

Annex 3: Sample BOT/Concession Agreement for Constructing and Operating the Whole Small Scale Scheme

(for a completely new scheme or expanding existing scheme)

Note: In this example, the developer takes revenue risk. This template could be adapted to have authority taking revenue risk and paying developer a fee.

DATED

BUILD OPERATE TRANSFER (BOT) AGREEMENT FOR [] SMALL SCALE WATER PROJECT

Between

[AUTHORITY]

And

[OPERATOR]

[Prepared as a sample. Lenders may want to be a party to this agreement and have certain rights under the agreement]

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BUILD OPERATE TRANSFER (BOT) AGREEMENT

THIS AGREEMENT (hereinafter referred to as the “Agreement”) is made the day of

BETWEEN:

[CONTRACTING AUTHORITY] (the “Authority”) a corporate entity established under the Laws of [COUNTRY] and with a mandate under the [WATER LAW] to provide potable water services to the [COMMUNITY], whose address is []; AND

(2) [OPERATOR] (the “Operator”) a limited liability company incorporated in whose address is [ADDRESS AND COUNTRY].

The Authority and the Operator being called individually as “Party” and collectively as the “Parties.”

WHEREAS:-

The Authority is the owner and developer of water sources under a permit granted by [RELEVANT AGENCY];
 The Authority is mandated to undertake water supply infrastructure development and supply water services to [TOWN].
 the Authority wishes to contract with the Operator to design, build, operate and finance the scheme and then transfer it to the Authority at the end of the scheme.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In addition to the terms defined elsewhere in this Agreement, whenever used in this Agreement (including Schedules hereto), unless the context otherwise requires, the following terms shall have the following meanings:

“Abstraction Permits” means the permits issued by [RELEVANT AGENCY] to the Authority to develop the Water Source and to abstract water therefrom.

“Agreement Period” has the meaning assigned to it in Section 2.2.

“Applicable Law” means laws and any other legal instruments having the force of law in [COUNTRY] and includes any applicable statute, ordinance, decree, regulation or by-law or any rule, circular, directive or any licence, consent, permit, authorization, concession or other approval issued by any Government authority which has appropriate jurisdiction.

“Certificate of Effectiveness” means the certificate to be issued by the Authority certifying the satisfaction of all conditions precedent to this Agreement.

“Construction Period” has the meaning assigned to it in Section 2.2.

“[Currency]” means the lawful currency of [COUNTRY].

“Customer” means any person or legal entity within the Service Area who has signed a Customer Agreement with the Operator for receipt of Services.¹

“Customer Agreement” means an agreement in the form of the Model Customer Agreement entered into between the Operator and a Customer.

“Effective Date” means the date determined in accordance with Section 2.1.

“Eligible Payments” means payments to regulatory authorities including the Regulatory Fees, other statutory fees and the Operator Fees payable in accordance with this Agreement.²

“Existing Facilities” means the Water Resource and other facilities, whether immovable or movable, equipment, supplies and other property, owned or used by the Authority on the date of signature of this Agreement in connection with developing a potable water supply for the Service Area.

“Expiry Date” means the last day of the Operating Period as specified in section 2.2.

[“Environmental Impact Assessment” means an assessment of the environmental and social impact of the Project;]

“Facilities” means Existing Facilities and New Facilities.

“Financial Year” means the period from 1 January to 31 December of any year during the Agreement Period, with the first financial year running from the Effective Date until 31 December of that year.

“Force Majeure” means the events specified in Sub-Section 11(b).

“Initial Tariffs” means the Tariffs as approved and set out in Schedule 3.

[“Lease” means the lease agreement to be entered into between the Authority and the Operator in relation to the land necessary for the Operator to construct the New Facilities and operate the Facilities;]

“Model Customer Agreements” means the form of customer agreement to be entered into between the Operator and the household customers as agreed between the Parties [and approved by the Regulatory Agency].³

[“Monitoring Agency” means the agency appointed by the Authority to monitor the Services and Facilities on its behalf;]

“New Facilities” means facilities, whether immovable or movable, including vehicles, equipment, supplies and other property, constructed or purchased by the Operator during the Agreement Period for the provision, by the Operator, of Services in the Service Area including those facilities set out in Schedule 2.

“Operation Commencement Date” means the date following the date on which the Authority issues, or is deemed to have issued, the Performance Certificate under Section 5.3, whichever is the earlier.

[“Operator Fees” are the fees to be paid to the Operator for Services as set out in section [] and Schedule 8.]⁴

“Operator Staff” has the meaning assigned to it in Section 8.3.

¹Assuming that operator will have direct relationship with customers (ie will collect user fees (either on its own behalf or on behalf of Authority

²Depending on arrangements with financiers, financiers are likely to want to take a charge over the Revenue Collection Account and to be paid ahead of the Operator. These arrangements may be set out in a separate financing agreement but may also be referred to in the BOT agreement

³See footnote 22

⁴Only relevant in cases where the operator is collecting revenue on behalf of the authority or is only permitted to keep a portion of the proceeds for its own account and leave some in an escrow account that can then be put towards expansion of the system

“Operating Period” has the meaning assigned to it in Section 2.2.

“Penalty” has the meaning assigned to it in Schedule 6.

“Performance Certificate” means a certificate issued under Section 5.3.

“Performance Tests” means the tests specified in the Specifications and designated as such, which are to be carried out before the Performance Certificate is issued by the Authority.

“Potable Water” means water either treated or in its natural state complying with the requirements of Applicable Law.

“Project” means the project described in the Agreement including the development of the New Facilities, the operation, repair and maintenance of Facilities and the provision of Services by the Operator.

“Prudent Industry Practice” means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions (including the conditions of the Existing Facilities at the Effective Date) as contemplated by this Agreement.

“Raw Water” means any untreated water.

“[Regulatory Agency]” means [REGULATORY AGENCY].⁵

[“Regulatory Fee” means an amount payable to the Regulatory Agency during the Agreement Period.]

“Recitals” means recitals of this Agreement.

“Relevant Bank Base Rate” means the base rate of the central bank of [COUNTRY] from time to time.

“Revenue Collection Account” means an account in the name of the Operator at a bank acceptable to the Lender and the Authority where customers deposit payment for Services pursuant to Section 6.2.

“Service Standards” means those standards listed in the Schedule 5.

“Services” means the services provided by the Operator in the Service Area during the Operating Period under this Agreement.

“Service Area” means the geographical area covered by the Services set out in Schedule 1 and the Customers served within that area, as may be expanded from time to time pursuant to the terms of this Agreement.

“Specifications” mean the specifications for the New Facilities set out in Schedule 2.

“Tariffs” means the charges levied on the consumption of water services as well as for access to a water system.

“Termination Payments” mean the amounts payable to the Operator under Schedule 8.

“Time for Completion” means the date by which the New Facilities are to have passed the Performance Tests as set out in Schedule 2 (or as extended under Sub-Clause 5.3), calculated from the Effective Date.

“Treated Water” means any Raw Water that has been treated and processed by the Operator through the Facilities in accordance with this Agreement.

1.2. Interpretation

- a) The Recitals and the Schedules to this Agreement shall form an integral part thereof. This Agreement shall be read as a whole. In event of discrepancy and/or contradiction between the Agreement and its Schedules, the Agreement shall prevail.
- b) References to Schedules shall be references to Schedules to this Agreement unless otherwise agreed by the Parties. The following Schedules which are incorporated by reference into this Agreement shall be referred to as follows:
 - Schedule 1: Service Area
 - Schedule 2: Facilities and Specifications
 - Schedule 3: Initial Tariffs
 - Schedule 4: Reporting Requirements

⁵if applicable

Schedule 5: Service Standards

Schedule 6: Penalties

Schedule 7: Operator Fees

Schedule 8: Termination Payments

- c) The headings of Sections of this Agreement and the Table of Contents are inserted for convenience and reference purposes only and shall not in any way limit, alter or affect the interpretation of this Agreement.
- d) In this Agreement, words denoting the singular include the plural and vice-versa, words denoting persons include companies, corporations, partnerships or other legal persons and references to any Party or person include references to its respective successors and permitted assigns.
- e) The words “include,” “includes,” and “including” shall at all times be construed as if followed by the words “without limitation.”

2. COMMENCEMENT, DURATION, RENEWAL

2.1. Commencement

- a) This Agreement shall become effective (the “Effective Date”) from the date when the following conditions precedent are fulfilled:
 - i) [Approval by the [Regulatory Agency] of this Agreement];
 - ii) the Operator obtaining from its finance institution confirmation that the funds for financing the New Facilities are available for drawdown;
 - iii) [execution by the Operator and the Authority of the Lease];
- b) The Operator, and the Authority shall use their best efforts and endeavours to procure the satisfaction of the conditions precedent specified in Section 2.1(a) as soon as is practicable and in any event no later than [ninety (90)] days after the date of signing this Agreement.
- c) The Operator shall take over the Existing Facilities and commence the provision of the Services within fifteen (15) days of the Effective Date. The Authority shall provide the Operator with written notice of the Effective Date, and this shall be deemed to be the Effective Date for the purpose of this Agreement.
- d) If the conditions specified in Section 2.1(a) are not fulfilled or waived by mutual agreement of the Parties within ninety (90) days of the date of the signature of this Agreement, each Party shall have the right to terminate this Agreement immediately and no Party hereto shall be liable to the other Party for any damages or losses in respect thereof.

2.2. Agreement Period

Unless terminated earlier pursuant to Section 9 or 10, this Agreement shall remain in full force for the sum of the Construction Period and the Operating Period (the “Agreement Period”). The Construction Period shall commence on the Effective Date and end on the date of issue of the Performance Certificate, which shall be no longer than [12] months from the Effective Date. The Operating Period shall be a period of [10-20] years⁶ from the Operation Commencement Date.

2.3. Renewal

Unless terminated earlier pursuant to Section 9 or 10 below, this Agreement shall be eligible for renewal for a maximum period of [3] years, subject to successful negotiation by the parties of any terms and conditions applicable under this contract. If the Parties do not agree to the terms of renewal, the Operator shall have the right to bid on any new contract tendered by the Authority.

⁶Duration will depend on factors such as length of period necessary for operator to recover investment

3. REPRESENTATIONS AND WARRANTIES

3.1. Operator

The Operator represents and warrants that:

- a) It is a legal entity duly registered/incorporated under the Laws of [COUNTRY] and has all requisite legal power and authority to enter into this Agreement and such other agreements, being agreements to which the Operator will be a party, as are contemplated elsewhere in the Agreement and in the Schedules and to carry out the terms, conditions and provisions thereof.
- b) There is no litigation, actual or pending at the date of execution of this Agreement, which relates to the Operator and to which the Operator is a party or of which the Operator is aware which would materially affect the Operator or its ability to perform its Obligations under this Agreement and the transactions contemplated hereby.

3.2. Authority

The Authority represents and warrants that:

- a) The execution, delivery and performance of this Agreement and the transactions contemplated hereby do not and will not infringe and are not and will not be contrary to any laws or regulations of any Governmental, administrative or regulatory body.
- b) It will provide to the Operator all necessary access to, and exclusive use of, the Existing Facilities, free of charge and without responsibility for any debt charges on such assets and without interruption from any other person provided that the Authority and the [Monitoring Agency⁷] has the right at all reasonable times, in all reasonable places, and subject to the operational needs of the provision of the Services to visit, inspect and conduct tests on all documents and the Service Area and the Operator shall make reasonable provision to assist the Authority and the [Monitoring Agency] in such events.
- c) The Authority will not, for the Agreement Period, retain, use or employ another contractor, or employ any other person or body to perform the Services within the Service Area unless such alternative provision is caused or made necessary by any failure by the Operator to perform its obligations under this Agreement.

4. RIGHTS AND OBLIGATIONS

4.1. Operator Obligations

The Operator shall:

- a) design, build and construct the New Facilities in accordance with the Specifications, the Construction Schedule and Prudent Industry Practice;
- b) provide all financing for the New Facilities and all necessary and adequate working capital at all times during the Agreement Period to enable it to fulfill its obligations under the Agreement and to provide Services in the Service Area, including repair and maintenance of the Facilities;
- c) operate the Facilities in accordance with Prudent Industry Practice and the Service Standards and provide Potable Water and deliver the Services to Customers in accordance with Service Standards;
- d) operate the Water Resource in accordance with the applicable Abstraction Permits;
- e) obtain all necessary licenses, permits and warranties necessary to carry out its obligations under this Agreement, other than the Abstraction Permits;
- f) arrange for an electricity supply for the Facilities;⁸

⁷May be a water user association or regulatory authority, whichever is the most appropriate entity to monitor performance, if Authority so delegates

⁸In some cases it may be more appropriate to make this a Authority obligation?

- g) repair and maintain the Facilities in good working order and not dispose of any of the Facilities without the authorization of the Authority, other than to assign its interest in the New Facilities to the Lender pursuant to its financing arrangements;
- h) prepare an asset register within 12 months of the commencement of the Operating Period, keep a copy thereof on site and maintain such asset register;
- i) open a Revenue Collection Account [in its name/ in joint names with Operator] and direct payments from customers into such account and only withdraw Eligible Amounts from that account;
- j) employ staff who have the relevant qualifications/ experience;
- k) provide as a minimum to staff statutory benefits and terms and conditions of employment;
- l) ensure that all employees who have contact with the public have identification documents to be produced when required;
- m) obtain appropriate insurance coverage for the Agreement Period with an insurance company of repute against claims, losses, damages to assets, accidents, injury or death, as more fully described in section 13.5;
- n) prepare and submit reports in accordance with this Agreement;
- o) prepare operating manuals within 12 months of the commencement of the Operating Period, keep a copy thereof on site and keep such operating manuals up to date;
- p) cooperate with the Authority, the [Monitoring Agency] and the [Regulatory Agency]⁹ to allow effective monitoring;
- q) publicize Tariffs at pay stations, all offices to which Customers have access and on standpipes and water kiosks;
- r) be responsible for all fees and expenses related to provision of the Service and construction of the New Facilities and operation, repair and maintenance of the Facilities, including but not limited to electricity charges, chemicals, raw water extraction fees, spare parts, equipment, employee salaries, levies, water permit fees and taxes;
- s) pay any Regulatory Fees out of the Revenue Collection Account; and
- t) comply with Applicable Laws.

4.2. Operator Rights

The Operator is entitled for the Agreement Period to:

- a) exclusive¹⁰ use of the Existing Facilities and [use and operation]¹¹ of the Facilities for the purposes of complying with its obligations under this Agreement and the provision of Services;
- b) exclusive right to provide Potable Water to residents within the Service Area;
- c) a lease of the Water Source and the land necessary to develop the New Facilities, together with necessary easements and the right to lay pipes in the Service Area;
- d) conclude Customer Agreements with Customers for the supply of Potable Water [in the name and on behalf of the Authority] in the form of the Model Customer Contract;
- e) charge Tariffs [as approved by the [Regulatory Agency] from time to time] and issue customer bills to Customers for Potable Water provided;¹²
- f) receive payments from Customers into the Revenue Collection Account;
- g) be paid the Operator Fees, if any, in accordance with Schedule 8;
- h) be paid the Termination Payments in accordance with Schedule 10;
- i) disconnect Customers for non-payment on receiving express authorization from the Authority to do so;
- j) reconnect customers on assessment that customers have cleared their financial obligations to the Operator;

⁹If relevant

¹⁰Exclusivity is appropriate if operator is taking revenue risk

¹¹It may be able to own the facilities, depending on the country

¹²This will need to be amended If collecting on behalf of authority and authority paying operator fee

- k) enter into premises and properties within the Service Area and to exercise all other statutory powers within the Service Area necessary for the purposes of fulfilling its obligations under this Agreement and the Customer Agreements;
- l) and exclusive right to abstract water from the Water Source; and
- m) to apply to the [Regulatory Agency] for Tariff adjustments from time to time in accordance with the relevant guidelines published by the Regulatory Agency.

4.3. Authority Obligations

The Authority, as from the Commencement Date:

- a) grants free of charge to the Operator a lease over the Water Source and other Existing Facilities and access to all land within the Service Area in respect of which access is required for the performance of the Services by the Operator [in accordance with the Lease¹³];
- b) grants the Operator the [exclusive] right to provide Services to Customers in the Service Area;
- c) provides exclusive access to the Water Source and a copy of the terms of relevant Abstraction Permits;
- d) [shall make arrangement for the renewal of Abstraction Permits;¹⁴]
- e) shall make all reasonable efforts to assist the Operator to gain access to assets or to other land on which it is required to exercise its duties. [If access cannot be obtained even with the assistance of the Authority, and there is no fault or negligence on the part of the Operator, the Operator shall not be considered to be in default of its Obligations under this Agreement];
- f) not interfere and cause its employees and sub-contractors not to interfere or obstruct the Operator in carrying out its obligations under this Agreement and providing the Services;
- g) shall arrange for the carrying out of surveys and review business plans investment plans;
- h) [shall prepare studies of demand forecast and expansion of the water supply systems in consultation with the Operator¹⁵];
- i) [shall carry out an Environmental Impact Assessment where appropriate or compulsory according to Applicable Law];
- j) shall obtain and keep in force all licences, permits and warranties outside the responsibility of the Operator;
- k) shall give the Operator full access to all necessary information, plans, policies, papers, reports and data in order to enable the Operator to carry out the services and assist the Operator to obtain, from the Government, local government or statutory bodies, all necessary consents and permits as required by Applicable Law; and
- l) shall monitor the performance of the Operator under this Agreement.

4.4. Supervision by the Authority

- a) The Authority shall supervise the Operator in the performance of its obligations under this Agreement.
- b) The Authority shall review and approve or comment upon all reports submitted by the Operator pursuant to Schedule 3.
- c) The Authority shall be given reasonable access during normal working hours to the Facilities and to premises, works and sites of the Operator for the purposes of inspection and certification to the extent this does not disturb the Operator's performance of its obligations under this Agreement. For the avoidance of doubt the term "Authority" as used herein shall include duly authorized officers, employees and representatives as well as the financial and technical auditors.

¹³Is a separate lease is required – otherwise can be granted under this agreement

¹⁴This may be an Operator responsibility, if the law allows this

¹⁵May be more appropriate for operator to carry out this exercise, even if on behalf of the authority

5. CONSTRUCTION, TESTING AND COMMISSIONING

5.1. Construction of New Facilities

- a) The Operator shall commence the design and construction of the New Facilities within 15 days of the Effective Date. The Operator shall then proceed with construction of the New Facilities with due expedition and without delay.
- b) The Facilities shall have passed the Performance Tests by the Time for Completion.
- c) The Operator is entitled to an extension of the Time for Completion if he is or will be delayed either before or after the Time for Completion by any of the following causes:
 - i) a change in the Specifications for the New Facilities that delays materially the Time for Completion set out in Schedule 2;
 - ii) a Force Majeure event (as defined in Section 11);
 - iii) physical conditions or circumstances on the site for the New Facilities, which are adverse and were not (by the Effective Date) drawn to the Operator's attention or within its knowledge (as is evidenced by written records) or foreseeable from the data supplied to the Operator by the Authority;
 - iv) any breach of this Contract, delay, impediment or prevention by the Authority; or
 - v) an action by a legally constituted public authority which has delayed, impeded or prevented the Operator from installing the New Facilities other than due to the negligence or wilful default of the Operator.
- d) If the Operator intends to apply for an extension of the Time for Completion, the Operator shall give notice to the Authority of such intention as soon as possible, together with supporting information. The Operator shall keep such contemporary records as may be necessary to substantiate any application, at the site and such other records as may reasonably be requested by the Authority. The Operator shall permit the Authority to inspect all such records, and shall provide the Authority with copies as required. The Authority shall respond within 28 days of receiving a claim from the Operator by either confirming the Authority's entitlement, or denying the claim with detailed reasons. Any dispute may be referred for resolution in accordance with Section 12.
- e) The Operator will provide monthly status reports to the Authority and the [Engineer] during the Construction Period setting out progress on the New Facilities and whether there are any delays or issues that have arisen. The first report shall be provided following the first calendar month after the Effective Date and shall be provided within 14 days of the end of such calendar month.

5.2. Delay in Construction

If the Operator fails to comply with Section 5.1(b) for reasons other than those set out in Section 5.1(c) above, the Operator shall pay to the Authority the sum set out in Schedule 2 as liquidated damages for such default (which sum shall be the only monies due from the Operator for such delay) for every week which shall elapse between the relevant Time for Completion and the date stated in the Performance Certificate, provided that the total of all liquidated damages payable by the Operator pursuant to this Section 5.2 shall not exceed the sum set out in Schedule 2.

5.3. Performance Tests

- a) The Operator shall carry out the Performance Tests in accordance with this Section 5.3 and the Specifications (Schedule 2). The Operator shall give to the Authority 7 days' notice of the date on which the Operator will carry out the Performance Tests and invite the Authority [and the Engineer to attend]. The Performance Tests may proceed as scheduled irrespective of whether the Authority [or the Engineer] is attending.
- b) As soon as the Facilities have passed the Performance Tests, the Operator shall provide the Authority [and the Engineer] with a certified report of the results of all such Performance Tests.
- c) If the Facilities fail to pass the Performance Tests, the Operator shall promptly and in any event within [14] days inform the Authority of the action it proposes to take to ensure that it does pass them when retested and such failed Tests shall

then be promptly repeated under the same terms and conditions. Such failed Tests shall be repeated in accordance with this Section 5.3 until the Facilities pass the Performance Tests.

- d) The Operator may apply by notice to [the Engineer on behalf of] the Authority for a Performance Certificate not earlier than 14 days after it has provided the certified report of the results of the Performance Tests to the Authority. The Authority [or the Engineer on behalf of the Authority] shall, within 14 days after the receipt of the Operator's application:
 - i) issue the Performance Certificate to the Operator, stating the date on which the Facilities have passed the Performance Tests; or
 - ii) reject the application, giving its reasons for believing that the Facilities have not passed the Performance Tests and specifying the work required to be done by the Operator to enable the Performance Certificate to be issued. The Operator shall then complete such work before issuing a further notice under this Section.
- e) If the Authority/Engineer, as the case may be, fails either to issue the Performance Certificate or to reject the Operator's application within the period of 14 days, and if the Facilities have passed the Performance Tests, the Performance Certificate shall be deemed to have been issued on the last day of that period and the date of issue of the Performance Certificate shall be deemed to be the date of receipt of the application.

6. TARIFFS AND CUSTOMER RELATIONS

6.1. Tariffs

- a) The Initial Tariffs to be charged to Customers are set out in Schedule 6.
- b) Increases in Tariffs must be approved by the [Regulatory Agency¹⁶]. Tariffs shall be sufficient to cover the reasonable cost of providing the Services, maintaining the Facilities, any upgrades in Facilities or extension of Services agreed by the parties, servicing of financing for the New Facilities and to meet any other costs specified in this Agreement. The Operator and the Authority shall carry out a tariff review to adjust the Tariffs and/or remuneration of the Operator or the Authority within 30 days of the anniversary of the Agreement. Such Tariff adjustment proposal shall be established in cooperation by the Operator and Authority justifying the Tariff adjustment with all necessary documentation and estimates. The proposed Tariff adjustment shall be presented in accordance with the Applicable Law to the Regulatory Agency for approval. The Regulatory Agency may approve the tariff application and confirm the new Tariff.¹⁷
- c) If one of the parties does not agree to the adjustment proposal or does not respond to the request of the other party within three (3) months, it may declare a dispute in writing and seek dispute resolution in accordance with Section 12.

6.2. Customer Relations

- a) The Operator will install new household connections to all potential Customers who make a written request to be connected, subject to any limitations on resources within the Service Area. New connections shall be installed in accordance with good utility and industry standards. Customers will be required to meet the entire cost of new connections which they shall be required to pay in full prior to installation of the connection. Any payments will go into the Revenue Collection Account.
- b) The Operator will enter into a Customer Agreement with each Customer in the form of the Model Customer Agreement.
- c) The Operator will ensure that all household connections are metered and that meters installed comply with good utility standards and the Regulatory Agency's specifications on meters and shall be installed in such a manner as to be accessible to the meter readers. The Operator shall be responsible for maintenance and repair of meters and cost thereof.

¹⁶This will be modified if it is only on agreement of Authority

¹⁷May want to specify requirement for parties to request additional opportunities to revise tariffs, standards, specifications etc. Process will take into account whether there is an existing regulatory agency and law relating to tariff approval

- d) The Operator will bill the Customers in accordance with the approved Tariff and will collect payment from Customers in accordance with the Customer Agreement.
- e) Payment collected will be immediately deposited in the Revenue Collection Account and [any regulatory payments will be transferred to the Regulatory Agency].
- f) The Operator shall ensure that Customers throughout the Service Area have easy access to information from the Operator and are able to lodge complaints with it. The Operator is obliged to display prominently a schedule of Tariffs and details of how to contact the Operator and file complaints at water kiosks.
- g) The Operator shall record all complaints from Customers and shall report to the Authority on an annual basis on the complaints received. The Operator shall promptly respond to requests for information and complaints according to the Minimum Service Level Guidelines published by the Regulatory Agency. The Operator will use every reasonable effort to resolve complaints from Customers within its Service Area.
- h) [The Regulatory Agency may take a decision that the Operator should pay compensation to Customers for failure to provide Services, provided that such failure is due to the negligence or willful default of the Operator.]

7. REPORTING AND PLANNING

7.1. Reporting

The Operator shall be responsible for submitting periodic reports to the Authority, the Lender and the Regulatory Agency, as set out in Schedule 4.

7.2. Planning

The Operator shall prepare a five-year draft business plan not later than one (1) month prior to the end of the first financial year of the Agreement and this will be updated annually and sent to the Authority and the Lender. The business plan will also set out any proposals for significant expansion of the Facilities or capital investment in addition to the New Facilities. The business plan will be reviewed by the Authority. In the event that any proposed investment would require additional funding then the Operator would need approval of the Authority and the Lender prior to making such investment.

8. FACILITIES AND PERSONNEL

8.1. Title to the Facilities

- a) Title to the Existing Facilities shall remain at all times in the Authority. Title to New Facilities shall remain in the Operator up until the expiry or termination of the Agreement, when they shall pass to the Authority.¹⁸

8.2. Title to Documents

- a) All plans, drawings, specifications, designs, reports, and other documents and software prepared by the Operator in the course of performing its obligations under this Agreement shall remain property of the Operator. On expiry or termination of the Agreement the Operator shall deliver a copy of all documents and software to the Authority, together with a detailed inventory thereof and grant a nonexclusive royalty free license to use such documents and software in connection with the Project.
- b) The Operator may retain copies of such documents and software.

8.3. Operator Staff

- a) The Operator shall at its own cost provide such qualified and experienced staff (the "Operator Staff") and sub-contractors, as are required to carry out effectively construction of the New Facilities and the Services.
- b) If the Authority has reasonable cause to be dissatisfied with the qualification and/or performance of any Operator

¹⁸Subject to law of country

- Staff or sub-contractors, the Operator shall, at the Authority's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Authority. For the avoidance of doubt, "reasonable cause" shall not include causes not related to technical qualifications or performance of the Operator Staff.
- c) The Operator shall have no claim for additional costs arising out of or incidental to the removal and/or replacement of Operator Staff or sub-contractors.
 - d) On expiry or termination of this Agreement the Operator Staff will not be transferred to the Authority unless and subject to prior agreement of the Operator and the Authority.

9. LIABILITY

- a) The Operator is obliged to meet the Service Standards and shall be subject to Penalties to the extent that it fails to meet the Service Standards, as set out in Schedule 6.
- b) The Operator shall not be liable for failure to meet Service Standards and shall not be subject to Penalties where such failure is caused by:
 - i) Failure by the Authority to perform its obligations under this Agreement;
 - ii) Force Majeure pursuant to Section 11;
- c) Notwithstanding any other provision of this Agreement, the Parties agree that the maximum cumulative liability of the Operator to the Authority (i) for liquidated damages for delay during the Construction Period shall be as stipulated in Schedule 2 and (ii) for each calendar year of the Operating Period arising under or in relation to this Agreement shall not exceed CURRENCY [AMOUNT], provided that such limitation shall not apply to fraud, gross negligence or willful misconduct of the Operator, any sub-contractor, or their respective agents or employees.
- d) Any Party alleging a breach of contract or right to be indemnified in accordance with this Agreement shall be under a duty to take all necessary measures to mitigate the loss which has occurred, provided that it can do so without unreasonable inconvenience or cost.
- e) No Party shall be liable to any other Party by way of indemnity or by reason of any breach of this Agreement or of its statutory duty or by reason of tort (including negligence), strict liability or otherwise for any incidental, consequential, punitive or special damages or any consequential or economic loss including, but not limited to, any loss of profit, use, opportunity, production or other indirect or consequential loss that may be suffered by that other Party. [NEED TO CONSIDER WHO BEARS RISK OF ENVIRONMENTAL POLLUTION AND HEALTH RISKS, ESPECIALLY WHEN THE RAW WATER FALLS OUTSIDE THE SCOPE OF THE SCHEME (AND SO MAY BE DIFFICULT TO TREAT)].
- f) A Party shall indemnify, defend and hold harmless the other Party and/or its subcontractors or their officers, agents or employees against any and all claims for loss, damage and expense of whatever kind and nature (including all related costs and expenses) in respect of personal injury to or death of third parties and in respect of loss of or damage to any third party property to the extent that the same arises out of any negligence, default or breach of statutory duty on the part of the other Party, its subcontractors or their officers, agents or employees.

10. TERMINATION, EXPIRY AND HANDOVER

10.1. Termination and Expiry

- a) This Agreement will terminate on the Expiry Date unless terminated earlier under this section 10.
- b) The Authority shall be entitled to terminate the Agreement early by giving [three (3)] months notice where:
 - the Operator fails to perform any of its obligations under this Agreement and this has a material impact on the Project and such failure continues for [thirty (30)] days after written notice from the Authority to the Operator requesting that such failure be cured;
 - the actions of the Operator directly cause a widespread danger to the health of the public in the Service Area and such failure continues for thirty (30) days after written notice from the Authority to the Operator requesting that such failure be cured;

the Operator becomes insolvent or bankrupt or goes into liquidation whether compulsory or voluntary; or the Operator in the reasonable judgment of the Authority has engaged in corrupt or fraudulent practices in competing for or in executing this Agreement.

- c) The Operator shall be entitled to terminate the Agreement early by giving [three (3)] months notice where the Authority fails to perform any of its obligations under this Agreement in a material respect and such failure continues for [thirty (30)] days after written notice from the Operator to the Authority requesting that such failure be cured.
- d) In respect of section 10.1(b) and (c) such right to terminate shall not arise to the extent that the default occurred solely as a result of any breach of the other party of this Agreement or is due to Force Majeure.
- e) In the case of extended Force Majeure, the Parties may terminate this Agreement in accordance with Section 11.

10.2. Termination payments

Upon early termination this Agreement, the Authority shall pay to the Operator the termination fees set out in schedule 8.

10.3. Handover

- a) Upon termination or expiration of this Agreement, the Parties shall have no further rights or obligations hereunder except for rights and obligations which arose prior to such termination or expiration and those which expressly survive termination or expiration pursuant to this Agreement.
- b) On termination or expiration of this Agreement, the Operator shall handover to the Authority the Facilities in good working condition (wear and tear excepted) and operational control of the Facilities and shall not remove any part of the Facilities that are necessary to operate the System. It shall also handover drawings for the New Facilities as well as any other drawings, a royalty free license to use any software developed under the Agreement for delivery of the Services, a set of operating manuals and an update inventory of assets.
- c) Except in the case of early termination pursuant to Sections 10.1(b) and (c), the Operator and the Authority shall cooperate as reasonably necessary during the six (6) month before expiration of this Agreement in order to ensure the smooth continuation and provision of Services.

11. FORCE MAJEURE

- a) For the purposes of this Agreement, “**Force Majeure**” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are reasonably within the power of the Party invoking Force Majeure to prevent), and with respect to the Operator only, any failure, shortage or interruption of the supply of electricity for more than two (2) consecutive days.
- b) Force Majeure shall not include (a) any event which is caused by the negligence or intentional action of a Party or such Party’s sub-contractors or agents or employees, nor (b) any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Agreement, and avoid or overcome in the carrying out of its obligations hereunder.
- c) The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.
- d) A Party affected by an event of Force Majeure shall continue to perform its obligations under this Agreement as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

e) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible. In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Section 12 below.

If any event of Force Majeure continues for longer than sixty (60) days, the Parties shall enter into discussions in order to agree on a mutually satisfactory solution to continue the performance of this Agreement. If the Parties fail to reach a mutually satisfactory solution within sixty (60) days of the commencement of such discussion, either Party shall have the right to terminate this Agreement early by written notice (the “Force Majeure Termination Notice”) to the other Party and this Agreement shall then immediately terminate.

12. DISPUTE RESOLUTION AND APPLICABLE LAW

- a) If any dispute arises out of or in connection with this Agreement, a Party shall give a written notice of fourteen (14) days to the other Parties. The Parties shall meet promptly and in good faith attempt to reach an amicable settlement through mutual consultation and negotiation.
- b) In the event that the Parties do not resolve a dispute within thirty (30) days of notice of the dispute either Party may refer the dispute to an agreed mediator before submitting the dispute to the [Regulatory Agency¹⁹] for determination. The party which has established the dispute will give written notice to the other party at least fourteen (14) days before referring the dispute to the [Regulatory Agency].
- c) The decision of the [Regulatory Agency] over the dispute shall be final but in the event that the [Regulatory Agency] shall be considered to have erred in law, an appeal on its decision may be made to the High Court of [COUNTRY].

13. MISCELLANEOUS

13.1. Applicable Law

This Agreement shall be governed by and construed pursuant to the Laws of [COUNTRY].

13.2. Survival

The dispute resolution provisions contained in Section 12 shall survive termination of this Agreement.

13.3. Conflicts of Interest

Neither the Operator nor its sub-contractors nor the Operator Staff shall engage during the term of this Agreement, either directly or indirectly in any business or professional activities in the [COUNTRY] which would conflict with the activities assigned to them under this Agreement. Where a dispute arises over definition of conflict of interest, the dispute shall be handled in accordance with Clause 12 of this Agreement. Notwithstanding this Section, the Operator will be eligible to bid for additional contracts related to the Services.

13.4. Authorized Representative

Any action required or permitted to be taken, and any document required or permitted to be executed under this Agreement by the Authority or the Operator may be taken or executed by the officials specified in the Section 13.13.

13.5. Insurance

- a) The Operator shall procure and maintain, and shall cause any Operator sub-contractors to procure and maintain, throughout the term of this Agreement a professional liability insurance coverage and insurance coverage for the

¹⁹Such other agency with an express mandate to decide over disputes in the water sector/ or, if not relevant, such other entity as the parties deem appropriate – could be appointment of arbitrator

Facilities. Such professional liability insurance shall be purchased by the Operator at its own cost at such levels as are consistent with prudent industry practice. Such insurance shall be effective as of the Commencement Date and cover the Operator, the Operator Staff and sub-contractors.

- b) The Operator shall provide the Authority with certificates of insurance or other satisfactory evidence that the required insurance policies have been issued and are in force and shall promptly pay all insurance premiums, fees or other costs due in relation with the required insurance policies. The said insurance policies may not be cancelled or modified except with the prior written consent of the Authority obtained not less than thirty (30) days before the intended date of cancellation or modification.
- c) To the extent that a loss or damage suffered by the Operator falls within the terms of the insurance cover required under this Section 13.5, the Operator shall forthwith make the appropriate claims thereunder and shall replace or repair such loss or damage.

13.6. Assignment of this Agreement

- a) The Authority shall not assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the Operator, such consent not to be unreasonably withheld or delayed.
- b) The Operator shall not without the prior written consent of the Authority and the Lender, such consent not to be unreasonably withheld or delayed, transfer all or any part of its rights or obligations under this Agreement other than by way of security assignment to the Lender.
- c) The Lender shall not assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the Authority and the Operator, such consent not to be unreasonably withheld or delayed.

13.7. Confidentiality

- a) Each of the Parties, their employees, sub-contractors, consultants and agents, shall hold in confidence all documents and other information, whether technical or commercial, supplied to it by or on behalf of the other Party in relation with this Agreement, and shall not publish or otherwise disclose or use the same for its own purposes otherwise than as may be required by the Applicable Law or to perform its obligations under this Agreement.
- b) The Parties' obligations under this Section shall survive for a period of two (2) years following the termination of the Agreement or any extension or renewal thereof.

13.8. Relations between the Parties

- a) Subject to the provisions of this Agreement, the Operator shall be an independent contractor in its performance of this Agreement. This Agreement does not create any agency, partnership, joint venture or other joint relationship between the Operator, the Lender and the Authority.
- b) All Operator Staff and sub-contractors shall be under the complete control of the Operator and nothing contained in this Agreement or any sub-contract awarded by the Operator shall be construed to create any contractual relationship between the Operator's representatives or subcontractors and the Authority.
- c) None of the Parties has any responsibility whatsoever with respect to the obligations assumed by the other Parties under this Agreement and nothing in this Agreement shall constitute the Operator, the Lender or the Authority to be a partner, agent or local representative of the other or create a fiduciary relationship or trust between them.

13.9. Variations in Writing

All additions, amendments and variations to this Agreement shall be binding only if in writing, signed by duly authorized representatives of each of the Parties.

13.10. Entire Agreement

This Agreement, including the Recitals and the Schedules attached hereto, represents the entire agreement between the Parties in relation to the subject matter thereof and supersedes any or all previous agreements, communications or arrangements, whether oral or written, between the Parties.

13.11. Severability

If any part or parts of this Agreement are agreed by the Parties or declared by any competent tribunal to be invalid, the other parts shall remain valid and enforceable.

13.12. Non-Waiver

None of the provisions of this Agreement shall be deemed waived by either Party except when such waiver is given in writing. The failure by either Party to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

13.13. Notices

Unless otherwise agreed by the Parties, notices to be given under this Agreement shall be in English, in writing and shall be given by hand delivery, recognized international courier or mail and delivered to the Parties at their respective addresses set forth below:

The Authority: []
Attention: [] (Authorized Representative)
Address: []

The Operator: []
Attention: [] (Authorized Representative)
Address: []

or such other address as may be notified by that Party to the other Party from time to time, and shall be deemed to have been made or delivered when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address.

13.14. Language

This Agreement is made in the English language.

IN WITNESS WHEREOF, this Agreement has been executed by duly authorized representatives of the Parties hereto on the day, month and year above written.

Authority

Witnessed by:

By:

Name:

Name:

Title:

Title: Company seal:

Date:

Date:

Operator

Witnessed by:

By:

Name:

Name:

Title:

Title: Company seal:

Date:

Date:

SCHEDULE 1: SERVICE AREA

[Insert Map]

SCHEDULE 2: FACILITIES AND SPECIFICATIONS

Existing Facilities

Water Resource

[]

New Facilities

During the Construction Period the Operator shall ensure that the Water Resource is functioning and design, build and finance the following New Facilities:

[New Facilities]

The New Facilities shall meet the following Specifications:

[Specifications]

Time for Completion: [date]

Liquidated damages for delay in completion: CURRENCY [] per day, up to a total maximum of CURRENCY []

SCHEDULE 3: INITIAL TARIFFS

The Initial Tariffs, which will apply for a minimum of one year from the Effective Date, shall be:

Category of Customer	Initial Tariff
Household customer	
Standpipe customer	
Kiosk customer	

SCHEDULE 4: REPORTING REQUIREMENTS

The Operator shall submit the following reports to the Authority:

Construction Period

The Operator will provide monthly status reports on construction of the New Facilities in accordance with Section 5.1.

Operating Period

Monthly Report including the following information:

- Total volume and amount of water billed for the previous month
- Total volume of water produced for the previous month
- Revenue collection summary for the previous month

Project expenditure summary for the previous month
Any failures in meeting the minimum supply specifications during the previous month
Number of new household connections in the previous month
within 14 days following the end of the month to which the Monthly Report relates.

Quarterly Report including the following information:

Volume of total water produced, total water billed and non-revenue water
Revenue collection and costs summary including breakdown of energy, chemical and maintenance costs
Volumes and amounts billed based on actual meter readings by customer category and zone
Billing to collection ratio by customer category and zone
Numbers and categories of active connections, disconnections and reconnections
Water quality test results and commentary on raw, treated and distributed water
Renovation works and repairs carried out or to be carried out at the Project
Interruptions and emergency actions at the Project
Number, type and response time to customer enquiries and complaints
within 28 days following the end of the month to which the Monthly Report relates.

Annual Report to Authority and [the Regulatory Agency in accordance with Applicable Laws] including the following information:

Summary of quarterly report data for the full financial year
Diagnostic assessment of operating and financial performance of the Project (benchmarked against service standards set out in Schedule 4)
Condition of assets of the Project and status of raw water sources
Number and roles of staff employed at the Project
Diagnostic of levels of service performance
Suggested Capital Investment plans – for next few years and more detail for coming year
Annual business plan updated
Revenue and expense budget for forthcoming year
Compliance with any statutory reporting and operating requirements

Financial accounts of the Operator shall be submitted to an independent financial and technical audit at the Operator's cost. Not later than three (3) months following the end of the Financial Year, the Operator shall provide the Authority with the audited Annual Report.

SCHEDULE 5: SERVICE STANDARDS

During the Operating Period the Operator shall achieve the Service Standards set out below, and shall be subject to penalties in the event that the Operator's performance is below the Service Standards. [The Service Standards shall be established by the Expert on completion of the Baseline Survey within 6 months of commencement of the Operation Period. The Service Standards that are subject to approval by the Expert shall not be subject to penalty reduction until the baseline survey is complete.]

	Factor	Requirement	Minimum Service Standard	Subject to baseline survey
1	Continuity of supply	12 hours of constant supply to all active connections every day subject to availability of raw water, chemicals, and sound technical functionality of the system	360 hours supply per month	NO
2	Water pressure	[]		
2	Meter reading and billing	Number of active accounts that have been billed according to actual meter readings within 7 days of the end of the billing period	90%	NO
3	Percentage of water produced that is sold	Volume water billed as a percentage of volume water produced	Xx %	YES
4	Customer response plan	Develop a plan for handling customer enquiries and complaints within 3 months of the Commencement Date	Average customer response time of 48 hours	NO
5	Interruptions and emergency actions	Develop an Emergency Action plan applicable to interruptions of services and emergency actions in case of potential danger to public health within 3 months of the Commencement Date	Time to implement emergency action measures set out in the Emergency Action plan	YES
6	Financial & system operations reporting	Develop standard reporting formats within 3 months of the Commencement Date	Accounts to conform to International Accounting Standards	YES

SCHEDULE 6: PENALTIES

Subject to Section 5.1.3 of this Agreement, if the Operator's performance is below the Service Standards set forth in Schedule 5 and the reasons provided for such below par performance are not acceptable to the Authority, the Operator at the end of each quarter will be subject to the following penalty payments to the Authority wherever applicable:

	Service Standard	Penalty criteria	Penalty Reduction
1	Continuity of supply	Less than 12 hours of water supply per day for 2 consecutive days subject to the availability of raw water, chemicals (if required) and proper functionality of the System	[CURRENCY AND AMOUNT] per occurrence, where an occurrence refers to any 2 consecutive days that the system is operated below the established standard
2	Meter reading and billing	More than 10% of active accounts have not been billed according to actual meter readings within 7 days of the end of the billing period	[CURRENCY AND AMOUNT] per month for each month that the service fails the service criteria
3	Physical water loss	Ratio of volume water billed to volume water produced is less than 10% of the ratio established in the baseline survey and the Authority has implemented system maintenance recommendations proposed by the Operator	[CURRENCY AND AMOUNT] per month for each month that the service fails the service criteria
3	Interruption of Water Supply	Unannounced interruption 20-36 hours <15% (calculated 36-48 hours <8% annually) >48hours<3%**	[AMOUNT] per year [AMOUNT] per year [AMOUNT] per year

[The penalties indicated above are subject to revision by the Parties 6 months after completion of the Baseline Survey indicated in Schedule 4: Service Standards.]

[SCHEDULE 7: OPERATOR FEES]²⁰

The Operator shall be entitled to payment of the following fee, on a monthly basis, subject to any penalties to be paid by the Operator under schedule 6 of this Agreement:

Base Monthly Charge: ²¹	[] plus [Service Tax]
Variable Charge:	[] per m ³ of treated water supplied by Operator from the Facilities (as evidenced by Customer bills)
Reimbursement for New Connections	All new connection charges received into the Revenue Collection Account during the previous month ²²

On or after the Completion Date, the Operator shall issue an invoice for the first payment of the Base Monthly Charge for the month in which the Completion Date has fallen and for the month following the month in which the Completion Date has fallen. In respect of all subsequent monthly invoices the Operator shall issue an invoice on or after the first day of each month for:

- the Base Monthly Charge in respect of the month following the month in which the invoice is issued; and

²⁰Only relevant where Operator is either being paid directly by the authority or is to take only a portion of the revenues as fees,. This will need to be tailored to the relevant project

²¹This is supposed to cover the cost of financing and other fixed costs

²²Assuming that operator receives all of the new connection charge for own account

- the Variable Charge for the month preceding the month in which the invoice is issued

together with reimbursement for new connections less any Penalties payable by the Operator during the relevant period.

The Base Monthly Charge shall be adjusted in accordance with the following formula applied annually on the anniversary of the Base Date:

[Adjustment formula including indexation, increases in volume, exchange risk, actual operation cost]

[Adjustment formula including indexation, increases in volume, exchange risk, actual operation cost]

The Authority shall have 14 days from receipt of the invoice to dispute or accept the invoice. Following this period in the event of no response from the Authority the Authority will have been deemed to accept the invoice and the Operator may withdraw the amount corresponding to the invoice from the Revenue Collection Account.

In the event that the Authority disputes the invoice then the Parties shall seek to resolve the dispute in accordance with clause 12. During the period of dispute the dispute amount shall not be paid to the Operator. In the event that the dispute is found in favour of the Operator then it shall be paid the disputed amount together with interest calculated at the rate of [] over Relevant Base Rate.

SCHEDULE 8: TERMINATION PAYMENTS²³

All payments due under this Schedule 8 shall be paid within 30 days of the date of early termination and the debtor shall otherwise comply with the provisions of Clause 10. Where relevant, title in the Facility and Materials purchased by the Authority under the terms of this Agreement shall be transferred on the date when any relevant termination payment is made in full. This Schedule 8 shall apply to termination before the Expiry Date, whether it occurs before or after the issue of the Performance Certificate.

On early termination of the Contract the Authority shall compensate the Operator as follows:

Category of termination	Amount Payable
Termination for Operator default	[]% of aggregate of the Base Monthly Charge for the period from the date of termination of the Contract until the Expiry Date ²⁴ less the reasonable Cost of rectification of the Facilities, if any, which the Operator is required to carry out to bring the Facilities up to the standard set out in clause 10.3 minus any insurance proceeds relating to the Facility
Extended Force Majeure	[]% of aggregate of the Base Monthly Charge for the period from the date of termination of the Contract until the Expiry Date as set out in Schedule 3 plus other unavoidable Costs (including breakage costs for financing) minus any insurance proceeds received by the Operator for the Force Majeure event, subject to a duty on the Operator to use reasonable endeavours to minimise Costs
Termination for Authority Default	<p>²⁵[]% of aggregate of the Base Monthly Charge for the period from the date of termination of the Contract until the Expiry Date as set out in Schedule 3; plus an amount comprising costs of work carried out by Operator, breakage Costs (including market value of Materials purchased by Authority), repatriation Costs, subject to a duty of mitigation of the Operator to minimise Costs; plus reasonable loss of profit calculated as the aggregate Variable Charge based on a projected take of [] m³ per day</p> <ul style="list-style-type: none"> • for the period from the date of termination to the Expiry Date, up to a maximum of [].

²³Termination payments will vary depending on whether there is an Operator fee or not. The principal is that in cases of early termination there is likely to be a termination payment that needs to be paid, which will be more in the case of authority default or voluntary termination than in the case of termination for operator default or force majeure

²⁴This could also be based on a percentage of debt outstanding

²⁵This could be formulated as a 100% recovery of debt outstanding +an element of profit (could also be for instance 150% of the equity value) less insurance proceeds and any damages payable