



REPUBLIC OF UGANDA

MINISTRY OF WATER AND ENVIRONMENT

***Performance Contract for Water Supply and Sewerage
Authorities***

**PERFORMANCE CONTRACT FOR WATER SUPPLY AND SANITATION SYSTEMS
MANAGEMENT BETWEEN THE MINISTER OF WATER AND ENVIRONMENT AND
..... WATER SUPPLY AND SEWERAGE AUTHORITY**

NOVEMBER 2010

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Abbreviations

CAPEX	Capital Expenditure
DWD	Directorate of Water Development
GoU	Government of Uganda
LG	Local Government
MWE	Ministry of Water and Environment
OPEX	Operational Expenditure
PC	Performance Contract
PCRC	Performance Contract Review Committee
PO	Private Operator
PPDA	Public Procurement and Disposal of Public Assets
RU	Regulation Unit
WSSA	Water Supply and Sewerage Authority
WSSB	Water Supply and Sewerage Services Board

THIS PERFORMANCE CONTRACT (hereinafter called "the Contract") is made thisday of 2010 (the "Commencement Date") between the **MINISTER OF WATER AND ENVIRONMENT** (the "Minister"); of P.O. Box 20026 Kampala on the one part and the **WATER SUPPLY AND SEWERAGE AUTHORITY** (the "Authority") of P.O. Boxon the other.

WHEREAS

- A. In pursuance of the Local Governments Act, Cap. 243 requirements for the transfer of water and sanitation provision responsibilities from the central government to the local governments, and in accordance with Sections 45 of the Water Act, Cap. 152, the Minister responsible for water has hereby declared the area given in the First Schedule as the Water Supply and Sewerage Authority. In furtherance of this declaration and in accordance with Sections 46 and 47 of the Water Act, the Minister has appointed the Town Council (named in the First Schedule) to be a Water Supply and Sewerage Authority for the area given in the First Schedule, to which the Minister now transfers responsibility for custodial care of the assets and management of the water supply and sanitation system.
- B. Section 48 of the Water Act requires the Minister to enter into a Performance Contract with the Authority, which contract shall be construed as the governing rules for the relationship between the Minister and the Authority and which shall guide the operations of the Authority.
- C. Upon signing this Performance Contract, the Local Council, as named in the First Schedule, acknowledges and confirms the establishment of the Water Supply and Sewerage Authority for purposes of management of the assets and water and sewerage services in the area.
- D. This Performance Contract and the agreed management arrangement should be construed within the context, timeframe and principles of the prevailing Policies and Strategies of the Government of Uganda.

THE PARTIES AGREE AS FOLLOWS:

1 INTERPRETATIONS

1.1 In this Contract, unless the context otherwise requires:

- a) "Authority and Area" are those specified in the First Schedule;
- b) "Director" means the Director, Directorate of Water Development, Ministry of Water and Environment;
- c) "Regulations" means:
 - (i) In the case of a Water Supply Authority, the Water Supply Regulations, 1999;
 - (ii) In the case of a Sewerage Authority, the Sewerage Regulations, 1995;
 - (iii) In the case of a Water Supply and Sewerage Authority, both of the above Regulations.
- d) "Council" means council within the meaning of the Local Governments Act, Cap. 243
- e) "Town Clerk" means the administrative head of a town/municipal council within the meaning of the Local Governments Act, Cap. 243
- f) "Sub county Chief" means the administrative head of a sub county within the meaning of the Local Governments Act, Cap. 243

1.2 In this Contract, unless the context otherwise requires:

- a) Reference to the Act relate to the Water Act, Cap.152;
- b) A reference to any legislation includes any subordinate legislation and its consolidations, amendments, re-enactments or replacements;
- c) The singular includes the plural and vice versa;
- d) The word "person" includes a firm, corporation, partnership, joint venture, unincorporated association and public authority;
- e) A reference to a clause or Schedule is to a clause of, or Schedule to, this Contract;
- f) A Schedule forms part of this Contract;
- g) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

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

1.4 In interpreting this Contract, a construction that would promote the purpose or object underlying the Contract shall be preferred to a construction that would not promote that purpose or object.

2 VALIDITY OF THE CONTRACT

2.1 This Contract shall commence on the "Commencement Date" given in Annex (1).

2.2 This Contract shall remain valid for the given period starting from the "Commencement Date" or until it is terminated in accordance with the provisions of this Contract or any other governing laws in Uganda.

2.3 This Contract shall be renewable at the discretion of the Minister.

3 PURPOSE OF THE CONTRACT

- 3.1 The purpose of this contract is to further set out the role, scope and performance targets of the Authority in the areas in which it is granted jurisdiction by the Minister for Water and Environment (MWE) as indicated in the First Schedule.
- 3.2 To ensure that there is an agreed framework within which the overall National Water Sector goals are achieved within the anticipated time frames.

4 AUTHORITY'S RIGHTS AND OBLIGATIONS

The primary obligations of the Authority is to achieve the minimum performance standards set out in this contract, on water sales, non-revenue water, collection efficiency, Water Quality Compliance and a minimum satisfactory score/grade on each technical inspection carried out by the ministry. The Key Performance Indicators (KPI's) are outlined in the Third Schedule of this contract.

4.1 TO HOLD ASSETS IN TRUST

- 4.1.1 It has been established at the commencement of this Contract that the Authority does not own the water supply and sewerage assets (herein called "assets") but holds in trust the assets listed in the Second Schedule.
- 4.1.2 If the Authority acquires any additional and/or replaces any assets during the contractual period, the Minister shall be notified and the Second Schedule shall be updated indicating the additional assets acquired or replaced, which shall belong to the Ministry of Water and Environment.
- 4.1.3 The Authority shall not dispose of any of the assets acquired, without the prior written consent of the Minister.
- 4.1.4 Where assets have been created and / or developed under any other arrangement as stated in Annex (1), they shall be deemed assets of the Ministry of Water and Environment and shall be added in the Second Schedule and shall be held in trust by the Authority as such.

4.2 TO MANAGE AND CONTROL ASSETS

- 4.2.1 The Authority has the sole right and duty to manage and control the assets set out in the Second Schedule and any accompanying drawings, for the purpose of discharging its obligations or exercising its powers under the Act, for the term of this Contract.

- 4.2.2 The Minister may direct the Authority on how to use or dispose of any money or other consideration to which the Authority may become entitled as a result of disposing of any asset referred to in sub-clause 4.1.
- 4.2.3 The Authority shall comply with any directions given by the Minister under this sub-clause to renew or to extend assets referred to in the Second Schedule, within such time or times as are specified in that direction, or such longer time as the Minister may allow.

4.3 TO PROVIDE SERVICES

- 4.3.1 The Authority shall discharge all the obligations of a Water Supply and Sewerage Authority within the area specified in the First Schedule, for the term of the Contract.
- 4.3.2 In discharging its functions and exercising its powers, the Authority shall comply with:
- a) Any code of workmanship prescribed by the Minister under Section 70 of the Water Act;
 - a) The service standards specified or referred to in the Third Schedule;
 - b) The provisions of Section 47 of the Water Act;
 - c) Any written directions given to the Authority from time to time by the Minister.
- 4.3.3 In discharging its functions and exercising its powers, the Authority shall be mandated by the Minister to constitute a Water Supply and Sewerage Services Board (WSSB) of five (5) members (unless amended in Annex (1)) for the Authority to exercise management oversight for the operations of the assets entrusted to the Authority including any operations sub-contracted under sub-clause 4.3.5. The details of the formation and membership of the WSSB shall be as given in the Sixth Schedule.
- 4.3.4 The WSSB shall discharge its management oversight responsibilities as stipulated in the Sixth Schedule.
- 4.3.5 In discharging its functions and exercising its powers the Authority, through the WSSB, shall sub-contract the day-to-day operation and management of the water supply system and the assets referred to by sub-clauses 4.1 and 4.2 to an independent professional operator that shall be contracted by the Authority through a transparent and competitive process in accordance with Part IX of the Local Governments Financial and Accounting Regulations, 2007 and the Local Governments PPDA (Public Procurement and Disposal of Public Assets) Regulations, 2006 and any other laws at the time being in force. The Authority and the private operator will enter into a management contract for the period as stated in Annex (1).
- 4.3.6 To attain economies of scale and obtain favorable terms from the private operator or a sub-contractor retained under sub-clause 4.3.5, the Authority may associate with other Authorities, provided that the Authority shall reach an understanding witnessed by a Memorandum of Understanding with the other Authority or Authorities with which it wishes to associate.
- 4.3.7 Where the Authority enters into a Memorandum of Understanding under sub-clause 4.3.6, it shall not withdraw from the arrangement without the consent of the Minister, which consent shall be sought through a written request specifying the reasons for the withdrawal and giving 90 days notice of the intention to withdraw. A request for withdrawal shall be subject to the intervention and resolution at the direction of the Minister.

- 4.3.8 The withdrawal of an Authority from an arrangement entered into under sub-clause 4.3.6, in a manner which contravenes sub-clause 4.3.7 shall amount to a breach of this contract and may constitute grounds for termination under sub-clause 5.5.
- 4.3.9 The Authority shall not sub-contract the performance of any of the obligations referred to in Clause 4, except that given in sub-clause 4.3.5, without first informing the Minister in writing and providing such additional information about the proposed sub-contractor as the Minister may require. Any new sub-contract, apart from that given under sub-clause 4.3.5, shall have prior written approval of the Minister, including operating through any other arrangements.
- 4.3.10 The Authority remains liable under this Contract for the performance of any obligations sub-contracted by it under sub-clause 4.3.5.

4.4 TO CHARGE FOR SERVICES PROVIDED

The Authority shall have the right to charge and collect tariffs, as determined by the Tariff Policy in force at the given time, any fees, rates and charges for services provided under sub-clause 4.3 and in accordance with the approved business plans under sub-clause 4.8.

4.5 TO COMPLY WITH LAWS

- 4.5.1 The Authority shall comply with:
- a) Provisions of the Water Act and regulations there under, the NEMA Act and regulations, Local Governments Act and regulations, Public Procurement and Disposal of Assets Act and regulations, the Occupational Health and Safety Act in relation to its employees and to the environment; the Public Finance Act; the Income Tax Act; and all other laws relating to its activities at the time being in force;
 - b) The terms of any water or waste discharge permit granted to the Authority.
- 4.5.2 The Authority shall not take or use water from any source of water subject to Part II of the Water Act, except in accordance with a water permit granted under that Part.

4.6 TO MAINTAIN ASSETS

- 4.6.1 The Authority shall maintain, in good condition and working order including preventive maintenance throughout the term of this Contract:
- a) All assets referred to in the Second Schedule, while they remain in the trust and custody of the Authority;
 - b) All other assets renewed, acquired or constructed by the Authority or its agents or sub-contractors, whether or not under a direction from the Minister given under clause 4.2.2.
- 4.6.2 The Authority shall also maintain and regularly update an assets register which details all assets held by the Authority and any additional investments made periodically.

4.7 TO ALLOW INSPECTION

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

- a) Any land owned or occupied by the Authority;
- b) Any assets referred to in the First and Second Schedules and any other assets renewed, acquired or constructed by the Authority;
- c) Any land, works, buildings or any other assets;
- d) And make any tests, take any measurements or take any samples;
- e) Take any photographs or make any plans or drawings;
- f) And, if necessary, to make any copies of any records or documents referred to in sub-clause 4.9 in order to ascertain whether the Authority is complying in every respect with this Contract and the Water Act.

4.8 TO PREPARE BUSINESS PLANS

- 4.8.1 The Authority through the WSSB shall, prepare a three year Business Plan and have this updated and submitted no later than two months before the end of the financial year.
- 4.8.2 The first Business Plan shall come into effect on a date to be determined by the Minister.
- 4.8.3 The Authority shall annually update and submit to the Minister its revised Business Plan and any amendments, no later than three (3) months before the end of each GoU financial year.
- 4.8.4 A Business Plan shall be in a form approved by the Minister and include the following:
- a) The objectives of the plan;
 - b) The overall strategies and policies that the Authority is to follow to achieve those objectives;
 - c) The services that the Authority expects to provide and the standards expected to be achieved in providing those services;
 - d) Performance indicators and targets (whether financial or operational) as agreed with the Authority. At a minimum these targets will be constituted of Non-Revenue Water, Water Sales, Collection Efficiency and Water Quality Compliance, and a minimum "satisfactory" grade for an annual technical inspection;
 - e) Financial matters as set out in sub-clause 4.10;

- f) Other information that the Authority may consider appropriate or that may be specified in writing by the Minister.
- 4.8.5 A Business Plan shall be consistent with any Water Action Plan established under Section 17 of the Water Act.
- 4.8.6 Each Business Plan shall state, in relation to financial matters:
- a) The financial target of the Authority;
 - b) The overall financial strategies including the setting of tariffs and charges, the making and levying of rates, borrowing, investment and purchasing and disposing of assets;
 - c) A forecast of the revenue and expenditure of the Authority, including a forecast of capital expenditure and borrowing;
 - d) Details of the tariffs, fees, rates and charges expected to be raised by the Authority and the basis on which those tariffs, rates and charges are to be raised;
 - e) Other financial information as the Authority may consider appropriate or as is specified in writing by the Minister.
- 4.8.7 In preparing a financial target, the Authority shall have regard to:
- a) Maintaining the Authority's financial viability;
 - b) Maintaining a reasonable level of reserves, so as to make provision for:
 - (i) Estimated future demand for the services of the Authority;
 - (ii) Any capital contributions which the Authority is obliged to make under clause 4.10;
 - (iii) Improved accessibility of and performance standards for, the services provided by the Authority;
 - (iv) Other matters that may be specified by the Minister in writing from time to time.
- 4.8.8 The Minister may, within 60 days after receiving a copy of a Business Plan and within 30 days after receiving a copy of a revised plan and after consultation with the Authority, direct the Authority to vary any aspect of the plan, including the period to which it relates.
- 4.8.9 In exercising his powers under sub-clause 4.8.8., the Minister shall have regard to:
- a) The effect of the variation on the Business Plan;
 - b) The effect of the variation on the services provided by the Authority;
 - c) Any other matter that the Minister may consider appropriate.
- 4.8.10 A direction under sub-clause 4.8.8. shall be in writing and shall set out the Minister's reason for the direction.
- 4.8.11 If the Authority is of the opinion that matters have arisen that may prevent, or significantly affect the achievements of the objectives of the Authority under the Business Plan and the financial target under the plan, the Authority shall immediately notify the Minister of its opinion and its reasons for the opinion.
- 4.8.12 The Authority shall not make any major deviation from its Business Plan, unless it has first obtained the written approval of the Minister to do so.
- 4.8.13 The Minister may issue guidelines as to what are major deviations for the purpose of paragraph 4.8.12 above.
- 4.8.14 The Authority shall not set / charge / amend tariffs, fees, rates or charges otherwise than in accordance with its Business Plan and as approved in writing by the Minister.

4.8.15 The Authority shall implement the new tariff including all additional requirements of the business plan within 45-days of the written approval from the Minister.

4.9 TO KEEP AND MAINTAIN RECORDS

4.9.1 The Authority shall keep proper accounts and records of the transactions and affairs of the Authority and shall keep records that are necessary to explain the financial operations and financial position of the Authority.

4.9.2 Without detracting in any way from sub-clause 4.9.1, the Authority shall keep the records referred to in the Seventh Schedule and shall retain those records for the period specified in the Schedule, after each record is made.

4.9.3 Except as provided in sub-clauses 4.11 and 4.12, all records are confidential to the Authority.

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

4.9.5 The Authority shall provide a customer or former customer with a copy of the relevant records referred to in sub-clause 4.9.1, but may impose a reasonable charge to cover the costs to the Authority of making the copy of the records available.

4.10 TO MEET FINANCIAL OBLIGATIONS

- 4.10.1 The Authority shall pay all sums, including taxes, it is required to pay in order to comply with every condition of this Contract or any laws, out of monies collected by it from the tariffs, rates, charges, fees, penalties and interest paid to it under the Water Act and the Regulations, and any interest paid to it upon those monies.
- 4.10.2 The Authority shall pay to the Government of Uganda such contributions towards the capital cost of the assets referred to in the Second Schedule and at such times as are prescribed in the Fourth Schedule, as revised from time to time by the Minister.
- a) The Authority shall open Escrow Accounts which shall include an Investment Escrow Account and an Operating Escrow Account in the names of the Authority with a local bank;
 - b) The Operating Escrow Account shall be jointly controlled by the Operator, the Town Clerk or, for areas below town council status, the equivalent administrative head, and the Chairman of the WSSB, all three of whom shall be its joint signatories. The Operating Escrow Account shall be one into which all the revenues collected by the operator shall be deposited;
 - c) The Investment Escrow Account shall be jointly controlled by the Town Clerk or, for areas below town council status, the equivalent Administrative Head, the Chairman and the Treasurer of the WSSB, all three of whom shall be its joint signatories. The Investment Escrow Account shall be created for purposes of receiving and expending Conditional Grants and the CAPEX sums (minimum 10% unless amended in Annex (1)) as indicated in the approved Business Plans. The Minister and the Operator shall be kept fully informed of the income/expenses of the Investment Escrow Account on a quarterly basis;
 - d) Withdrawals from the Escrow Accounts shall be only for eligible payments which shall be limited to:
 - (i) Payments of the management fees due to the Operator after verification and confirmation that all the previous utility and similar bills have been settled by the Operator. The Operator shall open his own account in a local bank that can be operated by his resident site staff to avoid delays in payment to his site staff and other local consumables;
 - (ii) Payments for the WSSB's expenses (maximum 5% unless amended in Annex (1)) payable into the WSSB's operating account established under sub-clause 4.10.3;
 - (iii) Payments of all taxes, licenses, levies and other such charges due from the Authority for the operation of the water supply and sanitation facilities;
 - (iv) Approved major repairs and investments which shall be computed as 5% or more of the expected monthly revenue collection based on the Business Planning Tool.
 - (v) Other payments as directed by the Minister under sub-clause 4.2.2.
- 4.10.3 The first right of withdrawal shall be for the operators monthly management fee, which is the agreed percentage of revenue earned by the Authority during the period, upon presentation of approved invoices as provided for in the management contract. However, this shall only be made after confirmation and verification that all the outstanding bills, taxes, levies, charges have been settled. The subsequent payments shall be payments to the WSSB and all agreed expenses.
- 4.10.4 The Authority shall:
- a) Ensure that all money payable to the Authority is properly collected and paid into the escrow account established under sub-clause 4.10.2;

- b) Ensure that all money expended by the Authority is properly expended and only for purposes authorized by or under this Contract and that such expenditure is in conformity with approved Business Plans and is properly authorized;
- c) Ensure that adequate control is maintained over assets owned by, or in the custody of, the Authority;
- d) Ensure that all liabilities incurred by the Authority are properly authorized;
- e) Ensure efficiency and economy of operations and avoidance of waste and extravagance;
- f) Develop and maintain an adequate budgeting and accounting system;
- g) Particularly maintain a customer subsidiary ledger showing individual balances due to and from customers, and a general ledger control account for the customer subsidiary ledger showing the consolidated customer transactions;
- h) Develop and maintain an adequate financial control system;
- i) Ensure that any allowances paid to board members and other expenses of the WSSB are in conformity with sub-clauses 4.3 and 4.10;
- j) Ensure that the Conditional Grant and CAPEX funds are properly planned for, managed, expended and accounted for in a timely manner and in accordance with the guidelines.

4.11 TO REPORT TO THE MINISTER

- 4.11.1 The Authority shall, in respect of each quarter of financial year and at the end of the financial year, prepare quarterly and annual reports containing:
- a) Its operations during the reporting period;
 - b) Financial statements for the reporting period;
- and submit the reports to the Minister not later than thirty (30) days after the end of the quarter and two (2) months following the end of the GoU financial year.
- 4.11.2 The report of operations referred to in sub-clause 4.11.1 shall:
- a) Be prepared in a form determined by the Authority and DWD to be appropriate;
 - b) Contain the information specified in the Third Schedule and any other information determined by the Authority/DWD to be appropriate;
 - c) Contain a copy of any direction given by the Minister under clause 5.2 during the financial year;
 - d) Contain any other information required by the Minister.
- 4.11.3 The financial statements referred to in sub-clause 4.9 and 4.10 shall:
- a) Contain information determined by the Minister to be appropriate;
 - b) Include an assessment of:
 - (i) The cost of carrying out the Authority's community service obligations;
 - (ii) The cost of implementing any directions given by the Minister under sub-clause 4.2;
 - (iii) The cost of carrying out any other obligation that is imposed on the Authority under this Contract or the Act and that requires it to act otherwise than in accordance with normal commercial practice.
 - c) Be prepared in a manner and form approved by the Minister;
 - d) Present fairly the results of the financial transactions of the Authority during the financial year to which they relate and the financial position of the Authority as at the end of that year.

4.12 TO AUDIT ACCOUNTS

- 4.12.1 The financial statements referred to in clause 4.11.3 shall be audited by 31 October in any year by a duly qualified external auditor who shall be a member of the Institute of Certified Public Accountants of Uganda (ICPAU). The external auditor shall be appointed by the Authority after prior written approval from the Office of the Auditor General (OAG) as provided for in the Local Governments Financial and Accounting Regulations, 2007.
- 4.12.2 The Auditor's report shall state whether the statements are correct and shall set out all matters falling within the normal duties of an auditor which, in his opinion, should be brought to the attention of the Authority or the Minister. The auditor shall review the income and expenditure from the two escrow accounts (Operating and Investment) and compare these against the OPEX / CAPEX given in the approved Business Plans.
- 4.12.3 The Authority shall pay the costs of any auditor engaged under these clauses.
- 4.12.4 Nothing in the foregoing sub-clauses shall detract from the Authority's responsibility and reporting obligations under the Local Governments Act, Cap. 243 and Local Governments Financial and Accounting Regulations, 2007.

5 MINISTER'S RIGHTS AND OBLIGATIONS

5.1 PERFORMANCE CONTRACT MANAGEMENT

- 5.1.1 The review of the Authorities' performance under this Contract will be carried out by a Performance Contract Review Committee (PCRC) comprising of three members. One from the Regulation Unit of the Directorate of Water Development (DWD), one relevant official from the Ministry of Finance, Planning and Economic Development (MFPED) and one from the Ministry of Local Government (MLG), who shall be named within two (2) months of the signing of the contract.
- 5.1.2 The Committee will specifically address the following:
- a) Authorities' performance against specific indicators, which will be reviewed quarterly by the Regulation Unit (RU) of MWE and annually by the PCRC. However the RU can call for a special meeting of the PCRC;
 - b) Provide for the resetting of targets/projections, should it prove necessary;
 - c) Consider proposals for the re-assessment of targets if there is a significant change in the environment or significant new factors;
 - d) Any other issues that may from time to time be raised by the parties.
- 5.1.3 The PCRC may decide to appoint Consultants to assist in the review process.
- 5.1.4 The report and recommendations of the PCRC following the annual reviews will be submitted to both MWE and the WSSB within a period of 30 days after the review.
- 5.1.5 The review methodology used by the PCRC or its Consultants is specified in the Fifth Schedule.

5.2 TO AMEND STANDARDS OF SERVICE & RECORDS KEEPING REQUIREMENTS

- 5.2.1 The Minister may, from time to time, revise or add to the standards & records specified or referred to in the Seventh Schedule.
- 5.2.2 The Authority shall comply with the standards & records specified in the Seventh Schedule, as revised or added to under this clause, from such date as may be specified by the Minister in writing.

5.3 TO AMEND CAPITAL CONTRIBUTIONS

The Minister through the PCRC and RU will monitor and evaluate the expenses under the Conditional Grant and the CAPEX as given in the Business Plan. The Minister may, from time to time, amend these capital contributions as given in the Fourth Schedule, after consulting with the Authority.

5.4 TO ARRANGE COMPENSATION

- 5.4.1 On the completion or earlier termination of this Contract or in line with the sector reform recommendations, the Minister shall have the right to appoint a successor to the Authority and enter into a Performance Contract with the successor under section 48 of the Water Act.
- 5.4.2 The Minister may recommend to the Government the compensation to the Authority for any additional assets acquired by the Authority under this Contract where the assets are to be transferred to a private body.
- 5.4.3 Any additional assets acquired by the Authority under this Contract shall not be subject to compensation from the Minister in so far as they remain vested in a public body.

5.5 TO TERMINATE AGREEMENT

- 5.5.1 The Minister may also terminate this Contract if the Authority has not complied with any provision of this Contract, the Water Act or the prevailing Policies and Strategies. The Minister may serve a notice on the Authority setting out:
 - a) The provision which the Minister considers has not been complied with;
 - b) Why the Minister considers that the provision has not been complied with;
 - c) The date by which the Authority shall comply with the provision.
- 5.5.2 The Authority shall comply with any provision mentioned in a notice under sub-clause 5.5.1 by the date specified in that notice, to the satisfaction of the Minister.
- 5.5.3 If the Authority does not comply with the requirements of sub-clause 5.5.1 by the date specified in a notice served under this sub-clause, the Minister may terminate this Contract by giving the Authority at least 90 days' notice in writing.
- 5.5.4 From the date on which an Authority receives notice given under sub-clauses 5.5.1 and 5.5.3 until the date on which the period of these notices expire, the Authority:
 - a) Shall not dispose of or create any interest in any of its assets, except as directed by the Minister;
 - b) Shall observe any written directions given to it by the Minister.

6 DISPUTE RESOLUTION PROCEDURE

Any dispute arising out of or in connection with this Agreement shall be resolved in accordance with the procedure set out below.

- 6.1.1 Initially any dispute will be communicated to the Director, DWD for resolution by the Minister who may forward the matter to a sub-committee of no more than three members of the Water Policy Committee for technical advice.
- 6.1.2 Where the Minister guided by the WPC is unable to resolve such dispute within 14 days of being advised by the WPC, he/she shall notify the Authority whereupon the procedures set out for mediation, conciliation and arbitration under the Arbitration and Conciliation Act of Uganda shall be applied.

7 WAIVER

A failure, delay, relaxation or indulgency on the part of either party in exercising any power or right under this Contract does not waive that power or right, nor does any single exercise of the power or right preclude any other or further exercise of it, or the exercise of any other power or right under this Contract.

8 AMENDMENT OR VARIATION

This Contract may only be amended or supplemented in writing signed by both parties.

9 GOVERNING LAW AND JURISDICTION

This Agreement shall be considered as a contract made in the Republic of Uganda and shall be subject to the laws of Uganda.

IN WITNESS WHEREOF the parties have executed this Contract by their duly authorized representatives on the date mentioned herein above.

FOR AND ON BEHALF OF THE MINISTRY OF WATER AND ENVIRONMENT:

.....
MINISTER OF WATER AND ENVIRONMENT

IN THE WITNESS OF:

.....
DIRECTOR, DIRECTORATE OF WATER DEVELOPMENT

FOR AND ON BEHALF OF WATER SUPPLY AND SEWERAGE AUTHORITY

.....
CHAIRPERSON OF THE LOCAL AUTHORITY

IN THE WITNESS OF

.....
TOWN CLERK/SUB COUNTY CHIEF

ANNEX 1

Amendments to the main clauses in the performance contract:

Clause	Amendment
2.1	The Commence date for this performance contract shall be 1st JULY 2010 and it shall be valid for five (5) years.
4.1.4	Specify any special conditions as required by the Donor e.g. GPOBA, etc. DBO-OBA contracts may exceed 5 years
4.3.3	The number of the WSSB members shall be 5 (five) and the formation shall be as given in the Sixth Schedule.
4.3.5	The duration of the Management Contract shall be 3 (three) years.
4.6.2	The format of the Asset Registry and Management shall be as described in the <i>Second Schedule</i> .
4.10.2	The business plan shall allow a minimum CAPEX of 10% for deposit into the Investment escrow account on a monthly basis.
4.10.2.b(ii)	The payment to the WSSB shall be 5% of monthly collections.

FIRST SCHEDULE

[Recital A, sub-clause 1.1 (a)]

AUTHORITY AND AREA OF OPERATION

The Authority shall be the Town Council/Sub County Water Supply and Sewerage Authority (WSSA), represented by the Council Chairperson of P. O. Box

The Terms of Reference, Roles and Responsibility of the WSSA and the WSSB are given in the Sixth Schedule.

The area of operation shall be all the area within the boundary of Town Council/Sub County as depicted by the attached town plan map. Authority, whose water supply extends beyond the boundary, should co-opt members of such areas on its WSSB.

SECOND SCHEDULE

ASSETS MANAGED AND CONTROLLED BY AUTHORITY

1. INCLUDE THE LAYOUT PLAN OF THE EXISTING SYSTEM.
2. INCLUDE SIMPLE DESCRIPTION OF ALL THE MAIN FACILITIES E.G. Intakes, Pumps, Treatment Plants, Transmission and Distribution Mains, Storage Tanks, all additional fittings, plant, tools and equipment, Buildings and Furniture, etc.
3. THE ASSET REGISTRY AND IT'S MANAGEMENT PLAN (WHEN READY) SHALL FORM PART OF THIS SECOND SCHEDULE.

THIRD SCHEDULE

PERFORMANCE INDICATORS IN SCORE CARD

Topics / Area	Indicator	Definition	Comments	Baseline	Target Year 1	Target Year 2	Target Year 3	Proposed Weight
Financial Efficiency	Increase in Water Sales	Increase in Volume of Water sold per annum [%]	Determine baseline for each PC +1.5% above premium	2.35 million m3/annum	7.50%	7.50%	7.50%	30%
Technical Efficiency	NRW	-% difference in amount of water produced and water billed	2% per annum (%-age improvement; scheme specific-PC)	24.00%	-200 basis points	-200 basis points	-200 basis points	10%
Commercial Efficiency	Collection Efficiency	Collections / Billed [%]	Scheme specific baseline and targets	85%	85%	85%	85%	15%
	Active Connections	Percentage improvement in active connections [%]	Scheme specific baseline and targets	N/K	10%	10%	10%	15%
Quality of Service / Environment	Compliance with drinking water quality standards	4 sets of passing samples at least once in each quarter	Uganda Drinking Water Standards. NWSC target is 95% every year	N/K	85%	90%	95%	5%
	Sanitation	%age of functioning public toilets	Authorities to manage public toilets – to be included in PO contract.	N/K	TBD	TBD	TBD	5%
Transparency / Good Water Governance	Percentage compliance with Annual Inspection / Audit compliance (*)	>70% Good 50-70% Satisfactory <50% Poor	Develop Checklist Questionnaire SIGMA Reporting					20%

Please note that the proposed scorecard for the small towns is an aggregate scorecard. The indicative targets above epitomize the goals of the small towns collectively and shall be cascaded to the individual small towns bearing in mind their unique characteristics for example, their differing levels of growth, town specific NRW etc. Care must therefore be taken in allocating SMART (specific, measurable, accurate, realistic and time bound).

FOURTH SCHEDULE

Capital Cost

The capital cost (CAPEX) contributions into the Investment Escrow Account required of the Authority by this Performance Contract are indicated in the respective Authority's Business Plans.

The approved Conditional Grant shall also be deposited in the same Investment Escrow Account.

FIFTH SCHEDULE

PERFORMANCE REVIEW METHODOLOGY

The Performance Contract Review Committee (PCRC) will comprise of three members drawn from the Regulation Unit of the Directorate of Water Development (DWD), the Ministry of Finance, Planning and Economic Development (MFPED) and the Ministry Local Government MLG).

A standard questionnaire addressing the following broad areas based on the SIGMA indicators, shall be developed and approved as the basis for periodic inspections by DWD. This questionnaire shall be modelled using the standards of performance listed in the Third Schedule. The questionnaire must only be completed on site to ensure a physical inspection is carried out. The areas this inspection questionnaire shall cover are:

- a) Asset maintenance (inspection of maintenance schedules, general condition of assets, etc);
- b) Customer Service (length of time to address customer complaints, perceived price of services, pending applications etc.);
- c) Finance and Accounting (audit of escrow account, accuracy of invoices, maintenance of billing and other accounting records, bulk meter reconciliations, value for money audits);
- d) Water Quality (compliance with effluent discharge standards, water source protection).

Every inspection shall have high, medium and low rated recommendations, as well as an overall score attached to the Authority reviewed in three categories i.e. Good, Satisfactory and Poor. The inspections shall conclude with formal report back sessions to the water authorities inspected and the DWD (for those areas that require DWD action).

The table below illustrates the proposed KPI's, the definition of 'outstanding' and 'underperformance' and their relative weightings.

Key Performance Indicator	Outstanding	Baseline target	Under-performance	Weighting
Aggregate Score	2	1	0	
Annual Water Sales growth	20%	10%	0%	60%
Collection Efficiency	90%	85%	75%	25%
Technical inspection score	Good	Satisfactory	Poor	15%

The Regulation Unit at DWD shall assess the performance of the Authority on a quarterly basis and in case of any exceptional findings before the annual review, will call a special PCRC meeting for addressing the exceptional findings and agree on the recommendations. The recommended five step Performance Contract review and target setting process is as follows:

1	Bi-annual high level performance review	To be concluded within 60 days of half year end i.e. no later than 28 th Feb every year. WA's to submit results within 30 days and the PCRC/Independent Consultants to conclude the review within 30 days.
2	Interim full year performance review. Comprised of technical audit and field visits.	To be concluded within 60 days of financial year end i.e. no later than 30 th August every year. This is 'Interim' because the results of this review will only be signed off once confirmation is obtained from the audited financial statements, which audit should take no more than 120 days to be completed or the inspectors' feedback.
3	Full scope performance review. Confirmatory assessment based on audited financial statements	To be concluded within 30 working days of submission of audited financial statements or receipt of the independent assessors' feedback, i.e. no later than 30 th November every year the findings in step 2 should be validated and signed off.
4	Set annual performance targets based on the previous years' performance.	The proposed targets have been designed in such a way as not to require frequent revision. Recommendations for revision will be made only if peculiar circumstances pertaining to the Authority's operations require this e.g. if a significant part of the Authority's customers are government officials who pay on a quarterly basis which makes the 90% attainment target impossible to achieve.

SIXTH SCHEDULE

TERMS OF REFERENCE FOR THE WATER SUPPLY AND SEWERAGE AUTHORITIES AND THE WATER SUPPLY & SEWERAGE SERVICES BOARDS

The Water Supply & Sewerage Services Board (WSSB) is the supervisory body of each respective Authority and its roles and responsibilities shall support the Authority in fulfilling its mandate in attaining the objectives of the MWE.

1. Roles and Responsibilities of the WSSA:

- a) Sign the Performance Contract (PC) with the Ministry of Water and Environment (MWE) and the Management Contract (MC) with the Private Operator (PO).
- b) Establish the WSSB.
- c) Manage assets and provide services. This includes undertaking repairs & maintenance for assets that are not the responsibility of the PO under the Management Contract, extending facilities & services and developing assets as planned or directed by the Minister or the Director DWD.
- d) Develop annual work-plans & budget (annual update of the Business Plans) and obtain approval by the Council & the MWE for these.
- e) Approve progress against work-plans and budgets (annual Business Plans) & approve performance reports by the PO.
- f) Operate all assets created by the Authority/ PO and those provided by the MWE.
- g) Charge, collect and manage all revenues, based on the tariff approved by the Minister.
- h) Manage the finances for water and sanitation services for operation and maintenance as well as development of new assets in accordance with all applicable laws and regulations and maintain records of the Investment and Operating Escrow Accounts.
- i) Regularly inspect and allow for inspection of water supply systems by the MWE or its agents and other competent authorities / arms of government.
- j) Prepare and submit reports to the Council and the MWE.
- k) Comply with sector laws and regulations as well as Local Government Act and other applicable laws, such as the Public Health Act, and pass by-laws as needed.
- l) Create awareness and disseminate information on the water supply and sanitation services, train users in good sanitation and hygiene practices as well as efficient and beneficial use of water.

2. Roles and Responsibilities of the WSSB:

- a) Oversee the Authority's implementation of its Performance Contract with the MWE with respect to maintenance of assets, records and supervision of the PO.
- b) Ensure the provision of water supply and sanitation services in accordance with the terms under the Performance Contract.
- c) Negotiate the Business Plans prepared by the PO and submit these to the Authority/Council and then to the MWE for final approval.
- d) Receive and address customer complaints referred to it by the Authority or PO.
- e) Monitor water quality and quantity and regulate service provision by the PO.
- f) Ensure and arrange for annual audits and special audits as required.

- g) Monitor the Management Contract and if deemed necessary initiate its termination on account of poor performance and/or breach of management contract terms by the PO.
- h) Appropriate no more than 5% of the gross revenues of the Authority to the WSSBs Operating Escrow Account for the WSSBs expenses.
- i) Comply with every provision of the Local Governments Act, Cap. 243 relating to its operations.

3. WSSB Membership:

The WSSB shall comprise of the following 5 members, unless this number is amended in Annex (1) of this Performance Contract:

- a) The Town Clerk or the equivalent Administrative Head as prescribed by the Local Governments Act, Cap 243, will be the Secretary to the WSSB.
- b) The Chairperson of the appropriate committee of the Council responsible for water and sanitation services or, in the absence of such designation, any other nominated Councilor will be the Treasurer to the WSSB.
- c) Three other members drawn from the various categories of water users (domestic users, private sector, urban poor, institutional users) in the service area and who are of high moral character, integrity and with senior management experience in the public or private sector management (with preference given for experience within the water and sanitation sector)
- d) Members shall each serve for a renewable term of three years, with the exception of the Town Clerk or sub-county chief who is a permanent member by virtue of his/her office.
- e) In the composition of the WSSB due consideration shall give to gender balance amongst the membership and in accordance with the Water and Sanitation Sector Gender Strategy.

4. WSSB Structure:

The WSSB shall comprise:

- a) At its first meeting elect a chairperson, who shall not be a member of the Local Government Administration.
- b) Determine rules for conducting its business that are in addition to what is stipulated in this schedule.
- c) Convene quarterly to review the operations of the Authority and its sub-contractor and convene other meetings if and when required / deemed necessary by the WSSB.
- d) The secretary shall keep minutes of each meeting, documenting at least the members in attendance, the agenda for the meeting and all resolutions taken and/or actions points deferred to a later meeting.
- e) Be guided by the WSSB Terms of Reference (ToR) developed by DWD and amended from time to time, as outlined in the Sixth Schedule of the Performance Contract.

SEVENTH SCHEDULE

STANDARDS OF SERVICE AND RECORD KEEPING REQUIREMENTS

A. STANDARDS OF SERVICE

1. Quality of Treated Water:

- a) The Authority shall endeavor to obtain the water abstraction permit and keep it updated.
- b) The Authority shall treat all water supplied to consumers to the relevant standards as specified by the Uganda Drinking Water Quality Standards and shall ensure that the quality of water throughout the water supply system does not vary significantly from these standards.

2. Customer Service:

- a) Except as provided in paragraph (b), the Authority shall ensure that water is always (at least 14 hours per day) available at:
 - (i) Every standpipe;
 - (ii) The first cold water tap on all lands or premises connected to the water supply.
- b) The Authority may temporarily interrupt supplies referred to in paragraph (a) whenever:
 - (i) The Authority reasonably wishes to examine, alter, repair, maintain or construct works, and has advised consumers likely to be affected in advance of the date upon which, and times between which, the supply will be interrupted; or
 - (ii) There is, or is reasonably likely to be, a risk that would endanger human life or any part of the environment, or compromise the health or safety of any person, or the safety of any works of the Authority, or would prevent or disrupt the operation of a sewerage treatment plant.
- c) The Authority does not fail to comply with paragraph (a) whenever an interruption to supply occurs, except for cases of:
 - (i) The action of a third party;
 - (ii) Failure of the electricity supply at any of the Authority's head works, treatment works or pumping stations, where no stand-by generator is installed;
 - (iii) An act of God.

3. Maintenance and Repairs:

The Authority shall:

- a) Maintain (preventive and regular) and keep in good repair and working condition all assets owned by it, or under its management or control;
- b) Ensure that the water supply system operates effectively at all times;
- c) Take appropriate action within five hours of any failure in any part of the water supply system being discovered by it, or brought to its attention.

4. *Prevention of Pollution:*

The Authority shall not discharge or dispose of any matter for which a waste discharge permit is required under the Water Act or a pollution license under the National Environment Management Act except in accordance with such a permit or license.

Other standards of service will form the subject of the questionnaires to be completed by the authorized inspectors.

B. RECORD KEEPING REQUIREMENTS

The Authority shall maintain certain technical, administrative and financial records and make them available for inspection as set out below. The checklist / questionnaire to be completed, the results of which will determine the qualitative performance grade of the Authority, must, at a minimum, constitute of the following:

1. *Finance and Accounting records:*

The Authority shall ensure that:

- a) Proper records (including books of accounts) are kept at all times, that at a minimum, record water sales, network distribution map, water pressure, a maintenance schedule, a list of pending applications, a customer complaints register, a record of when complaints are reported and fully addressed, a complete asset register, a list of customers including dates of commencement, escrow account(s) bank statements, bulk meter reconciliations, operating expenses, and any other record deemed relevant for the smooth running of the water supply operation.
- b) Detailed records shall be kept indefinitely of all incoming and outgoing funds. The records shall be arranged to indicate the cost of individual activities including:
 - (i) Water abstraction costs at each source by calendar month
 - (ii) Water treatment costs at each works by calendar month
 - (iii) Water distribution costs by calendar month
 - (iv) Administration and overhead costs.
- c) The records are audited by an approved qualified and registered accounting firm or accountant,

2. *Technical Records:*

The Authority shall maintain a full set of constructed (as-built) drawings of all water source works, treatment works, pumping stations, pipelines, chambers, fittings and other buildings. The drawings shall include general arrangement drawings, hydraulic sections, process control and instrumentation diagrams and mass balance diagrams as appropriate. The record (as-built) drawings shall be kept up to date. Such records are for the benefit of the Authority in the event of maintenance, refurbishment and extensions and may be kept confidential as the Authority considers necessary.

The Authority shall maintain a set of plans and Schedules showing all works situated in land not owned by the Authority for public inspection.

The Authority shall also maintain an Asset Registry and its Management Plan when this is ready; in the meantime the information on the following appurtenances shall be maintained:

- a) Water Pipes: Location, diameter, class, type, invert and ground level, age;
- b) Chambers: Location, type, size, cover level, age;
- c) Sewers: Location, diameter, class, type, upstream and downstream manhole references and invert levels, age;
- d) Manholes: Unique reference number, location, incoming sewer diameter and invert levels, outgoing sewer diameter and invert level, cover level, age;

and details of all other appurtenances that are located outside the Authority's own land

3. Maintenance of records:

The Authority shall maintain administrative records for a minimum period as stated which shall include as a minimum:

- a) Indefinitely:
 - (i) The quantity of water extracted, treated, supplied and sold by calendar month;
 - (ii) The quantity of sewerage received and treated and all effluent quality data by month;
 - (iii) Details and cost of all capital works carried out either in house or contracted out;
 - (iv) Personnel including the salary and position of each employee;
 - (v) Details of connections to premises;
 - (vi) Details of all disconnections and reconnections.
- b) Five years:
 - (i) Consumption and billing by month;
 - (ii) All applications made to the Authority for water supply or sewerage connections and the action taken including all charges and dates;
 - (iii) All complaints received by the Authority and the action taken including dates and times;
 - (iv) Details of all persons who default on charges
 - (v) The quantities and purpose of all fuel, power, chemicals other materials and consumables used.