



REPUBLIC OF UGANDA

**XXXXXTOWN WATER SUPPLY  
AND SEWERAGE AUTHORITY**

**MANAGEMENT CONTRACT FOR  
XXXXXTOWN WATER SUPPLY SYSTEM**

Date:-----

This **MANAGEMENT CONTRACT** is made this.....day of ....., 200...

**BETWEEN**

1. **XXXX** Town Water Supply and Sewerage Authority (the “Authority”) of P.O. Box  
.....

and

2. ....(*Private Operator*).

**WHEREAS:**

- A. The Minister of Lands, Water and Environment (the “Minister”) has appointed the Authority to be a Water Supply and Sewerage Authority for the area specified in the First Schedule;
- B. The Minister has entered into a Performance Contract with the Authority pursuant to section 48 of the Water Act, Cap 152, 1997;
- C. clause 4.5 of the Performance Contract requires the Authority to sub-contract the services stipulated in the Performance Contract to, and enter into a Management Contract with, an independent operator;
- D. clause 4.10 of the Performance Contract holds the Authority liable for performance of any obligations sub-contracted by it and, therefore, the Authority is bound to ensure that the Operator complies with the standards set therein;
- E. The Operator understands and agrees to be bound, as an agent of the Authority, by the provisions stated in the Performance Contract and any amendments and variations thereto, which Performance Contract forms part of this Contract;
- F. The Authority has requested the Operator to undertake the management of water supply services within **XXXXXX** Town Water Supply Area (the “area” );
- G. The Operator, having represented to the Authority that it has the required managerial, technical, scientific, engineering and operational skills and competencies in respect of

water supply services, has agreed to provide an effective and efficient management service (the “Service”);

## **THE PARTIES AGREE AS FOLLOWS:**

### **1.0 INTERPRETATIONS**

1.1 In this Contract, unless the context otherwise requires:

- (a) **“Area”** means the area specified in the First Schedule;
- (b) **“Authority”** means ~~XXXXXX~~ Town Water Supply and Sewerage Authority, its Water Supply and Sewerage Board duly constituted under the terms of the Performance Contract, or any of their authorised representatives;
- (c) **“Commencement Date”** means the date stated by the Authority in the Letter of Acceptance or other subsequent written notice from the Authority to the Operator; provided always that the Commencement Date shall occur:
  - (i) not less than fourteen (14) days following the date of receipt by the Operator of the Letter of Acceptance; and
  - (ii) on or before the first day of the second calendar month following that calendar month in which the Letter of Acceptance is received by the Operator;
- (d) **“Escrow Account”** means a special custodial account service provided by a bank providing only for certain restricted payments against the account either on presentation of specified documentation or otherwise;
- (e) **“Generally Accepted Accounting Principles”** means the Generally Accepted Accounting Principles prescribed by the Institute of Certified Public Accountants of Uganda;
- (f) **“Letter of Acceptance”** means the written communication by the Authority to the Operator recording the acceptance by the Authority of the Operator’s Proposal;
- (g) **“National Environment Management Authority”** means the National Environment Management Authority established by section 5 of the National Environment Management Statute, 1995;

- (h) **“Operator”** means the bidding firm or joint venture that submitted the Proposal or its authorised representative, and the person or persons that signed the Commitment Letter in the Proposal;
- (i) **“Pollution license”** means a pollution license granted under section 59 of the National Environment Management Statute, 1995;
- (j) **“Proposal”** means the proposal submitted by the Operator in response to the Request for Proposal drafted by the Directorate of Water Development that resulted in this Contract;
- (k) **“Regulations”** means (i) in the case of a Water Authority, the Water Supply Regulations, 1999; (ii) in the case of a Sewerage Authority the Sewerage Regulations, 1995; and (iii) in the case of a Water and Sewerage Authority, both of the above Regulations;
- (l) **“Act”** means the Water Act, Cap 152, 1997;
- (m) **“Sub-County Council”** means the administrative head of a Sub-County Council within the meaning of the Local Governments Act 1997;
- (n) **“Water Supply and Sewerage Board”** means a Water Supply and Sewerage Board constituted under clause 4.3 of the Performance Contract.

1.2 In this Contract, unless the context otherwise requires:

- (a) words and phrases bear the same meaning as in Parts I and III of the Act;
- (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 unless otherwise stated;
- (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.

1.3.1 In interpreting this Contract, a construction of words that would promote the purpose or object underlying the Contract must be preferred to a construction that would not promote that purpose or object.

1.4 This Contract shall be interpreted in accordance with the laws of the Republic of Uganda.

## **2.0 THE CONTRACT DOCUMENTS**

The Contract documents shall consist of:

- (a) This Management Contract document;
- (b) Letter of Acceptance;
- (c) Minutes of Negotiation Meetings;
- (d) The Act;
- (e) The Performance Contract;
- (f) The Proposal and its qualification data;
- (g) Notices, schedules and other correspondence issued under the provisions of this Contract.

## **3.0 COMMENCEMENT OF CONTRACT**

This Contract shall come into effect on the Commencement Date as defined in sub-clause 1.1 (c).

## **4.0 DURATION OF THIS AGREEMENT**

This agreement shall come into effect on the Commencement Date and shall continue in force for a period of 3 years ending on the third anniversary of the Commencement Date. This agreement shall be subject to a review after every 12 months from the Commencement Date.

**5.0 NOTICE UNDER THIS AGREEMENT**

5.1 Any notice, instruction, direction, request or permission to be given or made under this Contract shall be in writing and signed by:

**For the Authority:**

A member of the Water Supply and Sewerage Board authorised by and acting on behalf of the Water Supply and Sewerage Board;

**For the Operator:**

The Operator or any person authorised by and acting on behalf of the Operator.

Such authorisations shall become Contract Documents in accordance with clause 2.0 (g).

5.2 Such notice, instruction, request or permission under sub-clause 5.1 shall be deemed to be duly given or made when it shall have been delivered by hand or mail at the address of the party concerned as specified below:

**For the Authority:**

XXXXXX Town Water Supply and Sewerage Authority  
P.O Box-----, XXXXXX Town

**For the Operator:**

M/s. ....  
P.O. Box .....

## **6.0 ASSIGNMENT OF THE CONTRACT**

- 6.1 The Operator shall not assign the Contract or any part thereof, or any benefit or interest therein or thereunder, without the written consent of the Authority, which consent shall not be unreasonably withheld.
- 6.2 The Authority shall, by notice to the Operator given at least 30 days in advance, be entitled to assign its rights and obligations, in whole or part, to any other person, as defined in sub-clause 1.2 (d), which may become responsible for the water supply in the area in accordance with the Act. Any such assignment by the Authority shall become effective on the thirtieth (30<sup>th</sup>) calendar day following the said notice or on such later date as may be specified in the notice.
- 6.3 No such assignment by the Authority in accordance with sub-clause 6.2 shall in any way invalidate the Contract in whole or in part, nor relieve the Authority of any of its obligations hereunder.
- 6.4 Notwithstanding anything to the contrary as may be stated in or reasonably inferred from the Contract, the Operator shall not be entitled to any payments or compensation, either by the Authority or by any assignee of the Authority consequent either directly or indirectly on the exercise by the Authority of its rights in accordance with sub-clause 6.2.

## **7.0 APPOINTMENT AND RESPONSIBILITY OF THE OPERATOR**

- 7.1 The Authority hereby appoints the Operator to be the sole and exclusive manager of the piped water supply system in the area for the duration of this Agreement.
- 7.2 The Operator shall, in such manner and at such times as they shall in their absolute discretion see fit, use all their skills and knowledge to manage, administer, conduct, maintain and develop the piped water supply system in the area efficiently, in the best interests of the Authority, in a professional manner and, in particular but

without prejudice to the generality of the foregoing, shall carry out the duties and obligations and have the rights set forth in this Contract.

- 7.3 The Operator shall also be responsible for the efficient implementation of any development plan, which has now or may hereafter be agreed between the Authority and the Operator.

## ***DUTIES, OBLIGATIONS AND RIGHTS OF THE OPERATOR***

Without detracting from any duties, obligations and rights imposed on or conferred upon (whether expressly or by implication) the Operator by this Contract or implied by law or commercial custom on managers of a business similar to the Service, it shall be the duty, obligation or right of the Operator:

### **8.0 TO SAFEGUARD, USE, MANAGE AND CONTROL ASSETS**

- 8.1 The Authority reserves the rights in the assets comprising the system in sub-clause 7.1 as set out in the Third Schedules to this Management Contract.
- 8.2 The Operator shall have access to, the right to use, and the duty to safeguard, manage and control the assets referred to in sub-clause 8.1, for the purpose of discharging its duties and obligations or exercising its rights under this Contract, for the term of this Contract.
- 8.3 The Operator shall maintain in good working condition, throughout the term of this Contract, the assets referred to in sub-clause 8.1 and shall ensure that adequate control is maintained over assets owned by, or in the custody of the Operator.
- 8.4 The Operator shall not dispose of or create any interest in the assets referred to in sub-clause 8.1, except on the express written instruction of the Authority.

8.5 The Operator shall comply with any directions of the Authority to use or dispose of any asset or any money or other consideration to which the Authority becomes entitled as a result of disposing of any asset referred to in sub-clause 8.1.

8.6 The Operator shall jointly with the Sub-County Council Chief or, for areas below Sub-County Council Council status, the equivalent administrative head, control the Escrow Account of the Authority as set out in sub-clause 12.2 of the Performance Contract.

8.7 The Operator shall deposit all monies collected under clause 11 into the Escrow Account as set out in sub-clause 12.2 of the Performance Contract

## **9.0 PROVIDE OPERATIONS AND MAINTENANCE SERVICES**

9.1 The Operator shall discharge all the duties and obligations of a water supply service provider within the area for the term of this Contract.

9.2 In discharging the duties and obligations referred to in sub-clause 9.1, the Operator shall:

(a) Exercise due diligence, efficiency and economy in accordance with generally accepted professional conduct and practice, and shall employ sound management practices and appropriate technology in the best interests of the Authority;

(b) Employ key personnel of at least the same skills and qualifications as identified in the Operator's proposal or of such other skills and qualifications as the Authority may agree to in writing ;

(c) Acquire, provide, manage and utilize all assets, resources, facilities, staff and technologies necessary to the provision of the service in the area;

(d) Comply with:

- (1) Any code of workmanship prescribed by the Minister under section 70 of the Act.
- (2) The service standards specified or referred to in the Fourth Schedule to this Management Contract.
- (3) Every provision of all laws relating to the duties and obligations referred to in sub-clause 9.1, to occupational health safety of employees, to the environment, to the collection and payment of taxes and to any other matter whatsoever.
- (4) The terms of any water or waste discharge permit granted to the Authority.
- (5) Any notice, instruction or direction issued in accordance with clause 5 and clause 21.

Failure by the Operator to comply with any of the foregoing provisions shall amount to a breach of this Contract subject to clause 24 at the discretion of the Authority.

- (e) Raise, collect, remit and pay all taxes, rates, charges, fees, and penalties and provide all returns, files and documents required of it under applicable tax laws or other laws and discharge all obligations imposed on it by such laws.

9.3 In discharging the duties and obligations referred to in sub-clause 9.1, the Operator may sub-contract any part of such duties to an independent Operator with the express approval of the Authority. The Operator shall provide the Authority with such information about the proposed sub-contractors as the Authority may require and shall execute a contract approved by the Authority.

9.4 The Operator shall remain liable under the Contract for the discharge of any duties and obligations sub-contracted under sub-clause 9.3.

## **10.0 TO MANAGE REPAIRS AND EXTENSIONS TO THE SYSTEM**

10.1 The Operator shall be responsible for managing all repairs or replacements to the system including damage to the system from any cause whatsoever. The Operator

shall also be responsible for initiating and managing extensions to the distribution system.

- 10.2 In the event of repairs or replacements under sub-clause 10.1 the Operator shall notify the Authority immediately in writing explaining the circumstances or events that have arisen, the recommended repairs and/or replacements, the cost estimates and the necessary financing for materials, parts and labor.
- 10.3 In the event of extensions under sub-clause 10.1 the Operator shall submit a plan showing the objectives of the extensions, the design drawings, specifications and costs of materials and parts, and nature and cost of labor required.
- 10.4 Upon receiving satisfactory information as set out in sub-clause 10.2, the Authority shall notify the Operator of its approval and the Operator shall, from its own funds, acquire the approved materials, parts and labor and shall carry out the said repairs and/or replacements expeditiously. The Operator shall subsequently claim from and be paid by the Authority for the approved materials, parts and labor expended in carrying out the repairs and/or replacements.
- 10.5 Clause 5 notwithstanding, if the Operator does not receive notice of approval from the Authority under sub-clause 10.4 within 7 days from the date of the Operator's notice under sub-clause 10.2, the Operator shall proceed to act as set out in sub-clause 10.4 as if the approval notice under that sub-clause had been received and shall claim for payment as set out therein.
- 10.6 Upon receiving satisfactory information as set out in sub-clauses 10.3, the Authority shall make an advance payment to the Operator for materials and parts and the Operator shall carry out the approved extensions. The Operator shall subsequently claim from and be paid by the Authority for the labor provided by the Operator in carrying out the extensions.
- 10.7 Any payment due to the Operator under sub-clauses 10.4 and 10.6 shall be governed by a procedure identical to that specified under clause 12.

## **11.0 TO CHARGE AND COLLECT FOR SERVICES PROVIDED**

The Operator shall charge and collect tariffs, fees, rates and charges for services provided under clause 9 in accordance with a schedule published by the Authority under sub-clause 18.3 and in accordance with the Authority's business plan referred to in sub-clauses 11.3 (d) and 11.7 (c) of the Performance Contract.

## **12.0 TO RECEIVE A MANAGEMENT FEE**

- 12.1 In consideration for discharging the duties and obligations referred to in clause 9, the Operator shall be entitled to receive a Management Fee from the Authority on the basis set out in the Second Schedule and in the manner set out in this clause.
- 12.2 Where the Operator fails to fulfill the continuity of service standards set forth in the Fourth Schedule to this Management Contract, for reasons other than those outside its control, the Operator shall, at the discretion of the Authority, forfeit a portion of the Base Fee specified in the Second Schedule. The portion of the Base Fee forfeited under this sub-clause shall be calculated pro-rata on the basis of the number of hours of discontinued service as a proportion of the total hours of service expected for that month.
- 12.3 Where the Operator fails to provide the Authority with a business plan in accordance with clause 14 or to report to the Authority in accordance with clause 15, the Authority shall, at its discretion, withhold payment of the Base Fee specified in the Second Schedule until such provisions are met.
- 12.4 The Operator shall compute the monthly Management Fee due under sub-clause 12.1 and shall submit an invoice for the appropriate Management Fee to the Authority by the 15<sup>th</sup> day of every month in respect of the Management Fee for the previous calendar month. The invoice shall show the detailed computation of the Management Fee and shall be in a format and have content acceptable to the Authority.

12.5 The Operator shall have a right to settlement of the invoice referred to in sub-clause 12.4 by the Authority within 30 days from the receipt of such invoice by the Authority provided that:

- (a) The Operator shall have provided all explanations, corrections and information requested by the Authority regarding the invoice within 3 working days of receiving them; and
- (b) Any requests by the Authority for explanations, corrections and information shall have been made at least 3 working days prior to the expiry of the period under this sub-clause.

12.6 Where the Authority fails to settle the amount due to the Operator in accordance with sub-clause 12.5, the Operator shall be entitled to interest earned on the invoice balance from the first day after the expiry of the period under sub-clause 12.5 to the date the Operator receives payment. Such interest shall be due and payable together with the outstanding invoice balance.

12.7 The provisions of sub-clause 12.6 shall apply for a maximum of 30 days following which continued non-settlement of the Operator's invoice by the Authority shall amount to a breach of this Contract subject to clause 24. Nothing under this sub-clause shall preclude the Operator from seeking other remedies available under applicable laws.

12.8 Any interest due under sub-clause 12.6 shall be at a rate equivalent to the prevailing rate charged to preferred customers (also known as the prime rate) of the bank where the Escrow Account of the Authority is located.

### **13.0 TO MAINTAIN AND KEEP RECORDS**

13.1 The Operator shall keep proper and adequate accounts and records of the transactions and affairs of the water supply and shall keep records that are necessary to explain the financial operations and financial position of the system.

- 13.2 The accounting period of the Operator shall coincide with the accounting period of the Authority.
- 13.3 The Operator shall develop and maintain an adequate budgeting and accounting system.
- 13.4 The Operator shall develop and maintain an adequate internal accounting control system.
- 13.5 Without detracting from sub-clause 13.1, the Operator shall keep the records referred to in the Fifth Schedule of this Management Contract and shall retain those records for the period prescribed in the Schedule.
- 13.6 Except as provided in sub-clauses 13.8 and clause 16, all records are confidential to the Operator and the Authority.
- 13.7 Any customer or former customer of the Operator may apply to the Operator for a copy of all records held by the Operator concerning that customer, in such a form as may be prescribed by the Authority.
- 13.8 The Operator shall provide a customer or former customer under sub-clause 13.7 with a copy of the relevant records, but may impose a reasonable charge to cover the costs to the Operator of making the copy available in accordance with clause 11.

**14.0 TO PREPARE AND SUBMIT BUSINESS PLANS**

- 14.1 The Operator shall, within one month of the Commencement Date, prepare and submit to the Authority a three-year business plan.
- 14.2 The business plan under sub-clause 14.1 shall be reviewed, updated and submitted to the Authority on an annual basis or as directed by the Authority.
- 14.3 Failure to submit a business plan in accordance with the provisions of this clause shall amount to a breach of this Contract subject to clause 24 at the discretion of the

Authority and shall result in withholding of the Management Fee in accordance with sub-clause 12.3.

- 14.4 A business plan shall be in a form approved by the Authority and shall include:
- (a) The objectives of the plan;
  - (b) The overall strategies and policies that the Operator is to follow to achieve the objectives in 14.4 (a);
  - (c) The services that the Operator plans to provide and the standards that are planned to be maintained in providing those services;
  - (d) Performance indicators and targets, both financial and operational;
  - (e) Financial matters as set out in sub-clause 14.6;
  - (f) Other information that the Operator may consider appropriate or that may be specified by the Authority.
- 14.5 A business plan shall be consistent with any National Water Action Plan established under Section 17 of the Act and with all provisions of the Performance Contract.
- 14.6 A business plan shall state, in relation to financial matters:
- (a) The financial target of the provider;
  - (b) The overall financial strategies including proposed tariffs, rates, fees and charges, investment and borrowing as well as proposed disposal of assets;
  - (c) A forecast of revenue and expenditure, including a forecast of capital expenditure and borrowing; and
  - (d) Other financial information as the Operator may consider appropriate or as is specified by the Authority.
- 14.7 Submission of a business plan to the Authority under this clause shall in no way detract from the Operator's duties, obligations and rights under this Contract. A business plan shall not be binding on the Authority and shall only be for the convenience of the Authority in planning, managing and developing the Service in the area.

14.8 If the Operator is of the opinion that matters have arisen that may prevent, or significantly affect the achievement of business plan objectives and targets, the Operator shall immediately notify the Authority of its opinion and the reasons thereof.

## **15.0 TO REPORT TO THE AUTHORITY**

15.1 The Operator shall, in respect of each quarter of a financial year and no later than 30 days after the end of such quarter, prepare a report to the Authority containing:

- (a) Information about, and an analysis of, its operations for the quarter and cumulatively for the year to date; and
- (b) Financial statements in accordance with Generally Accepted Accounting Principles for the quarter and cumulatively for the year to date.

15.2 The report referred to under sub-clause 15.1 shall:

- (a) Be prepared in a form acceptable to the Authority;
- (b) Contain the information specified in the Fifth Schedule of this Management Contract and any other information determined by the Operator to be appropriate; and
- (c) Contain any other information required by the Authority.

15.3 The financial statements referred to under sub-clause 15.1 (b) shall:

- (a) Contain information determined by the Authority to be appropriate;
- (b) Include an assessment of:
  - (1) The cost of carrying out the Authority's community service obligations under the Act;
  - (2) The cost of carrying out any other obligation that is imposed on the Operator under this Contract or the Act and that requires the Operator to act otherwise than in accordance with normal commercial practice;
- (c) Be prepared in a manner and form approved by the Authority; and

(d) Present fairly the results of the financial transactions of the Operator during the financial period to which they relate and the financial position of the Operator as at the end of that period.

15.4 The Operator shall, in respect of each calendar month, and no later than 5 days after the end of such month, prepare a report to the Authority containing:

- (a) The billings for the month showing distinctly the net billings, Value Added Tax, and gross billings;
- (b) Collections for the month showing distinctly the net billings, Value Added Tax and gross billings collected;
- (c) The Value Added Tax due from and payable by the Authority on account of the billings and collections for the month.

15.5 The Authority may require and the Operator, when notified, is obliged to appear in meetings of the Authority convened to discuss the affairs of the Authority. The Authority may request the Operator to make such presentations, reports, demonstrations or take such actions as the Authority may deem necessary with reasonable prior notice.

15.6 Failure of the Operator to comply with the provisions of this clause shall amount to a breach of this Contract subject to clause 24 at the discretion of the Authority, and shall result in withholding of the Management Fee in accordance with sub-clause 12.3.

## **16.0 TO ALLOW INSPECTION**

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

- (a) Any land owned or occupied by the Authority;
- (b) Any assets referred to in the Second or Third Schedule to the Performance Contract and any other assets renewed, acquired or constructed by the Authority;
- (c) Any assets owned by the Operator;

- (d) Inspect any land, works, buildings or any other assets;
- (e) Make any tests, take any measurements or take any samples;
- (f) Take any photographs or make any plans or drawings; and
- (g) Inspect and, if necessary, make any copies of any records or documents referred to in clause 13 in order to ascertain whether the Operator is complying in every respect with this Contract, the Performance Contract and the Act and to satisfy audit requirements under clause 15 of the Performance Contract.

#### **17.0 TO BE INDEMNIFIED**

Provided that the Operator, their servants and employees shall use diligence and care in carrying out their duties hereunder, neither they nor any of their servants and employees shall be liable for any damage to persons or property arising out of any information, advice or service supplied to the Authority or act performed for the Authority or otherwise in the course of their duties hereunder. The Authority shall indemnify the Operator and every such person against all claims, demands, losses, liabilities, actions, lawsuits, costs and expenses arising directly or indirectly out of or in consequence thereof or in the implementation of this Contract.

### ***DUTIES, RIGHTS AND OBLIGATIONS OF THE AUTHORITY***

Without detracting from any duties, obligations and rights imposed on or conferred upon (whether expressly or by implication) the Authority by this Contract or implied by law or commercial custom on persons similar to the Authority, it shall be the duty, obligation or right of the Authority:

#### **18.0 TO SET TARIFFS, FEES, RATES AND CHARGES**

- 18.1 The Authority shall have the right to set the tariffs, fees, rates and charges to be charged and collected by the Operator under clause 11, subject to the provisions of the Performance Contract.

18.2 In exercising its rights under sub-clause 18.1, the Authority shall give due consideration to any proposals submitted by the Operator in its business plans and seek any necessary explanations, advice and information from the Operator.

18.3 In exercising its rights under sub-clause 18.1, the Authority shall, from time to time, publish a schedule of approved tariffs, fees, rates and charges and related instructions and shall furnish the Operator with such schedule.

#### **19.0 TO PAY A MANAGEMENT FEE**

19.1 The Authority shall have the obligation to pay to the Operator a Management Fee duly computed and demanded by the Operator under clause 12.

19.2 The Authority shall have the right to inspect the operations of the Operator as set out in clause 16 to obtain such information as it requires to ascertain the Management Fee payable under sub-clause 19.1.

19.3 The Authority shall remit to the Operator the amount demanded by the Operator and certified by the Authority in accordance with clause 12.

#### **20.0 TO AUDIT ACCOUNTS**

20.1 The Authority shall have the right to appoint an auditor to examine the accounts, books and records of the Operator and to take such other actions as are necessary for the Authority to comply with clause 15 of the Performance Contract.

20.2 The Authority shall pay the costs of any auditor engaged under sub-clause 20.1

#### **21.0 NOT TO INTERFERE WITH OPERATIONS**

The provisions in this Contract notwithstanding, the Authority shall not interfere with the day-to-day operations of the Operator. In particular, the Authority shall not:

- (a) Issue instructions to the Operator regarding operational decisions or actions except by way of the Authority's approved business plan or amended business plan in accordance with the provisions of the Performance Contract or by way of a schedule issued under clause 18;
- (b) Issue instructions to an Operator or attempt to influence an Operator's decision regarding the connection of a customer to the water supply system;
- (c) Issue instructions to the Operator or attempt to influence an Operator's decision regarding a disconnection made by the Operator or any lawful action taken by the Operator regarding non-payment by a customer;
- (d) Withhold payments due to the Operator on account of the Operator refusing or failing to comply with instructions issued in contravention of this clause;
- (e) Contravention of this clause by the Authority shall constitute a breach of this Contract subject to termination of the Contract under clause 24.

## ***MISCELLANEOUS PROVISIONS***

### **22.0 WAIVER**

22.1 A failure, delay or indulgence on the part of either party in exercising any power or right under this Contract does not waive that power or right.

22.2 Any single exercise of a power or right under this Contract does not preclude any other or further exercise of it or the exercise of any other power or right under this Contract.

### **23.0 AMENDMENT OR VARIATION**

This Contract may be amended or supplemented, at any time, in writing signed by both parties.

## 24.0 TERMINATION

24.1 This Contract shall be terminated by the Authority:

- (a) At the expiration of the period specified under clause 4;
- (b) By notice given to the Operator in accordance with clause 5, given at least 90 days before the date on which the Contract is intended to be terminated;
- (c) Forthwith and without notice, upon the Operator having an order made against them or passing a resolution for their winding-up or having a receiver appointed over all or a substantial part of their assets; or
- (d) After 14 days of continued failure of the Operator to comply with a written notice concerning any provisions of this Contract or to perform to the standards required under this Contract.

24.2 This Contract shall be terminated by the Operator:

- (a) At the expiration of the period specified under clause 4;
- (b) By notice given to the Authority in accordance with clause 5, given at least 90 days before the date on which the Contract is intended to be terminated;
- (c) 14 days after failure of the Authority to pay the Operator its due Fee or part thereof in accordance with sub-clause 12.7; or
- (d) 14 days after failure of the Authority to comply with a written notice concerning any provision of clause 21.

24.3 Upon termination of this Contract under sub-clause 24.1 (b) and 24.2 (b), the terminating party shall pay to the other party and the other party shall be entitled to receive compensation from the terminating party. The Compensation shall amount to the average monthly Management Fee paid to the Operator calculated over the cumulative period from the Commencement Date to the month in which the Contract terminates but excluding the month in which the Contract terminates, multiplied by 6 or the number of whole months remaining to the expiry of the Contract under clause 4, whichever is less.

24.4 Any compensation due under sub-clause 24.3 shall be remitted to the party entitled to receive such compensation no later than 90 days after the date on which the Contract terminates.

**25.0 ARBITRATION**

Any dispute arising between the parties in connection with this Contract shall be submitted to an arbitrator to be appointed by agreement between the parties or, failing such agreement, by the Director, within 30 days after one party first serves notice on the other of such dispute. Any such arbitration proceedings shall be conducted in accordance with and subject to the provisions of the Arbitration Act (Chapter 49).

EXECUTED as a Contract this .....day of .....2006  
IN WITNESS WHEREOF the Authority and the Operator have caused their  
Common Seals to be hereunto affixed.

SEALED with the Common Seal of the  
Said **XXXXXX** **Town Water and Sewerage Authority**

In the presence of:

SEALED with the Common Seal  
Of the said Operator, **M/s.** .....

In presence of:

**FIRST SCHEDULE**

**AREA OF AUTHORITY**

*Map and description of the area for which the authority is responsible*

## **SECOND SCHEDULE**

### **THE MANAGEMENT FEE**

#### **Principle**

The Management Fee is an agreed percentage of the revenue collected by the Operator and payable to the Operator by the Authority out of the Joint Account as outlined below. The Management Fee cannot exceed the amount thus calculated, and it is the sole responsibility of the Operator to make his own financial arrangements for the operation and maintenance of the Utility.

#### **Calculation**

The Operator shall compute the monthly Management Fee due under sub-clause 12.1 and shall submit an invoice for the appropriate Management Fee to the Authority by the 15th day of every month in respect of the Management Fee for the previous calendar month, in the following called "the Period".

The invoice shall show the detailed computation of the Management Fee and shall be in a format and have content acceptable to the Authority.

The Management Fee shall be calculated as a percentage of the money collected from customers during the Period.

The percentage to be applied is:

<b>Year</b>	<b>Percentages</b>
One	
Two	
Three	

#### **Documentation**

The Operator shall attach the following documentation to each monthly invoice:

Certified list of collections during the period showing for each collection:

- ⇒ Receipt number and date.
- ⇒ Number of the bill to which the collection refers.
- ⇒ Amount.
- ⇒ Customer reference number.
- ⇒ Total of all receipts of the Period.

**Payment**

The Authority shall pay to the Operator a Management Fee duly computed and demanded by the Operator under clause 12.

The Authority shall have the right to inspect the operations of the Operator as set out in clause 16 to obtain such information as it requires to ascertain the Management Fee payable under sub-clause 19.1.

The Authority shall remit to the Operator the amount demanded by the Operator and certified by the Authority, out of the Joint Account.

## **THIRD SCHEDULE**

### **ASSETS MANAGED AND CONTROLLED BY THE AUTHORITY**

#### **1. PUMPS**

1No. submersible pumps of .....(Example - 7m<sup>3</sup>/hr)

#### **2. TRANSMISSION SYSTEM**

(Example - 3.144km PVC of OD 75mm)

#### **3. STORAGE RESERVOIRS**

(Example - 60 m<sup>3</sup> round tank on concrete dwarf walls)

#### **4. DISTRIBUTION SYSTEM**

(Example - 11.3km)

## **FOURTH SCHEDULE**

### **STANDARDS OF SERVICE**

#### **1. TECHNICAL REQUIREMENTS**

##### **1.1 Availability of Supply**

The Operator shall ensure that:

- (a) Compulsory water restrictions are not imposed on consumers more than once in every 2 years; and
- (b) Major campaigns to achieve voluntary savings in consumption are not required more than once in every 5 years.

##### **1.2 Service Coverage**

- (a) Within 12 months of the date of this Contract, the Operator shall ensure that the number of people not connected to the Water Supply and living more than 250 metres from the nearest standpipe is reduced by 20% and by 20% for each successive year until the entire population in the Area lives no more than 250 metres from the nearest standpipe, provided that the Authority would have provided the materials and other resources required to achieve this.

##### **1.3 Quality of Treated Water**

- (a) The Operator shall treat all water supplied to consumers to the relevant standards specified by Directorate of Water Development/National Environment Management Authority;
- (b) The Operator shall ensure that the quality of water throughout the water supply system does not vary significantly from the standard specified in paragraph (a).

##### **1.4 Pressure of Water Supplies**

The Operator shall ensure that:

- (a) The pressure in the water supply system is always sufficient to prevent back-siphoning or infiltration of water into the system;
- (b) There is never more than 10 m in head of pressure at the boundary stop-cock on the consumer's side of a meter;
- (c) There is never less than:
  - (i) 10 metres head of pressure;

- (ii) A flow of 9 litres per minute at the boundary stop-cock on the supplier's side of a meter.

## 1.5 **Continuity of Service**

- (a) Except as provided in paragraph (b), the Operator shall ensure that water is always available at:

- (i) Every standpipe;
- (ii) The first cold water tap on all lands or premises connected to the water supply.

24 hours per day for all 7 days of the week.

- (b) The Operator may temporarily interrupt supplies referred to in paragraph (a) whenever -

- (i) The Operator 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 Operator does not fail to comply with paragraph (a) whenever an interruption to supply occurs, because of:

- (i) The action of a third party;
- (ii) Failure of the electricity supply at any of the Operator's head works, treatment works or pumping stations, where no stand-by generator is installed; or
- (iii) An act of God.

## 1.6 **Maintenance and Repairs**

The Operator shall:

- (a) Maintain and keep in good repair and working condition all assets owned by the Authority, or under its management or control;
- (b) Ensure that the water supply system operates effectively at all times; and

- (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.

1.7 **Prevention of Pollution**

- (a) The Operator shall not discharge or dispose of any matter for which a waste discharge permit is required under the Act, or a pollution license under the **National Environment Management Statute 1995**, except in accordance with such a permit or license.

2. **CUSTOMER SERVICES**

- 2.1 The Operator shall comply with the performance standards set out in the following table:-

<b>Indicator</b>	<b>Minimum Performance</b>
Percentage of billing enquiries acknowledged within 7 working days	90%
Percentage of billing enquiries dealt with within 14 working days	90%
Percentage of complaints acknowledged within 7 days	90%
Percentage of complaints dealt within 14 days	90%

## **FIFTH SCHEDULE**

### **REPORTING FORMAT**

The Operator shall prepare a report for submission to the Authority and to be made available to the Director and the public summarizing the year's activities. The report will comprise the following sections and information:

#### **I Service Coverage**

The section will present

- (a) The percentage of the population in the Area with either a direct service connection or within 250 metres of a stand pipe.
- (b) The number of new water supply connections made during the period.
- (c) The number of disconnections and reconnections
- (d) The total number of water supply connections

#### **II Water Consumption**

This section will present

- (a) The total amount of water (in m<sup>3</sup>) extracted, treated, supplied and sold;
- (b) The average amount of water (in m<sup>3</sup>) sold per connection per month

#### **III Unaccounted for Water**

This section will present information on Unaccounted for Water computed

- (a) As the difference between water supplied and water sold expressed as a percentage of net water supplied;
- (b) As the volume of water lost per kilometer of water distribution network.

#### **IV Metering**

This section will present information on the proportion of connections that are metered computed as the total number of connections with a meter/total number of connections expressed as a percentage.

## **V Cost of Operations**

This section will present information on the costs of operation showing:

(a) Unit Operational Cost computed in Shillings per m<sup>3</sup> as total period operating costs divided by volume of water (in m<sup>3</sup>) for the period.

(b) Staff per 1000 connections computed as

$$\begin{array}{r} \text{Total Number of Staff} \quad \quad \quad \times \quad \quad \quad 1,000 \\ \hline \end{array}$$

Total Number of Connections

## **VI Quality of Service**

This section will present information on continuity of service expressed as the Average Hours of water supply per day for the period.

## **VII Pricing and Revenue Collection**

This section will present information on

(a) The average tariff in Shillings per m<sup>3</sup>

(b) The connection charge in Shillings per connection

(c) The collection period for accounts receivable expressed in months

## **VIII Investments**

This section will present a summary of the capital works carried out and the investment involved for the period.

## **IX Financial Performance**

This section will present

(a) A summary balance sheet prepared in accordance with Generally Accepted Accounting Principles.

(b) A summary income statement prepared in accordance with Generally Accepted Accounting Principles.