Subcontractors or agents or employees; or
 - (b) any event which a diligent Party could reasonably have been expected to,
 - (i) take into account at the time of the execution of this Contract; and
 - (ii) avoid or overcome in the carrying out of its obligations under the Contract.
- (4) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.6.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract to the extent that such failure to fulfill the Contract obligation arose from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.⁷

⁶ in a case where a whole network is being managed, rather than a distinct asset, it is likely that in the event of Force Majeure the Operator will be only partially prevented from performing the services – this should be made clear in the drafting
⁷ for the avoidance of doubt, it should be made clear that if FM has an impact on the Operator to reach its composite score under the Incentive Compensation, this should not penalize it

2.6.3 Measures to be Taken

(1) A Party affected by an event of Force Majeure shall take all reasonable measures to fulfill its obligations under the Contract with a minimum of delay.

(2) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 14 days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

(3) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

2.6.4 Extension of Time

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

2.6.5 Payments

During the period of the Operator's inability to perform the Services as a result of an event of Force Majeure, the Employer shall continue to pay the Operator under the terms of this contract and shall reimburse the Operator for additional costs reasonably and necessarily incurred by the Operator during such period for the purposes of the Services and in reactivating the Services after the end of such period.

2.6.6 Consultation

Not later than 30 days after the Operator, as the result of an event of Force Majeure, has become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.7 Suspension⁸

The Employer may, by written notice of suspension to the Operator, suspend all payments to the Operator hereunder if the Operator fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension,

- (a) shall specify the nature of the failure; and
- (b) shall require the Operator to remedy such failure within a period not exceeding 30 days after receipt by the Operator of such notice of suspension.

2.8 Termination

2.8.1 By the Employer

- (1) The Employer may terminate this Contract if,
 - (a) the Operator fails to remedy a failure in the performance of its obligations as specified in a notice of suspension pursuant to GC

⁸ it unusual for an employer to be able to suspend all payments in the event that the Operator fails to perform its obligations as the Operator will still have fixed costs that it needs to meet and so may also after a time become insolvent. This is also very harsh as the Employer may suspend payment for any failure of the Operator, no matter how minor. If a provision of this sort is to be included it should be very narrowly drafted and make it clear that payment shall resume as soon as the failure has been remedied.

Section 2.7 within 30 days of the Operator's receipt of such notice of suspension or within such further period as the Employer may, in its sole discretion, approve in writing;

- (b) the Operator becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or takes advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Operator fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Article 8;
- (d) the Operator submits to the Employer a statement which has a material effect on the rights, obligations or interests of the Employer and which the Operator knows to be false;
- (e) as a result of Force Majeure, the Operator is unable to perform a material portion of the Services for a period of more than 60 days; or
- (f) the Employer, in its sole discretion and for any reason whatsoever, decides to terminate the Contract.

(2) Without limiting the generality of GC Section 2.8.1(1), if the Operator fails to achieve a Composite Score of 1.5 in accordance with the Incentive Compensation Appendix it shall constitute a performance failure for which the Employer may terminate the Contract in accordance with GC Section 2.8.1.

2.8.2 Required Notice of Termination – For Cause

(1) The Employer may terminate the Contract pursuant to GC Section 2.8.1(1)(a), (b), (c), (d) or (e) by delivering a written notice of termination (the "Notice of Termination – For Cause") to the Operator and the termination of the Contract shall occur 30 days after the date of the Notice of Termination – For Cause.

(2) The Notice of Termination – For Cause shall set out the specific section or sections of the Contract pursuant to which the Contract is being terminated by the Employer.

2.8.3 Required Notice of Termination – For Convenience⁹

The Employer may terminate this Contract pursuant to GC Section 2.8.1(1)(f) by delivering a written notice of termination (the "Notice of Termination – For Convenience") to the Operator and the termination of the Contract shall occur 60 days after the date of the Notice of Termination – For Convenience.

2.8.4 By the Operator

The Operator may terminate this Contract if,

- (a) the Employer fails to pay any money due to the Operator pursuant to this Contract within 45 days after receiving written notice from the Operator that such payment is overdue, if the payment is not subject to dispute pursuant to GC Article 8;

⁹ an operator will resist a clause allowing the Employer to terminate for convenience as the operator will want certainty as to length of contract. In any event, they will seek compensation for loss of profits in this circumstance – the operator will want to ensure that the employer is discouraged from terminating for convenience

- (b) the Employer is in material breach of its obligations pursuant to this Contract and has not remedied the same within 45 days after receiving written notice from the Operator;
- (c) as the result of Force Majeure, the Operator is unable to perform a material portion of the Services for a period of more than 60 days; or
- (d) if the Employer fails to comply with any final decision reached as a result of arbitration pursuant to GC Article 8.

2.8.5 Notice of Termination by the Operator

(1) If the Operator wishes to terminate this Contract pursuant to GC Section 2.8.4 it shall deliver a written notice of termination (the “Operator’s Notice of Termination”) to the Employer and the termination of the Contract shall occur 30 days after the date of the Operator’s Notice of Termination.

(2) The Operator’s Notice of Termination shall set out the specific section or sections of the Contract pursuant to which the Contract is being terminated by the Operator.

2.8.6 Disputes about Events of Termination

If either Party disputes whether an event specified in GC Section 2.8.1(1)(a), (b), (c), (d) and (e) or in GC Section 2.8.4 has occurred, such Party may, within 20 days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to GC Article 8, and the Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

2.8.7 Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to GC Section 2.8, the Operator shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to Contract Records and equipment, materials and property which is to be returned to the Employer, the Operator shall proceed as provided, respectively, by GC Section 3.7 and 3.11.

2.8.8 Payment upon Termination

Upon termination of this Contract pursuant to GC Section 2.8, the Employer shall make the following payments to the Operator:

- (a) compensation pursuant to GC Article 6 for Services satisfactorily performed prior to the date of termination; and
- (b) except in the case of termination pursuant to GC Section 2.8.1(1)(a), (b), (c) or (d), reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract.

ARTICLE 3 - OBLIGATIONS OF THE OPERATOR

3.1 **General**

3.1.1 Services and Standard of Performance

The Operator shall,

- (a) perform the Services set out in the Services Appendix;
- (b) perform the Services in accordance with the Performance Standards set out in the Performance Standards Appendix;
- (c) [carry out its obligations under the Contract with due diligence, efficiency and economy in accordance with,
 - (i) internationally accepted techniques and practices used in the water and wastewater industry; and
 - (ii) professional engineering, accounting and consulting standards recognized by international professional bodies;
- (d) observe sound management, technical and engineering practices;
- (e) employ appropriate advanced technology and safe and effective equipment, machinery and methods;
- (f) act, in fulfilling its obligations under the Contract, as faithful advisors to the Authorities¹⁰; and
- (g) support and safeguard the Employer's legitimate interests in any dealings with Subcontractors or other Third Parties]¹¹.

3.1.2 Service Area

The Operator shall perform the Services, as specified in the Services Appendix and the Service Area Appendix.

3.1.3 Facilities

The Operator shall perform the Services as they relate to the Facilities set out in the Facilities Appendix.

3.2 **Law Governing Services**

The Operator shall perform the Services in accordance with the Applicable Law and shall ensure that its Management Staff and Subcontractors perform the Services in accordance with the Applicable Law. The Employer shall advise the Operator in writing of relevant local customs and the Operator shall, after such notifications, respect such customs.

3.3 **Conflict of Interest**

3.3.1 Operator not to Benefit from Commissions, Discounts or Similar Payments

The compensation of the Operator pursuant to GC Article 6 shall constitute the Operator's sole compensation in connection with this Contract or the Services and, subject to GC Article 6, 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

¹⁰ this may be a difficult obligation for a court to interpret

¹¹ these standards are vague and may be difficult to enforce – it may be better to refer to good industry practice, with a definition such as "Good Industry and Operating Practices" means the standards, practices, methods and procedures conforming to all applicable laws and that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced water services utility company, contractor, engineer or operator, as the case may be, engaged in providing services similar to the Services or undertaking capital works under the same or similar circumstances;

efforts to ensure that the Management Staff, any Subcontractors, as well as employees and agents or either of them, similarly shall not receive any such additional remuneration.

3.3.2 Operator and Affiliates Disqualification

The Operator, its Subcontractors and any entity affiliated with the Operator or the Subcontractors during the term of the Contract and after its termination shall be disqualified from providing goods, works or services, other than the Services and any continuation thereof, with respect to,

- (a) the goods, works and services purchased from the Operating Investment Fund;
- (b) any project resulting from or closely related to the Services; and
- (c) the Capital Investment Program.

3.3.3 Prohibition of Conflicting Activities

The Operator, Management Staff, Subcontractors and the employees and affiliates of the Operator and Subcontractors shall not engage, either directly or indirectly, in any business or professional activities in [] which would conflict with the activities assigned to them under this Contract.

3.4 **Confidentiality¹²**

The Operator, Subcontractors and the employees and affiliates of the Operator and Subcontractors shall not, either during the term of the Contract or after the expiration of the Contract, disclose any proprietary or confidential information relating to the Services, the Contract or the Employer's business or operations without the prior written consent of the Employer. The determination of whether information is proprietary or confidential shall be in the sole discretion of the Government of [].

3.5 **Liability of the Operator**

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

- (a) the Operator shall not be liable for any damage or injury caused by or arising out of the act, neglect, default or omission of any persons other than,
 - (i) the Operator;
 - (ii) the Management Staff;
 - (iii) the Subcontractors;
 - (iv) the Operations Staff who are under the supervision of the Operator pursuant to the Contract; and

¹² this clause is only in favor of the Employer – confidentiality provisions are usually mutual/ or vaguely mutual

- (v) the employees of the Operator and the Subcontractors; and
- (b) the Operator shall not be liable for any loss or damage caused by or arising out of circumstances over which the Operator had no control.
- (2) Except in cases of criminal negligence or wilful misconduct,
 - (a) the Operator shall not be liable to the Employer in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits of interest costs, provided that this exclusion shall not apply to any obligation of the Operator to pay liquidated damages¹³ to the Employer; and
 - (b) the aggregate liability of the Operator to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total Management Fixed Fee, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Operator indemnify the Employer with respect to patent infringement.

3.6 Insurance to be Taken Out by the Operator¹⁴

- (1) The Operator shall, during the performance of the Contract,
 - (a) take out and maintain at the Operator's own cost; and
 - (b) cause the Subcontractors to take out and maintain at the Subcontractor's own cost,insurance against the risks and for the coverages as follows:
 - (i) Third Party motor vehicle liability insurance in respect of motor vehicles operated in connection with the carrying out of the Services under the Contract by the Operator or its Management Staff or any Subcontractors or their employees, with a minimum coverage of [US \$1,000,000];
 - (ii) Third Party liability insurance, with a minimum coverage of US [\$1,000,000];
 - (iii) professional liability insurance, with a minimum coverage of US [\$1,000,000];
 - (iv) employer's liability and worker's compensation insurance in respect of the Management Staff of the Operator and employees of any Subcontractor, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to the Management Staff and Subcontractors, any such life, health, accident, travel or other insurance as may be appropriate; and

¹³ there is no other reference in the contract to liquidated damages in the contract – it is not clear whether this is intended or not

¹⁴ advice should always be obtained as to the appropriate levels of insurance and what is available locally

- (v) insurance against loss of or damage to,
 - (A) equipment purchased in whole or in part with funds provided under this Contract;
 - (B) the Operator's property used in the performance of the Services; and
 - (C) any documents prepared by the Operator in the performance of the Services.

(2) The insurance referred to in GC Section 3.6(1)(b)(i), (ii), (iii), (iv) and (v) shall be on terms and conditions approved by the Employer.

(3) The Operator shall, at the Employer's request, provide written evidence, satisfactory to the Employer that the insurance set out in GC Section 3.6(1) has been taken out and maintained and that all current premiums for that insurance have been paid.

3.7 Contract Records, Accounting and Auditing

3.7.1 Contract Records

(1) All data, information, documentation and account of any kind whatsoever (the "Contract Records") prepared by the Operator in performing the Services shall become and remain the property of the Employer and the Operator shall deliver all Contract Records and a detailed inventory of those Contract Records to the Employer no later than the date of termination or expiration of the Contract.

- (2) The Contract Records shall include but not be limited to,
 - (a) information of any kind whatsoever related to the Operating Investment Fund;
 - (b) all files, documents, plans, drawings, specifications, notes, minutes of meetings and conversations; and
 - (c) all manuals, reports, condition surveys, safety records, audit records, inventories, laboratory test results, procurement records, customer information, financial information, financial statements, invoices, accounting records, subcontracts and personnel records,

whether stored in hard copy or electronically.

(3) The Operator shall provide the Employer with unrestricted access to the Contract Records during the term of the Contract, including the right to make and retain copies.

(4) The Operator may retain a copy of the Contract Records but shall not use them for purposes unrelated to this contract without the prior written approval of the Employer.

3.7.2 Accounting

The Operator shall keep accurate and systematic accounts in respect of the Services and the Contract in accordance with internationally accepted accounting principles.

3.7.3 Auditing Contract Records

(1) The Employer may, in its sole discretion, audit the Operator's accounts, financial information, financial statements and technical information in respect of any matters related to the Contract at any reasonable time and without notice to the Operator.

(2) The Employer may complete the audit or audits itself or may retain an independent auditor, at the Employer's expense, to complete the audit or audits.

(3) The IDA may, in its sole discretion, inspect or audit the Operator's accounts, financial information, financial statements, and technical information in respect of any matters related to the Contract at any reasonable time and without notice to the Operator and may have the audit carried out by auditors appointed by the IDA.

3.8 Subcontractors

(1) The Operator shall not enter into any contract or contracts which will result in the total or majority of the Services being performed by a Subcontractor. The Operator may enter into a contract or contracts with Subcontractors to perform some elements of the Services.

(2) The Operator may not enter into a contract with any Subcontractor without the prior written consent of the Employer.

(3) If a Subcontractor is listed in the Annual Operating Investment Fund Plan and the Annual Operating Investment Fund Plan is approved by the Employer, that approval by the Employer shall constitute the Employer's consent pursuant to GC Section 3.8(2).

(4) The Operator shall ensure that any of its Contract obligations which are relevant to the work being carried out by a Subcontractor are incorporated into the terms and conditions of the agreement under which the Subcontractor is retained.

(5) Subcontracting by the Operator does not relieve the Operator of any of its obligations under the Contract.

(6) The Employer's consent to a Subcontractor imposes no obligations or liabilities whatsoever on the Employer and in no way relieves the Operator of any of its obligations under the Contract.

3.9 Meetings

(1) The Operator's Authorized Representative and the Employer's Authorized Representative shall meet not less than once weekly to discuss and review the Services and Facilities. These weekly meetings shall be scheduled as agreed upon from time to time by the Authorized Representatives.

(2) The Operator's Authorized Representatives shall meet with the Employer's Authorized Representative at regularly scheduled monthly meetings to discuss and review any issues related to the Services and Facilities and the bi-monthly reports prepared by the Operator pursuant to the Services Appendix and other Contract Documents.

3.10 Reporting Obligations

Unless otherwise specified in the Contract, the Operator shall submit to the Employer ten copies in English and [] and an executive summary in [] of the reports and documents required by the Contract, in the form, in the numbers and within the time periods set forth in the Contract. The Employer may, in its discretion, request an additional 10 copies of a report without cost to the Employer.

3.11 Equipment and Materials Furnished by the Employer

(1) The assets of the water and wastewater systems in the Service Area will remain under the ownership and control of the Authorities currently charged with the operations and maintenance of the systems in accordance with the Applicable Law.

(2) Equipment and materials and any other property whatsoever made available to the Operator by the Employer, or purchased by the Operator with funds provided by the Employer, including the Management Fixed Fee funds, shall be the property of the Employer and shall be marked accordingly.

(3) Upon termination or expiration of this Contract, the Operator shall provide to the Employer an inventory of such equipment and materials and other property and shall dispose of such equipment and materials and property in accordance with the Employer's instructions.

3.12 Procurement Plans and Practices

3.12.1 General

The Operator shall carry out two types of purchasing on behalf of the Employer as follows:

- (a) the Operator shall procure goods, works, and services for day to day operations and maintenance in accordance with SA Article 3; and
- (b) the Operator shall procure goods, works, and services with respect to the programs under the Operating Investment Fund.

3.12.2 Day to Day Operations Procurement

The Operator shall procure goods and services for use in the day to day operations and maintenance in [] in accordance with the Procurement Guidelines developed by the Operator as required by SA Section 2.3(2) using funds raised from Employer revenues.

3.12.3 Operating Investment Fund – Procurement

In the case of goods, works and services that are paid for out of the Operating Investment Fund, and have been approved pursuant to GC Section 3.12.4, the Operator shall adopt and follow the procurement policies of the IDA as set out in the Procurement Appendix.

3.12.4 The Annual Operating Investment Fund Plan

- (1) The Operator shall prepare and submit to the Employer,
 - (a) 60 days after the Starting Date; and
 - (b) 60 days prior to the last day of each of the first, second and third Contract Years for the next Contract Year,

a detailed and comprehensive plan and budget for the use of the funds identified in the Operating Investment Fund Appendix (the "Annual Operating Investment Fund Plan").

- (2) The Operator shall develop the Annual Operating Investment Fund Plan,

- (a) for those projects specifically identified as eligible projects in the Operating Investment Fund Appendix and in accordance with the budget set out in the Operating Investment Fund Appendix;
 - (b) for projects of a similar nature and similar budget to those set out in the Operating Investment Fund Appendix for which the Operator has received the Employer's prior written consent to include in the Annual Operating Investment Fund Plan.
- (3) The Operator shall also provide a comprehensive spending plan as part of the Annual Operating Investment Fund Plan.
- (4) The Employer shall, within 30 days of receiving the Annual Operating Investment Fund Plan, either approve, or approve with revisions, the Annual Operating Investment Plan as submitted by the Operator. If the Employer does not approve the Annual Operating Investment Fund Plan, or approve with revisions, within 30 days of receiving it, the Annual Operating Investment Fund shall be deemed to be approved.
- (5) After the Annual Operating Investment Fund Plan has been approved pursuant to GC Section 3.12.4(4), those expenditures identified in the approved Annual Operating Investment Plan shall be expenditures which are eligible to be paid from the Operating Investment Fund for the Contract Year to which the Annual Operating Investment Fund Plan applies (the "Investment Fund Eligible Expenditures").
- (6) The Employer shall pay the Investment Fund Eligible Expenditures in accordance with the Procurement Appendix.¹⁵

3.13 Collection and Handling of Revenues

- (1) The Operator shall, in accordance with the Services Appendix, collect Revenues on the Employer's behalf.
- (2) The Employer shall open and maintain a deposit account at a bank which has branches in Yerevan to be used solely for the deposits of all Revenues collected by the Operator on behalf of the Employer. The account shall be in the Employer's name (the "Revenue Account") and the choice of the bank shall be in the Employer's sole discretion.
- (3) The Operator shall directly deposit all of the collected Revenues into the Revenue Account which shall be a dedicated account for Revenues collected by the Operator. The Operator acknowledges that at all times ownership of the collected Revenues rests with the Employer. The Operator shall deposit all collected Revenues, whether in the form of cash, cheques or other form, to the Revenue Account on the day of receipt. If it is not possible for the Operator to deposit Revenues on the day of receipt, the Revenues shall be deposited by the Operator on the next banking day.
- (4) At all times, all Revenues collected by the Operator are the property of the Employer. Until such time as the Operator deposits the Revenues into the Revenue Account, the Revenues shall be in the care and custody of the Operator.
- (5) The Operator shall not deposit nor permit the deposit of the Revenues into any account other than the Revenue Account.
- (6) The Operator shall be liable for any loss, theft or destruction of the Revenues which occurs prior to the deposit of the Revenues into the Revenue Account. In the event of

¹⁵ It is unclear whether the Operator will be relieved of its performance obligations in the event that the Employer fails to pay the Investment Fund Eligible Expenditures/ approve the Annual Operating Investment Fund

any loss or theft of Revenues before they are deposited to the Revenue Account, the Operator shall pay the amount of such losses to the Employer forthwith and without recourse to any defense or objection.

(7) The Operator shall put in place, prior to the receipt of any of the Revenues security measures necessary to protect such Revenues from loss, theft or destruction.

(8) Failure to comply with any of the above will constitute a default of the Operator entitling Employer to suspend payments and terminate this Contract in accordance with Articles 2.7 and 2.8 and any other appendices under this Contract.

3.14 Performance Security

The Operator shall take out and maintain at its own expense a performance security from a reputable bank guaranteeing the compliance of the Operator with the terms and conditions of the Contract. The form and wording of the Performance Security shall be as provided for in the Performance Security Appendix. The Operator shall provide the performance security no later than 30 days after the Operator's receipt of the Notification of Award pursuant to the Request for Proposals. The security shall be valid for an initial period of 12 months beginning on the Effective Date. The security shall ensure that security automatically renews annually, each renewal to take effect immediately on expiry of the previous security. The fourth annual performance security shall be supplied to expire no earlier than 18 months after the End Date or 18 months after the date of termination, whichever is earlier. The amount of the performance security shall be \$1,000,000 U.S. per Contract Year.

ARTICLE 4 - OPERATOR'S MANAGEMENT STAFF, OPERATIONS STAFFING AND OPERATIONS AND MAINTENANCE COSTS

4.1 General – Management Staff

(1) The Operator shall ensure that all Management Staff are qualified, appropriately certified, competent and capable of performing the Services and that the Management Staff is capable of providing the expertise required by the Management Staff Appendix.

(2) The Operator shall provide the expertise and the Management Staff listed in the Management Staff Appendix in accordance with the provisions of the Management Staff Appendix.

4.2 Removal or Replacement of Management Staff

(1) The Operator shall not change the Management Staff set out in the Management Staff Appendix without the prior written consent of the Employer.

(2) The Operator shall not change any levels of responsibility, time periods that any member of the Management Staff is committed to the Contract or any other matter set out in the Management Staff Appendix without the prior written consent of the Employer.

(3) If, for any reason beyond the Operator's control, it becomes necessary to replace any of the Management Staff, the Operator shall forthwith provide a person of equivalent or better qualifications to the satisfaction of the Employer.

(4) If,

- (a) in the Employer's discretion, it determines that any member of the Management Staff has committed serious misconduct or has been charged with having committed a criminal action; or
- (b) the Employer has reasonable cause to be dissatisfied with the performance of any of the Management Staff,

then the Operator shall, at the Employer's written request, remove the identified person forthwith and replace him or her with another person of equivalent or better qualifications, to the satisfaction of the Employer.

(5) If, pursuant to GC Section 4.2(3) or 4.2(4), the Operator provides a replacement person to the Management Staff, it shall be at no additional cost to the Employer.

4.3 Operator's Resident Project Manager

The Operator shall ensure that, at all times during the term of the Contract, the project manager, or the project manager's designate, is in residence in [] and is in charge of the performance of the Services.

4.4 Operations Staffing¹⁶

The Operator shall direct the activities of the staff employed by the Employer in carrying out water and wastewater services in the Service Area (the "Operations Staff") in accordance with the Staffing Policy Appendix.

4.5 Operations and Maintenance Budgets

(1) While the Operator is responsible for day to day operations and maintenance, the costs and expenses for day to day operations and maintenance, excluding the Management Staff Costs, shall be paid by the Employer.

(2) Notwithstanding GC Section 4.5(1), the Operator shall play the lead role in in the preparation of the annual operations and maintenance budgets for the Facilities and Services. The Operator shall submit these proposed annual budgets to the Employer, on a schedule to be determined by the Employer, for review and approval.

ARTICLE 5 - OBLIGATIONS OF THE EMPLOYER

5.1 Assistance and Exemptions

The Employer shall use its best efforts to,

(1) provide the Operator, Subcontractors and Management Staff with work permits and such other documents as shall be necessary to enable the Operator, Subcontractors or Management Staff to perform the Services;

¹⁶ it is not clear how the Operator will be able to direct the activities of the Employer's staff if the Employer continues to determine pay scales and enforce discipline – this is a difficult area as the operator will be dependent in part on the staff to ensure performance and service levels. At the least the Employer should be obliged to discipline staff that are brought to its formal attention by the Operator.

(2) arrange for the Management Staff and, if appropriate, their eligible dependants to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in [];

(3) facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Management Staff and their eligible dependants; and

(4) issue to officials, agents and representatives of the Employer all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

5.2 Access to Land

The Authorities shall provide the Operator, free of charge, with unimpeded access to all land in the Service Area in respect of which access is required for the performance of the Services and in respect of which the Authorities have control. The Employer will be responsible for any damage to such land or any property thereon resulting from such access and will indemnify the Operator and each of the Management Staff in respect of liability for any such damage, unless such damage is caused by the default or negligence of the Operator, the Management Staff or any Subcontractor or the Subcontractor's employees.

5.3 Facilities, Municipal Development Project Management Unit, Operations Staff, and Equipment and Materials

(1) The Employer shall, free of charge, for the purpose of carrying out the Services,

- (a) make the Operations Staff available to the Operator in accordance with the Staffing Policy Appendix;
- (b) provide all equipment and materials used by the Employer in the provision of the Services in the Base Year to the Operator;
- (c) make the Facilities available to the Operator in accordance with the Contract; and
- (d) ensure that the Municipal Development Project Management Unit set out in the GC Section 5.5 is operational at all times during the term of the Contract.

(2) If the Employer fails to carry out its obligations in accordance with GC Section 5.3 then the Parties shall agree on,

- (a) any time extension that it may be appropriate for the Employer to grant to the Operator for the performance of the Services;
- (b) the manner in which the Operator shall procure the equipment and materials or assistance required by this GC Section 5.3 from other sources; and
- (c) whether the Employer will permit the procurement agreed to pursuant to GC Section 5.3(2)(b) to be made from the Operating Investment Fund.

5.4 Payment

In consideration of the Service performed by the Operator under this Contract, the Employer shall make to the Operator such payments and in such manner as is provided by GC Article 6 of this Contract.

5.5 Municipal Development Project Management Unit

(1) The Municipal Development Project Management Unit (the “MDPMU”) shall be responsible for all coordination and supervision with respect to all aspects of the activities related to this Contract.

(2) The MDPMU shall, on behalf of the Employer, carry out all project coordination and supervision responsibilities under this Contract including, but not limited to,

- (a) direct supervision of the Operator;
- (b) providing the Authorized Representative for the Employer;
- (c) attending all meetings with the Operator on behalf of the Employer; and
- (d) approving and reviewing all submissions made by the Operator to the Employer in accordance with this Contract.

5.6 Reviews and Approvals of Submissions

(1) Except as otherwise provided in the Contract, if the Operator submits a plan, report or other similar documentation for review and approval by the Employer, the Employer shall review and either approve or provide written comment on the Operator’s submission within 30 days after the day of submission by the Operator.

(2) If the Employer fails to approve or refuses to approve the Operator’s submission in accordance with GC Section 5.6(1), the Operator shall notify the Employer in writing that it has not received a response to its submission.

(3) If the Employer fails to respond to the Operator’s written notification pursuant to GC Section 5.6(2) within 14 days after the receipt by the Employer of the Operator’s written notification, the Operator’s submission shall be deemed to be approved.

ARTICLE 6 - COMPENSATION TO BE PAID TO THE OPERATOR

6.1 Management Staff Costs

The Operator shall, at its own expense, pay all costs and expenses of, or related to, the Management Staff including, but not limited to,

- (a) wages, salaries, benefits, allowances, and severances;
- (b) the Operator’s home office support and all utility costs related to office premises in [] for the Operator which office premises are to be provide by the Employer;
- (c) all vehicle, accommodation and transportation costs, whether local or international;

- (d) travel and relocation of Management Staff and their dependants;
- (e) communications, photocopying, telephone, faxes, hardware, software and office supplies; and
- (f) training and development of the Management Staff.

6.2 Compensation to be Paid to the Operator

6.2.1 Compensation to be Paid

The Employer shall pay the Operator,

- (a) a fixed fee for the services of the Management Staff (the “Management Fixed Fee”) in accordance with the Bidder’s Price Form; and
- (b) an annual performance incentive payment (the “Performance Incentive Compensation”) in accordance with the Incentive Compensation Appendix.

6.2.2 Management Fixed Fee

(1) The Employer shall pay the Operator the Management Fixed Fee for the Services provided by the Management Staff of the Operator. The Operator acknowledges that the Management Fixed Fee is intended to fully compensate the Operator for the Services of the Management Staff.

(2) The Operator shall make no claim whatsoever for additional costs, expenses or reimbursement for any costs or expenses associated with the Management Staff and acknowledges that the Management Fixed Fee constitutes the only amount payable by the Employer to the Operator for the Management Staff.

6.2.3 Performance Incentive Compensation

(1) The Operator acknowledges that the intent of the Performance Incentive Compensation is to compensate the Operator based on the extent to which it achieves the system performance improvements set out in the Incentive Compensation Appendix.

(2) The Performance Incentive Compensation for each Contract Year shall be calculated in accordance with the Incentive Compensation Appendix.

6.3 Payment

6.3.1 Payment of Management Fixed Fee

(1) On the Starting Date, the Employer shall pay to the Operator an advance payment equal to 20 per cent of the Management Fixed Fee and the Employer shall make the payment in the currency or currencies as specified in the Bidder’s Price Form (the “Management Fixed Fee Advance Payment”). The Management Fixed Fee Advance Payment will be set off by the Employer in equal installments against the monthly Management Fixed Fee payments to the Operator for 48 months of the Contract term until the Management Fixed Fee Advance Payment has been fully set off (the “Advanced Payment Set-off”).

(2) The Management Fixed Fee Advance Payment will be due from the Employer after the Operator has provided the Employer with a bank guarantee, in the form set out in the Bank Guarantee Appendix, in an amount of and in the currency or currencies of the Management Fixed Fee Advance Payment. Such bank guarantee may be reduced annually

by the amount which has been set off, as provided in GC Section 6.3.1(1), in the previous Contract Year.

(3) Within 45 days after the Starting Date and by the 15th day of each subsequent month, the Operator shall render an invoice to the Employer for the services provided by the Management Staff in the preceeding month. The invoice shall be in the amount of the monthly Management Fixed Fee minus the Advanced Payment Set-off.

(4) The monthly Management Fixed Fee shall equal the Management Fixed Fee as set out in the Bidder's Price Form divided by 48.

(5) The Employer shall pay each invoice, in the currency or currencies specified in the Bidder's Price Form, within 60 days after the date of the invoice, except to the extent the Employer is permitted and decides to withhold a portion of the Management Fixed Fee pursuant to the Contract.

(6) The Operator shall ensure that it retains all information which clearly indicates the actual costs to the Operator of the Management Staff. All information with respect to these costs shall be made available to the Employer at the Employer's request.

6.3.2 Payment of the Performance Incentive Compensation

(1) Within 3 months of the Effective Date, the Employer shall retain and pay for an independent auditor from a reputable international firm (the "Independent Auditor") to undertake an audit of the Operator's achievements, calculate the Incentive Compensation for the applicable Contract Year and to resolve all disputes with respect to the calculation of the Performance Incentive Compensation. Notwithstanding GC Article 8, the decisions of the Independent Auditor, with respect to the calculation of the Performance Incentive Calculation, shall be final and shall not be subject to the settlement of disputes process.

(2) Within 30 days after the end of each Contract Year, the Operator shall submit to the Employer its calculations of the Performance Incentive Compensation for the previous Contract Year. The Operator shall prepare the calculation in accordance with the Incentive Compensation Appendix.

(3) Within 45 days after the Operator's submission to the Employer pursuant to the GC Section 6.3.2(2), the Employer shall inform the Operator as to whether it agrees or disagrees with the Operator's calculation based upon the recommendation and comfort letter from the Independent Auditor.

(4) If the Employer disagrees with the Operator's calculations, or does not respond within the time limit set out in GC Section 6.3.2(3), either Party may refer the matter again to the Independent Auditor for resolution.

(5) The Independent Auditor shall,

(a) complete a comprehensive review of the calculations; and

(b) meet with Parties, separately and together, before reaching a final decision.

6.4 **Currency and Exchange Rates**

(1) The Employer shall pay the Operator the Management Fixed Fee in the amounts and currency or currencies set out in the Bidder's Price Form.

(2) The Employer shall pay the Operator the Performance Incentive Compensation in accordance with the Incentive Compensation Appendix.

6.5 Change in Contract Elements¹⁷

(1) Except as provided in GC Section 6.5(2) and in the Incentive Compensation Appendix, the Operator shall make no claim whatsoever for any adjustment to the Management Fixed Fee or the Performance Incentive Compensation. Without limiting the generality of the foregoing, the Operator shall make no claim whatsoever for any adjustment as a result of,

- (a) a change in the number or type of water and wastewater customers in the Service Area;
- (b) changes to the Facilities or the addition of new Facilities;
- (c) changes to the quality or quantity of the raw water supply or the wastewater; or
- (d) disruption to the water or wastewater system as a result of the Authorities' capital programs.

(2) If, after the Effective Date, there is a change in the Applicable Law which either the Operator or the Employer can demonstrate has materially increased or decreased the cost of performing the Services then either Party¹⁸, as applicable, shall be entitled to an adjustment of either the Management Fixed Fee or the Performance Incentive Compensation to fully take into account the financial impact of the change in the Applicable Law by addition to or deduction from the Management Fixed Fee or the Performance Incentive Compensation, as the case may be.

ARTICLE 7 - FAIRNESS AND GOOD FAITH¹⁹

7.1 Good Faith

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

7.2 Operation of the Contract

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness,

¹⁷ there is no provision for the operator being compensated or the performance standards being amended in the event that the base data on which the operator has prepared its bid is inaccurate. This is often a concern for operators coming in as they may find themselves required to meet performance standards that cannot be achieved by the assets, for instance if treatment or network capacity is not as expected

¹⁸ it may be appropriate to indicate a monetary threshold for materiality

¹⁹ it is not clear why this clause has been included – in a civil law jurisdiction there is likely to be a similar concept incorporate into law – is this supposed to supplement/ reflect/ supersede it? In a common law jurisdiction there is no such understood concept – other than doctrines preventing a party from benefiting from fraud/ negligent misrepresentation – a court in a common law jurisdiction/ arbitral panel may have difficulties in interpreting such a provision

but no failure to agree on any action pursuant to this GC Section 7.2 shall give rise to a dispute subject to arbitration in accordance with GC Article 8 hereof.

ARTICLE 8 - SETTLEMENT OF DISPUTES

8.1 Amicable Settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof.²⁰

8.2 Right to Arbitration

Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably within 30 days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party in arbitration in accordance with the provisions of GC Sections 8.3, 8.4, 8.5, 8.6 and 8.7.

8.3 Selection of Arbitrators²¹

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

- (a) where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within 30 days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to the International Chamber of Commerce ("ICC") for a list of not fewer than five nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within 60 days of the date of the list, the ICC shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute;
- (b) where the Parties do not agree that the dispute concerns a technical matter, the Employer and the Operator shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within 30 days after the latter of the two arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by the ICC; and
- (c) if, in a dispute subject to GC Section 8.3(b), one Party fails to appoint its arbitrator within 30 days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the

²⁰ the parties may wish to consider going to an independent expert, at least in relation to disputes over technical matters, before resorting to arbitration

²¹ parties may wish to consider having a panel of three arbitrators, one chosen by each of the parties and the third chosen by the parties jointly, or failing agreement, by the ICC or other similar organization

ICC to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.

8.4 Rules of Procedure

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

8.5 Substitute Arbitrators

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

8.6 Nationality and Qualifications of Arbitrators

The sole arbitrator or the third arbitrator appointed pursuant to GC Section 8.3 (a), (b) and (c) shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Operator's home country or of []. For the purposes of this GC Section 8.6, "home country" means,

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

8.7 Miscellaneous

In any arbitration proceeding under the Contract,

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

This document has been prepared for the purposes of the
PPP IN INFRASTRUCTURE RESOURCE CENTER FOR CONTRACTS, LAWS AND REGULATIONS (PPIRC)
 website. It is a sample document FOR REFERENCE PURPOSES ONLY and SHOULD NOT BE used as a "model".

The inclusion of any legal materials on the PPIRC website does not mean that they are in any way approved, endorsed or recommended by the World Bank Group or its affiliates. Legal advice should be sought to determine whether a particular legal document is appropriate for any given project, and how the specific terms of the document should be adapted to fit the circumstances of that project

TABLE OF CONTENTS

ARTICLE 1 - CONTRACT AND INTERPRETATION	2
1.1	DEFINITIONS..... 2
1.2	CONTRACT DOCUMENTS 3
1.3	INTERPRETATION..... 4
1.3.1	<i>Language</i> 4
1.3.2	<i>Persons</i> 4
1.3.3	<i>Headings</i> 4
1.3.4	<i>Singular or Plural</i> 4
1.3.5	<i>Entire Agreement</i> 4
1.3.6	<i>Amendment</i> 4
1.3.7	<i>Independent Contractor</i> 4
1.3.8	<i>Joint Venture or Consortium</i> 5
1.3.9	<i>Non-waiver</i> 5
1.3.10	<i>Severability</i> 5
1.3.11	<i>Number of Days</i> 5
1.3.12	<i>References to Currency</i> 5
1.3.13	<i>Rate of Interest</i> 6
1.3.14	<i>Survival of Obligations</i> 6
1.3.15	<i>Section References</i> 6
1.4	NOTICES 6
1.5	LAW GOVERNING CONTRACT..... 7
1.6	LOCATION 7
1.7	AUTHORITY OF MEMBER IN CHARGE 7
1.8	AUTHORIZED REPRESENTATIVES 7
1.9	TAXES, DUTIES, CUSTOMS, LEVIES AND CHARGES 7
1.9.1	<i>Management Fixed Fee and Performance Incentive Compensation</i> 7
1.9.2	<i>Procurement by the Operator</i> 8
1.10	ASSIGNMENT..... 8
ARTICLE 2 - TERM COMMENCEMENT, COMPLETION, AND TERMINATION OF CONTRACT..	8
2.1	EFFECTIVENESS OF CONTRACT..... 8
2.2	EXPIRATION OF CONTRACT 9
2.3	COMMENCEMENT OF SERVICES 9
2.3.1	<i>Starting Date</i> 9
2.4	SERVICES AFTER THE END DATE 9
2.5	EXTENSION OF THE CONTRACT 9
2.6	FORCE MAJEURE 10
2.6.1	<i>General</i> 10
2.6.2	<i>No Breach of Contract</i> 10
2.6.3	<i>Measures to be Taken</i> 11
2.6.4	<i>Extension of Time</i> 11
2.6.5	<i>Payments</i> 11
2.6.6	<i>Consultation</i> 11
2.7	SUSPENSION 11
2.8	TERMINATION 11
2.8.1	<i>By the Employer</i> 11
2.8.2	<i>Required Notice of Termination – For Cause</i> 12
2.8.3	<i>Required Notice of Termination – For Convenience</i> 12
2.8.4	<i>By the Operator</i> 12
2.8.5	<i>Notice of Termination by the Operator</i> 13
2.8.6	<i>Disputes about Events of Termination</i> 13
2.8.7	<i>Cessation of Services</i> 13

This AGREEMENT HAS BEEN ANNOTATED AND AMENDED FOR THE PURPOSES OF THE WORLD BANK INFRASTRUCTURE AND LAW WEBSITE. It is a sample document FOR REFERENCE PURPOSES ONLY and SHOULD NOT BE used as A "model". The inclusion of any legal materials on the WORLD BANK INFRASTRUCTURE AND LAW WEBSITE does not mean that they are in any way approved, endorsed or recommended by the World Bank or its affiliates. Legal advice should be sought to determine whether an Agreement is appropriate for any given project and how the specific terms of an agreement must be adapted to fit the circumstances of that project.

2.8.8	<i>Payment upon Termination</i>	13
ARTICLE 3 - OBLIGATIONS OF THE OPERATOR		13
3.1	GENERAL.....	13
3.1.1	<i>Services and Standard of Performance</i>	13
3.1.2	<i>Service Area</i>	14
3.1.3	<i>Facilities</i>	14
3.2	LAW GOVERNING SERVICES.....	14
3.3	CONFLICT OF INTEREST.....	14
3.3.1	<i>Operator not to Benefit from Commissions, Discounts or Similar Payments</i>	14
3.3.2	<i>Operator and Affiliates Disqualification</i>	15
3.3.3	<i>Prohibition of Conflicting Activities</i>	15
3.4	CONFIDENTIALITY.....	15
3.5	LIABILITY OF THE OPERATOR.....	15
3.6	INSURANCE TO BE TAKEN OUT BY THE OPERATOR.....	16
3.7	CONTRACT RECORDS, ACCOUNTING AND AUDITING.....	17
3.7.1	<i>Contract Records</i>	17
3.7.2	<i>Accounting</i>	17
3.7.3	<i>Auditing Contract Records</i>	18
3.8	SUBCONTRACTORS.....	18
3.9	MEETINGS.....	18
3.10	REPORTING OBLIGATIONS.....	18
3.11	EQUIPMENT AND MATERIALS FURNISHED BY THE EMPLOYER.....	19
3.12	PROCUREMENT PLANS AND PRACTICES.....	19
3.12.1	<i>General</i>	19
3.12.2	<i>Day to Day Operations Procurement</i>	19
3.12.3	<i>Operating Investment Fund – Procurement</i>	19
3.12.4	<i>The Annual Operating Investment Fund Plan</i>	19
3.13	COLLECTION AND HANDLING OF REVENUES.....	20
3.14	PERFORMANCE SECURITY.....	21
ARTICLE 4 - OPERATOR’S MANAGEMENT STAFF, OPERATIONS STAFFING AND OPERATIONS AND MAINTENANCE COSTS		21
4.1	GENERAL – MANAGEMENT STAFF.....	21
4.2	REMOVAL OR REPLACEMENT OF MANAGEMENT STAFF.....	21
4.3	OPERATOR’S RESIDENT PROJECT MANAGER.....	22
4.4	OPERATIONS STAFFING.....	22
4.5	OPERATIONS AND MAINTENANCE BUDGETS.....	22
ARTICLE 5 - OBLIGATIONS OF THE EMPLOYER		22
5.1	ASSISTANCE AND EXEMPTIONS.....	22
5.2	ACCESS TO LAND.....	23
5.3	FACILITIES, MUNICIPAL DEVELOPMENT PROJECT MANAGEMENT UNIT, OPERATIONS STAFF, AND EQUIPMENT AND MATERIALS.....	23
5.4	PAYMENT.....	24
5.5	MUNICIPAL DEVELOPMENT PROJECT MANAGEMENT UNIT.....	24
5.6	REVIEWS AND APPROVALS OF SUBMISSIONS.....	24
ARTICLE 6 - COMPENSATION TO BE PAID TO THE OPERATOR		24
6.1	MANAGEMENT STAFF COSTS.....	24
6.2	COMPENSATION TO BE PAID TO THE OPERATOR.....	25
6.2.1	<i>Compensation to be Paid</i>	25

This AGREEMENT HAS BEEN ANNOTATED AND AMENDED FOR THE PURPOSES OF THE WORLD BANK INFRASTRUCTURE AND LAW WEBSITE. It is a sample document FOR REFERENCE PURPOSES ONLY and SHOULD NOT BE used as A "model". The inclusion of any legal materials on the WORLD BANK INFRASTRUCTURE AND LAW website does not mean that they are in any way approved, endorsed or recommended by the World Bank or its affiliates. Legal advice should be sought to determine whether an Agreement is appropriate for any given project and how the specific terms of an agreement must be adapted to fit the circumstances of that project.

6.2.2	<i>Management Fixed Fee</i>	25
6.2.3	<i>Performance Incentive Compensation</i>	25
6.3	PAYMENT	25
6.3.1	<i>Payment of Management Fixed Fee</i>	25
6.3.2	<i>Payment of the Performance Incentive Compensation</i>	26
6.4	CURRENCY AND EXCHANGE RATES	26
6.5	CHANGE IN CONTRACT ELEMENTS.....	27
ARTICLE 7 - FAIRNESS AND GOOD FAITH.....		27
7.1	GOOD FAITH.....	27
7.2	OPERATION OF THE CONTRACT	27
ARTICLE 8 - SETTLEMENT OF DISPUTES		28
8.1	AMICABLE SETTLEMENT	28
8.2	RIGHT TO ARBITRATION	28
8.3	SELECTION OF ARBITRATORS	28
8.4	RULES OF PROCEDURE	29
8.5	SUBSTITUTE ARBITRATORS	29
8.6	NATIONALITY AND QUALIFICATIONS OF ARBITRATORS	29
8.7	MISCELLANEOUS.....	29

This AGREEMENT HAS BEEN ANNOTATED AND AMENDED FOR THE PURPOSES OF THE WORLD BANK INFRASTRUCTURE AND LAW WEBSITE. It is a sample document FOR REFERENCE PURPOSES ONLY and SHOULD NOT BE used as A "model". The inclusion of any legal materials on the WORLD BANK INFRASTRUCTURE AND LAW website does not mean that they are in any way approved, endorsed or recommended by the World Bank or its affiliates. Legal advice should be sought to determine whether an Agreement is appropriate for any given project and how the specific terms of an agreement must be adapted to fit the circumstances of that project.

Appendix 1

Contract Particulars Appendix

**CONTRACT PARTICULARS
APPENDIX 1 TO
GENERAL CONDITIONS FOR A
MANAGEMENT CONTRACT FOR
THE PROVISION OF WATER
AND WASTEWATER SERVICES**

This AGREEMENT HAS BEEN ANNOTATED AND AMENDED FOR THE PURPOSES OF THE WORLD BANK INFRASTRUCTURE AND LAW WEBSITE. It is a sample document FOR REFERENCE PURPOSES ONLY and SHOULD NOT BE used as A "model". The inclusion of any legal materials on the WORLD BANK INFRASTRUCTURE AND LAW website does not mean that they are in any way approved, endorsed or recommended by the World Bank or its affiliates. Legal advice should be sought to determine whether an Agreement is appropriate for any given project and how the specific terms of an agreement must be adapted to fit the circumstances of that project.

CONTRACT PARTICULARS APPENDIX

[NOTE TO BIDDERS: DO NOT FILL IN THE BLANKS IN THIS APPENDIX. THE APPENDIX WILL BE COMPLETED PRIOR TO THE EXECUTION OF THE CONTRACT.]

1.1 Supplementing the General Conditions

The Contract Particulars Appendix shall supplement the General Conditions.

1.2 Definitions

(1) With respect to GC Section 1.1 the following shall apply:

1. the Starting Date shall be _____.

1.3 Notices

(1) With respect to GC Section 1.4 the following shall apply:

2. the address for the Employer shall be:

Name: _____

Address: _____

the address for the Operator shall be:

Name: _____

Address: _____

1.4 Authority of Member in Charge

(1) With respect to GC Section 1.7 the following shall apply:

3. the Member in Charge shall be:

Name: _____

Address: _____

This AGREEMENT HAS BEEN ANNOTATED AND AMENDED FOR THE PURPOSES OF THE WORLD BANK INFRASTRUCTURE AND LAW WEBSITE. It is a sample document FOR REFERENCE PURPOSES ONLY and SHOULD NOT BE used as A "model". The inclusion of any legal materials on the WORLD BANK INFRASTRUCTURE AND LAW website does not mean that they are in any way approved, endorsed or recommended by the World Bank or its affiliates. Legal advice should be sought to determine whether an Agreement is appropriate for any given project and how the specific terms of an agreement must be adapted to fit the circumstances of that project.

1.5 **Authorized Representatives**

(1) With respect to GC Section 1.8 the following shall apply:

4. the Authorized Representative for the Employer shall be:

Name: _____

Address: _____

5. the official designate of the Employer's Authorized Representative shall be:

Name: _____

Address: _____

6. the Authorized Representative for the Operator shall be:

Name: _____

Address: _____

7. the official designate of the Operator's Authorized Representative shall be:

Name: _____

Address: _____

This AGREEMENT HAS BEEN ANNOTATED AND AMENDED FOR THE PURPOSES OF THE WORLD BANK INFRASTRUCTURE AND LAW WEBSITE. It is a sample document FOR REFERENCE PURPOSES ONLY and SHOULD NOT BE used as A "model". The inclusion of any legal materials on the WORLD BANK INFRASTRUCTURE AND LAW website does not mean that they are in any way approved, endorsed or recommended by the World Bank or its affiliates. Legal advice should be sought to determine whether an Agreement is appropriate for any given project and how the specific terms of an agreement must be adapted to fit the circumstances of that project.
