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## SAMPLE CONTRACT AND SCHEDULES

Prepared by



for the PEGR-funded Reform Agenda on  
Institution Strengthening of the National Economic Development Authority  
and other Oversight Agencies on Value Engineering, Contract Preparation  
and Performance Monitoring of Infrastructure Projects (RA006-07)

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This sample contract is one of the following four sample contracts formulated by Castalia as part of the report for the second activity (Risk Management, Structuring of Public-Private Partnerships, Sample Contracts and Sample Bidding Documents) of the PEGR Reform Agenda RA006-07:

- 1 Urban Mass Rail Sample Contract and Schedules
- 2 Bulk Water Supply Sample Contract and Schedules**
- 3 Solid Waste Management Sample Contract and Schedules
- 4 Information and Communications Technology Sample Contract and Schedules

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# BULK WATER SUPPLY AGREEMENT

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## BULK WATER SUPPLY AGREEMENT

This **Bulk Water Supply Agreement** (this “**Agreement**”) is made this [insert date], (the “**Signature Date**”) at [●], Philippines, by and between:

[INSERT NAME OF AGENCY], a duly organized and existing agency of the Government of the Republic of the Philippines by virtue of [●], with principal office at [●], Philippines, represented herein by its [●], [●], hereinafter referred to as the “**Agency**”;

and

[INSERT NAME OF COMPANY], a corporation duly organized and existing under the laws of [●], with its principal office at [●], represented herein by its [●], [●], hereinafter referred to as the “**Company**”.

The foregoing entities are hereinafter collectively referred to as the “**Parties**”.

### RECITALS:

WHEREAS, *[state the rationale for and background of the Project]*;

WHEREAS, on [●], 2009, the Agency obtained the approval of the Investment Coordination Committee (“**ICC**”) of the National Economic and Development Authority (“**NEDA**”) to develop, finance, design, construct, commission, own, operate, manage and maintain the facilities that is capable of abstracting up to [●] cubic meters per day of raw water from *[indicate raw water source]*, treat such raw water into potable water, and deliver such bulk treated water through a transmission pipeline into the Agency System at the Delivery Point under a build-operate-transfer (“**BOT**”) contractual arrangement in line with Republic Act No. 6957, as amended, and its Implementing Rules and Regulations (the “**BOT Law**”);

WHEREAS, the Company has been selected by the Agency to undertake the Project on the terms and conditions set forth in this Agreement as the result of a competitive public bidding process conducted by the Agency under the provisions of the BOT Law.

NOW THEREFORE, for and in consideration of these premises and the mutual commitments, obligations and undertakings assumed and accepted hereunder, the Parties have agreed as follows:

# **1 DEFINITIONS, PRINCIPLES OF INTERPRETATION, AND PRIORITY OF PROJECT DOCUMENTS**

## **1.1 Definitions**

Unless the context otherwise requires, the following terms whenever used in this Agreement shall have the following meanings:

**“Accounting Principles”** means the generally accepted accounting principles applicable from time to time in the Philippines, as determined by the Financial Reporting Standards Council or its successor body.

**“Affiliate”** means, with respect to any specified person, any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified person. For purposes of this definition, “control” means the ownership, directly or indirectly, or as trustee, personal representative or executor, of more than fifty percent (50%) of the outstanding capital stock of such person, or other equity interests having the power to elect a majority of the board of directors, or similar body governing the affairs of such person or the power to direct or cause the direction of the business affairs or management of such person.

**“Agency Event of Default”** is defined in Section 15.2 (*Agency Events of Default*).

**“Agency Parties”** is defined in Section 14.1 (*Indemnification by the Company*).

**“Agency Rectification Plan”** is defined in Section 20.1.1(c) (*Termination Procedure*).

**“Agency Step-in Rights”** is defined in Section 17.1 (*Step-in Rights*).

**“Agency System”** means the Agency’s pipeline network for transmission and distribution of potable water, including Treated Water delivered to the Agency System at the Delivery Point.

**“Agreement”** means this Bulk Water Supply Agreement signed by the Parties on the Signature Date, including any amendments that may be made from time to time in accordance with its terms.

**“As-Built”** means, with reference to any drawing or document, the final design drawing or design document for an item which reflects as closely as possible the actual condition and field location of the item shown in the drawing or described in the document taking into account actual field measurements and observations and relevant construction records.

**“Auditors”** means the independent public accountants appointed by the Company with the prior written approval of the Agency.

**“Billing Month”** means (i) the period from the Provisional Operations Start Date until the last Day of the calendar month in which the Provisional Operations Start Date occurs; (ii) each successive period of one calendar month thereafter, exclusive of the calendar month in which the Termination Date occurs; and (iii) the period from the first Day of the calendar month in which the Termination Date occurs until the Termination Date.

**“BOI”** means the Board of Investments of the Department of Trade and Industry.

**“BOT Law”** means Republic Act No. 6957, as amended, and its Implementing Rules and Regulations.

**“Business Day”** means any Day other than a Saturday, a Sunday, and any Day which is a legal non-working holiday in [●], Philippines or any Day when commercial banks in [●], Philippines are closed.

**“Change-in-Law”** means any of the following events occurring as a result of any action by any Government Authority of the Philippines:

- (a) A change in or repeal of a Legal Requirement;
- (b) An enactment or making of a new Legal Requirement; or
- (c) A change in the interpretation or application of a Legal Requirement,

which in any case was not reasonably foreseeable at the Signature Date, but not a change in Taxation and an improvement in bulk water supply technology or operational policies or practices which are generally regarded by bulk water suppliers or operators and regulatory authorities in advanced jurisdictions as appropriate for suppliers and operators to have to make.

**“Change of Ownership”** means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Company, including control over the exercise of voting rights conferred on those shares, control over the right to elect, appoint or remove directors, or the right to dividends; and
- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above.

**"Claims"** means with respect to any person, any and all suits, sanctions, legal proceedings, claims, assessments, judgments, damages, penalties, fines, liabilities, demands, reasonable out-of-pocket expenses of whatever kind (including reasonable attorneys' fees and expenses) and losses incurred or sustained by or against such person but excluding any lost profits or other special, incidental, indirect, punitive, or consequential damages suffered by such person.

**"COA"** means the Commission on Audit.

**"Company Event of Default"** is defined in Section 15.1 (*Company Events of Default*).

**"Company Invoice"** is defined in Section 8.4 (*Invoices*).

**"Company Parties"** is defined in Section 14.2 (*Indemnification by Agency*).

**"Company Rectification Plan"** is defined in Section 20.1.1(b) (*Termination Procedure*).

**"Confidential Information"** is defined in Section 21.4.1 (*Confidentiality*).

**"Consent"** means any permit, license, approval, concession, right, award, registration, certification, waiver, exemption, or other authorization, including any amendments thereto, that is required from any Government Authority under the terms of or in connection with this Agreement.

**"Continuous Construction Date"** means the date on which the Company commences continuous construction activities to build the Facilities at the Site, including clearing, earthworks, excavation, formworks, piledriving, laying of foundations, or other activities approved in writing by the Agency as constituting commencement of continuous construction activities for the Project.

**"Contract Management Body"** is defined in Section 9.1 (*Contract Management Body*).

**"Contract Year"** means (i) initially, the period starting on the Provisional Operations Start Date and continuing until the end of that calendar year (such initial period being **"Contract Year 1"**) and (ii) thereafter, each successive period consisting of twelve (12) consecutive monthly Billing Months (the first such period being **"Contract Year 2"** and so on), provided that the last Contract Year shall end on the Termination Date.

**"Day"** means a 24-hour period beginning and ending at midnight, Philippine time.



***“Delay Liquidated Damages”*** is defined in Section 5.8(a) (*Liquidated Damages for Delay in Meeting Project Milestones*).

***“Delivery Point”*** means the point shown in Schedule C (*Interfaces and Delivery Point*) where Treated Water shall be delivered into the Agency System.

***“DENR”*** means the Department of Environment and Natural Resources.

***“Design and Technical Specifications”*** means the design and technical specifications set out in Schedule B (*Design and Technical Specifications*) to be followed and complied with by the Company in the design, engineering, procurement, and construction of the Project.

***“Dispute”*** means any difference or disagreement of any kind whatsoever arising between the Parties in connection with, arising out of, or relating to the interpretation, implementation, breach, termination, or validity of this Agreement.

***“Dollars”, “US Dollars”, and “US\$”*** means the lawful currency of the United States of America.

***“ECC”*** means the Environmental Compliance Certificate issued by the DENR for the Project.

***“Effective Date”*** is defined in Section 2.1 (*Conditions Precedent to the Effective Date*).

***“EIA”*** means the environmental impact assessment for the Project conducted or caused by the Company to be conducted in line with all applicable Legal Requirements.

***“EPC Contract”*** means the turnkey engineering, procurement, and construction contract made or to be made between the Company and the EPC Contractor for the design, engineering, procurement, construction, startup, testing, and commissioning of the Facilities.

***“EPC Contractor”*** means the contractor or person engaged by the Company under the EPC Contract.

***“Equity”*** means (i) the capital stock of any class the Company subscribed by the Shareholders of the Company, and (ii) indebtedness of the Company given to it by a Shareholder or an Affiliate of any Shareholder that is subordinated to any indebtedness incurred by the Company under the Financing Agreements.

**“Event of Default”** is defined in Section 15 (*Events of Default*).

**“Event of Loss”** means any occurrence during the term of the Financing Agreements which results in all or a substantial portion of the Facilities being damaged, destroyed, or rendered unfit for normal operation in accordance with this Agreement.

**“Exceptional Raw Water Quality Deterioration Event”** is defined in Schedule F (*Raw Water*).

**“Expert Panel”** is defined in Section 19.2.2 (*Establishment and Operation of Expert Panel*).

**“Extraordinary Tariff Adjustment”** is defined in Section 8.3.2.2 (*Tariff Adjustment Request and Approval*).

**“Facilities”** means the water treatment facility and associated equipment and facilities, as more fully described in Schedule B (*Design and Technical Specifications*).

**“Financial Model”** means the financial base case for the Project as reflected in the computer model prepared by the Company and submitted and agreed to by the Lenders, which model incorporates the forecast cash flow statements of the Company including all expenditure, revenues, taxation and financing of the Project together with the projected income statements and balance sheets for the Company over the Operating Period, and details of all assumptions, calculations and methodology used in the compilation thereof, as amended from time to time in accordance with the Financing Agreements.

**“Financing Agreements”** means the agreements or instruments that make available or extend loans, credit, notes, bonds, subordinated debt, letters of credit, credit security, swaps, derivatives, hedging instruments, and other documents relating to the financing or refinancing of the Project provided by any Lender, including any amendments, supplements, extensions, and renewals of that financing or refinancing.

**“Force Majeure Event”** is defined in Section 13.1.1 (*Definition of Force Majeure Event*).

**“Government Authority”** means any government, department, commission, board, bureau, agency, regulatory body, instrumentality, fiscal, legislative, judicial, or administrative, national or local, having jurisdiction or authority over the matter in question.

**“ICC”** means the Investment Coordination Committee of the National Economic and Development Authority.

***“Independent Verifier”*** means the person appointed by the Parties to review the detailed design and to monitor and verify the progress of the construction of the Facilities pursuant to Section 5.4 (*Independent Engineer*) hereof.

***“Initial Shareholders”*** means all of the Shareholders of the Company as of the Signature Date, the names of which are set out in Schedule P (*Ownership Interests in the Company*).

***“Intellectual Property Rights”*** means all rights of ownership recognized by law in inventions, technology, copyrighted material, computer software, and firmware, including (a) patents, trade marks, service marks, rights in designs, trade names, copyrights, rights to trade secrets, proprietary information, and know-how in each case whether registered or not; (b) applications for their registration; (c) rights under licenses and consents in relation to any of them; and (d) all forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world.

***“Legal Requirements”*** means all laws, statutes, orders, decrees, injunctions, Consents, agreements, EIAs, and regulations of any Government Authority having jurisdiction over the matter in question.

***“Lender”*** means any person providing loans or other financing or refinancing to the Company under the Financing Agreements, including its successors, assignees, agents and trustees, but not including any Shareholder or Affiliate of a Shareholder with respect to any indebtedness of the Company that constitutes Equity in the Company.

***“Lien”*** means any mortgage, pledge, lien, security interest, option agreement, claim, charge, or encumbrances of any kind.

***“Lock-in Period”*** is defined in Section 18.3.2 (*Restriction on Transfer of Capital Stock of Company*).

***“Maintenance Schedule”*** is defined in Section 6.5 (*Planned Downtime; Maintenance Program and Schedule*).

***“NWRB”*** means the National Water Resources Board.

***“NEDA”*** means the National Economic and Development Authority.

***“Non-Political Force Majeure Event”*** is defined in Section 13.1.3 (*Non-Political Force Majeure Event*).

***“Notice of Agency Event of Default”*** is defined in Section 20.1.1(c) (*Termination Procedure*).

***“Notice of Company Event of Default”*** is defined in Section 20.1.1(b) (*Termination Procedure*).

***“Operating Period”*** means the period commencing on the Provisional Operations Start Date and ending on the Termination Date.

***“Operating Procedures”*** means the plans, methods and procedures for operating the Facilities developed by the Company pursuant to Section 6.2 (*Operating Procedures*) and Schedule H (*Delivery Schedule and Operating Procedures*).

***“Operating Security”*** is defined in Section 6.3 (*Operating Security*).

***“Operating Standards”*** means the service levels and performance standards for the operation of the Facilities prescribed in Schedule H (*Delivery Schedule and Operating Procedures*) .

***“Operations Start Date”*** means the Day on which a final acceptance certificate for the Facilities is issued by the Agency to the Company in accordance with Section 5.6.2 (*Final Acceptance*).

***“Party”*** means the Agency or the Company, as the case may be, and ***“Parties”*** means both the Agency and the Company.

***“Penalty Rate”*** means [●] percent ([●]%) per annum.

***“Performance Security”*** is defined in Section 5.7 (*Performance Security*).

***“Performance Security Issuer”*** means (i) if the Performance Security is in the form of an irrevocable standby letter of credit, a universal or commercial bank reasonably acceptable to the Agency whose issuer credit rating or long-term unsecured debt obligations are rated at least PRS A by PhilRatings, or (ii) if the Performance Security is in the form of a surety bond callable on demand, a reputable surety company reasonably acceptable to the Agency which is duly licensed and ranked by the Insurance Commission in its latest official publication to be among the top ten (10) surety firms in the Philippines in terms of net worth.

***“Peso”, “P”, and “PHP”*** mean the lawful currency of the Republic of the Philippines.

***“Philippines”*** means the Republic of the Philippines.

**“Planned Downtime”** means any normal maintenance, replacement or servicing of equipment, or other work that is planned or scheduled pursuant to Section 6.5 (*Planned Downtime; Maintenance Program and Schedule*).

**“Planned Downtime Period”** is defined in Section 6.5(b) (*Planned Downtime; Maintenance Program and Schedule*).

**“Political Force Majeure Event”** is defined in Section 13.1.2 (*Political Force Majeure Event*).

**“Project”** means the undertaking, in line with the terms and conditions of this Agreement and all Legal Requirements, to prepare, develop, finance, design, engineer, procure, construct, startup, test, commission, implement, own, operate, manage, and maintain the Facilities and to provide the Services.

**“Project Agreements”** means:

- (a) this Agreement;
- (b) the EPC Contract;
- (c) the Shareholders’ Agreement;
- (d) the Financing Agreements; and
- (e) any other material agreement entered into by the Company pursuant to the agreements listed in sub-clauses (a) through (d) above, for the purposes of the implementation of the Project, including any agreement or subcontract for the management, operation and maintenance, and provision of technical assistance for the Project.

**“Project Milestones”** means (i) the Effective Date; (ii) the Continuous Construction Date; (iii) the Provisional Operations Start Date; and (iv) the Operations Start Date.

**“Project Milestone Schedule”** means the timetable or required dates for completing all the Project Milestones set out in Schedule A (*Project Milestone Schedule*), as may be amended from time to time in accordance with this Agreement.

**“Project Report”** is defined in Section 9.2 (*Project Report*).

**“Provisional Operations Start Date”** means the Day on which a provisional acceptance certificate is issued to the Company after successful testing and commissioning of the Facilities following the testing procedures provided in Schedule D (*Testing and Commissioning*).

***“Prudent Utility Practice”*** means applying, in relation to the manner in which the construction obligations and the performance of Services are rendered under this Agreement, the standards, practices, methods and procedures conforming to all Legal Requirements, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances, including including taking reasonable steps to ensure that:

- (a) adequate materials, resources, and supplies are available to meet the Facilities’ needs under normal conditions and reasonably anticipated abnormal conditions;
- (b) sufficient and duly licensed operating personnel (i) are available, (ii) are adequately experienced and trained to operate the Facilities properly and efficiently taking into consideration manufacturers’ guidelines and specifications, and (iii) are capable of responding to abnormal conditions;
- (c) preventive, routine, and non-routine maintenance and repairs (i) are performed on a basis that ensures reliable long-term and safe operation taking into account manufacturers’ recommendations and (ii) are performed by knowledgeable, trained, and experienced personnel who are duly licensed and are using proper equipment, tools, and procedures;
- (d) appropriate monitoring and testing is done to ensure the Facilities are functioning as designed and to provide assurance that equipment will function properly under both normal and abnormal conditions; and
- (e) equipment is operated in a manner safe to workers, the general public, and the environment.

***“Raw Water”*** means water taken by the Company from [indicate raw water source] for treatment at the Facilities, as more specifically described in Schedule F (*Raw Water*).

***“Raw Water Quality Parameters”*** is defined in Schedule F (*Raw Water*).

***“Request for Proposals”*** means the Request for Proposals dated [●] issued by the Agency calling for bids or proposals to carry out the Project.

***“Required Continuous Construction Date”*** means the date prescribed in the Project Milestone Schedule for the occurrence of the Continuous Construction Date, as such date may be changed from time to time in accordance with this Agreement.

***“Required Effective Date”*** means the date prescribed in the Project Milestone Schedule for the occurrence of the Effective Date, as such date may be changed from time to time in accordance with this Agreement.

**“Required Operations Start Date”** means the date prescribed in the Project Milestone Schedule for the occurrence of the Operations Start Date, as such date may be changed from time to time following the terms of this Agreement.

**“Required Provisional Operations Start Date”** means the date prescribed in the Project Milestone Schedule for the occurrence of the Provisional Operations Start Date, as such date may be changed from time to time in accordance with this Agreement.

**“SEC”** means the Philippine Securities and Exchange Commission.

**“Services”** means the operational services to be provided by or on behalf of the Company for the Agency as set forth in Section 7 (*Supply of Treated Water*).

**“Shareholder”** means any person owning any of the outstanding capital stock, of any class, of the Company, including any of the Initial Shareholders.

**“Signature Date”** means the date of signing of this Agreement as indicated in the preamble.

**“Site”** is identified in Figure B-1 in Schedule B (*Design and Technical Specifications*).

**“Sponsor”** means each of the Initial Shareholders and any transferee of the direct or indirect ownership of the outstanding capital stock of the Company.

**“Tariff”** is defined in Section 8.1 (*Tariff*).

**“Tariff Adjustment Request”** is defined in Section 8.3.2.2 (*Tariff Adjustment Request and Approval*).

**“Tax”** means any net income, gross income, gross receipts, sales, use, transfer, gains, *ad valorem*, franchise, profits, capital gains, license, value-added, withholding, payroll, employment, professional, business, excise, stamp, occupation, premium, property, environmental, windfall profit, documentary, registration, severance, custom duty, governmental fee, other like assessment or charge of any kind whatsoever imposed pursuant to the laws of any national, local, or foreign jurisdiction or by any political subdivision or taxing authority, together with any interest, penalty or other payment charged, and any liability for such amounts under all applicable laws as a result either of being a member of a

combined, consolidated, unitary or affiliated group or of a contractual obligation to indemnify any person or other entity.

**“Termination Date”** means the date when any of the following events occurs first:

- (a) termination of this Agreement pursuant to Section 2.3.1 (*Termination due to Non-Occurrence of Effective Date*);
- (b) termination of this Agreement pursuant to Section 20.1 (*Termination due to an Event of Default*);
- (c) termination of this Agreement pursuant to Section 20.2 (*Termination due to Prolonged Force Majeure Events*); or
- (d) on the [●] ([●]th) anniversary of the Provisional Operations Start Date.

**“Termination Notice”** is defined in Section 20.1.1(a) (*Termination Procedure*).

**“Total Project Cost”** has the meaning given to it in the BOT Law, which amount shall be calculated on the basis of information reasonably satisfactory to the Agency that may be provided by the Company.

**“Treated Water”** means treated Raw Water supplied by the Company to the Agency from the Facilities pursuant to this Agreement.

**“Treated Water Specifications”** means the quality specifications set out in Schedule G (*Treated Water Specifications*).

**“Unplanned Downtime”** means any temporary loss of function of the Facilities that is not a Planned Downtime and is not the result of a breach by the Company or its subcontractors of any of its obligations under this Agreement.

**“Unplanned Downtime Period”** is defined in Section 6.6 (*Unplanned Downtime*).

**“Wholly Owned Subsidiary”** means an entity that is fully owned by a person except for the minimum or nominal ownership interests that are held by other persons to satisfy the Legal Requirements for the valid existence of such entity.

## **1.2 Principles of Interpretation**

In the interpretation of this Agreement, unless the context otherwise requires:

- (a) Words importing a gender include any gender.



- (b) Words importing the singular number shall include the plural and *vice versa*.
- (c) References to persons shall include individuals, sole proprietorships, partnerships, associations, trusts, joint ventures, unincorporated organizations, corporations, States, governments and governmental entities.
- (d) References in this Agreement to any statute, law, decree, regulation, or other Legal Requirement shall be construed as a reference to such statute, law, decree, regulation, or other Legal Requirement as re-enacted, re-designated, amended, or extended from time to time, except as otherwise provided in this Agreement.
- (e) A reference to any person, Party, or entity includes its permitted successors and assigns. A reference to any government agency or authority shall include any agency or authority succeeding to such agency's or authority's powers and functions.
- (f) The words "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to," whether or not they are followed by such phrases or words with the same meaning.
- (g) References to a number of days shall refer to calendar days and references to "months" shall refer to calendar months.
- (h) The division of this Agreement into articles, clauses and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (i) The terms "this Agreement" and similar expressions refer to this Agreement and not to any particular article, clause, section or other portion hereof and include any agreement supplemental hereto.
- (j) Unless something in the subject matter or context is inconsistent therewith, references to articles, clauses, sections and schedules are to articles, clauses, sections and schedules of this Agreement.
- (k) No provision of this Agreement shall be construed adversely to a Party solely on the ground that that Party was responsible for the preparation of this Agreement or that provision.

## ARTICLE I

### CONDITIONS PRIOR TO EFFECTIVE DATE

#### 2 CONDITIONS PRECEDENT TO EFFECTIVE DATE

##### 2.1 Conditions Precedent to the Effective Date

This Agreement shall be effective and the Parties shall be bound by all its terms and conditions on the date (the “**Effective Date**”) when the following conditions have been fully satisfied or waived by the Parties and a written notice to such effect has been jointly signed by them:

- (a) Each of the Project Agreements shall have been duly signed by the parties thereto, shall be in full force and effect, and all conditions precedent to the effectiveness of each Project Agreement shall have been satisfied. The Company shall have also delivered a true and correct copy of each Project Agreement to the Agency.
- (b) Certified true copies of resolutions adopted by the board of directors of the Company authorizing the signing, delivery, and performance of this Agreement shall have been delivered to the Agency.
- (c) True and correct copies of the articles of incorporation and by-laws (including all amendments thereto) of the Company, certified by its corporate secretary and the SEC, shall have been delivered to the Agency.
- (d) All Consents that are required to have been obtained in connection with the execution, delivery, exercise of rights, and commencement of performance of this Agreement shall have been obtained and continue to be in full force and effect, including but not limited to, the relevant Consents listed on Schedule M (*Consents*).
- (e) A certificate in a form and substance reasonably satisfactory to the Agency shall have been issued and delivered by the Lenders to the Agency confirming that the Financing Agreements are in full force and effect and all conditions precedent under the Financing Agreements for the provision of debt financing for the Project have been satisfied.
- (f) True and complete printed and electronic copies of the Financial Model certified by the Lenders as part of the requirements to satisfy the condition described in Section 2.1(e) (*Conditions Precedent to the Effective Date*) shall have been submitted to the Agency.
- (g) A certificate in a form and substance reasonably satisfactory to the Agency shall have been delivered by the Company to the Agency either proving the infusion of or expressing the commitment and undertaking of the Initial Shareholders to contribute the necessary equity into the Project and the Company.

- (h) A true and complete copy, certified by the corporate secretary of the Company, of the unconditional notice to proceed issued by the Company to the EPC Contractor authorizing and directing the EPC Contractor to start work under the EPC Contract.
- (i) The Performance Security required from the Company pursuant to Section 5.7 (*Performance Security*) shall have been executed and delivered to the Agency and shall be in full force and effect.
- (j) Certified true copies of certificates of insurance coverage evidencing compliance with the requirements for insurance needed to be in force as of the Effective Date shall have been delivered to the Agency in line with Section 10.2 (*Insurance Certificates*) and Schedule N (*Insurance*).
- (k) The representations and warranties of the Company contained or incorporated herein by reference shall be true and correct in all material respects on and as of the Effective Date and the Agency shall have received a certificate to that effect dated as of the Effective Date and signed by the corporate secretary of the Company.
- (l) The Agency shall have received a legal opinion from the Company's external legal counsel, in a form and substance reasonably acceptable to the Agency, concerning the due organization and corporate good standing of the Company and the validity and enforceability of each of the Project Agreements.
- (m) The Company has paid the Agency the amount of [●] as reimbursement for the professional fees of the Agency's Project transaction advisors.
- (n) No Legal Requirement shall have been enacted, entered, promulgated, or enforced by any Government Authority having jurisdiction over the matter that restrains, prohibits, or declares illegal the consummation of the transactions contemplated in any of the Project Agreements and no action, suit, inquiry, or proceeding shall have been instituted or threatened that seeks to restrain, prohibit, or declare illegal the consummation of the transactions contemplated by any of the Project Agreements. Each Party, through its respective corporate secretary or chief legal officer, shall issue a sworn statement to this effect.
- (o) Certified true copies of resolutions adopted by the governing board of the Agency authorizing the execution, delivery, and performance of this Agreement shall have been delivered to the Company.
- (p) The Agency shall have obtained all land rights and rights-of-way in respect of the Site in such form and substance sufficient to complete the Project and shall have legal, peaceful and unencumbered use and possession of and access to the Site.

- (q) The Agency shall have obtained from the NWRB a water permit granting it the right to utilize raw water from *[indicate raw water source]* up to [●] liters per second for use in the Project.
- (r) The representations and warranties of the Agency contained or incorporated herein by reference shall be true and correct in all material respects on and as of the Effective Date and the Company shall have received a certificate to that effect dated as of the Effective Date and signed by the corporate secretary or chief legal officer of the Agency.
- (s) The Agency shall submit to the Company a legal opinion from the Agency's chief legal officer, in a form and substance reasonably acceptable to the Company and the Lenders, concerning the due organization and legal existence of the Agency under the laws of the Philippines and the validity and enforceability of this Agreement.

## **2.2 Reasonable Efforts to Satisfy Conditions Precedent**

- (a) Each Party shall use all reasonable efforts to satisfy the conditions enumerated in Section 2.1 (*Conditions Precedent to the Effective Date*) on or before the Required Effective Date. On each date that a Party believes that any of the conditions precedent has been satisfied, it shall promptly give written notice of that fact to the other Party together with copies of all relevant documents which satisfy that condition.
- (b) Without prejudice to the rights of the Parties to terminate this Agreement pursuant to Section 20.2 (*Termination due to Prolonged Force Majeure Event*), if the occurrence of the Effective Date is delayed by a Force Majeure Event, the Parties shall confer on the effects of such delay and may mutually agree to extend or otherwise adjust the Required Effective Date equitably. The Parties shall endeavor to reschedule activities and resume the performance of their obligations in a way that will avoid or minimize any further delay in the implementation of the Project.

## **2.3 Non-Occurrence of Effective Date**

### **2.3.1 Termination due to Non-Occurrence of Effective Date**

- (a) The Agency may extend the period for the Company to comply with its obligations under Section 2.1 (*Conditions Precedent to the Effective Date*) or may terminate this Agreement with immediate effect by giving written notice thereof to the Company at any time after the Required Effective Date (unless the Effective Date occurs before such notice is issued) if any of the conditions precedent set forth in Sections 2.1(a) through (n) inclusive has not been satisfied on or before the Required Effective Date.

- (b) The Company may extend the period for the Agency to comply with its obligations under Section 2.1 (*Conditions Precedent to the Effective Date*) or may terminate this Agreement with immediate effect by giving written notice thereof to the Agency at any time after the Required Effective Date (unless the Effective Date occurs before such notice is issued) if any of the conditions precedent set forth in Sections 2.1(n) through (s) and (d) (insofar as Consents that the Agency must secure are concerned) has not been satisfied on or before the Required Effective Date.

### **2.3.2 Consequences of Termination**

If this Agreement is terminated pursuant to Section 2.3.1 (*Termination due to Non-Occurrence of Effective Date*):

- (a) If the Company is at fault, the Agency shall be paid liquidated damages by the Company equal to [●] percent ([●]%) of the Total Project Cost unless the Company's failure to fulfill any of its conditions precedent was actually due to (i) a Political Force Majeure Event, or (ii) an Agency Event of Default. For this purpose, the Agency shall draw down the amount claimed as liquidated damages from the Performance Security posted by the Company.
- (b) If the Agency is at fault, the provisions of Section 20.1.2 (*Default Termination Buy-out Provisions*) will apply.
- (c) This Agreement shall have no further effect. The Parties shall have no further rights and shall be released from all their obligations under this Agreement except in respect of any rights or obligations arising before the termination occurred.

### **2.4 Specific Provisions Effective on the Signature Date**

The following sections shall be binding and effective on the Signature Date and the Parties' rights or obligations under those clauses shall not be conditional on the occurrence of the Effective Date:

- (a) Section 1 (*Definitions, Principles of Interpretation, and Priority of Documents*);
- (b) Section 2 (*Conditions Precedent to Effective Date*);
- (c) Section 11 (*Representations and Warranties*);
- (d) Section 13 (*Force Majeure*);
- (e) Section 14 (*Indemnity*);
- (f) Section 16 (*Limitation of Liability*);
- (g) Section 18 (*Assignment of Rights; Ownership of the Company*);
- (h) Section 19 (*Dispute Resolution*); and
- (i) Section 21 (*General Provisions*).

**ARTICLE II**  
**TERM OF THE AGREEMENT**

**3 TERM OF THE AGREEMENT**

**3.1 Contract Term**

Subject to Section 2.4 (*Specific Provisions Effective on the Signature Date*), the term of this Agreement runs from the Effective Date until the Termination Date.

**3.2 Provisions In Force**

From the Signature Date until the Effective Date, only the provisions enumerated in Section 2.4 (*Specific Provisions Effective on the Signature Date*) shall be in full force and effect. From the Effective Date until the Termination Date, all of the provisions of this Agreement shall be in full force and effect.

**ARTICLE III**  
**CONDITIONS AFTER EFFECTIVE DATE**

**4 PROJECT IMPLEMENTATION**

**4.1 Project Scope**

The Project shall comprise the planning, financing, development, design, engineering, and construction of the Facilities in accordance with the scope and specifications prescribed in Schedule B (*Design and Technical Specifications*), and the management, operation, repair, and maintenance of the Facilities and the provision of the Services by the Company during the Operating Period, including the transfer of the Facilities upon the Termination Date, in accordance with this Agreement and all applicable laws.

***Commentary:***

*The project scope is not limited to the description made in this sample contract but may change depending on the needs and unique circumstances of each project or transaction.*

**4.2 Grant of Rights**

On the terms and subject to the conditions set forth in this Agreement, the Agency hereby grants to the Company in compliance with all Legal

Requirements the sole and exclusive right and responsibility during the term of this Agreement to:

- (a) arrange financing for the Project;
- (b) plan, develop, design, build, test, commission, and decommission the Facilities;
- (c) implement the Project in accordance with the Project Milestone Schedule;
- (d) manage, use, occupy, operate, repair, maintain, decommission and refurbish the Facilities; and
- (e) provide and manage the Services.

#### **4.3 Land Acquisition and Right-of-Way**

- (a) The Agency shall be responsible at its own cost and expense for obtaining all land rights and permanent rights-of-way required in order to build, own, and operate the Facilities, including, without limitation, temporary rights-of-way to install and construct the Facilities.
- (b) The Company shall assist the Agency, using reasonable efforts, to acquire temporary rights-of-way or construction easements which the Company needs for the construction and operation of the Facilities in addition to those that the Agency may have obtained on or before the Effective Date.

#### **4.4 Consents and Approvals**

The Company shall at its own cost be responsible for obtaining all Consents required for the financing, building, construction, operation, maintenance, and ownership of the Facilities and the Project other than the Consents that the Agency itself is required to secure including the water permit pursuant to Section 2.1(q) (*Conditions Precedent to the Effective Date*) and all permanent rights-of-way or other land rights described in Section 4.3(a) (*Land Acquisition and Right-of-Way*) above.

### **5 CONSTRUCTION, TESTING AND COMMISSIONING**

#### **5.1 Construction Responsibilities of the Company**

The Company shall design, engineer, procure, and construct the Facilities in compliance with:

- (a) the Design and Technical Specifications;
- (b) Prudent Utility Practice;
- (c) all relevant design, engineering, and construction standards and practices in the Philippines;
- (d) all applicable Legal Requirements; and
- (e) the Project Milestone Schedule.

## **5.2 Further Responsibilities Related to Construction**

For the purpose of performing its obligations under Section 5.1 (*Construction Responsibilities of the Company*), the Company shall, among other things, have the right to and be responsible for:

- (a) calling for tenders and awarding contracts with or without tender subject to the Financing Agreements and the provision on transactions with Affiliates of the Company set forth in Section 12.7 (*Transactions with Affiliates of Company*);
- (b) causing the preparation of final engineering designs and approving or rejecting the same;
- (c) appointing and removing consultants and professional advisors;
- (d) purchasing and installing equipment in the Facilities;
- (e) hiring, organizing, removing and directing staff to manage and supervise the Project;
- (f) entering into contracts for the supply of materials, equipment and services including the connection to all utilities needed during construction and operation at the Site;
- (g) taking the necessary measures to protect people and property, avoid unnecessary interference caused by people and vehicles, minimize traffic, prevent any nuisance and unreasonable noise and disturbance, and ensure that emissions, discharges, and effluents from the Company's construction activities comply with all Legal Requirements; and
- (h) doing all other things necessary or desirable for the timely completion of the Facilities.

## **5.3 Warranties on Design and Construction**

### **5.3.1 General Warranties**

The Company expressly warrants that the design and construction of the Facilities including the works to be performed by the EPC Contractor and its subcontractors will conform to the Design and Technical Specifications in all respects and will be free from defects and deficiencies.



### **5.3.2 Duration**

The Company's warranties under this Section 5.3 (*Warranties on Design and Construction*) shall commence on the Effective Date and shall extend for a period of two (2) years after the Operations Start Date. If repairs or replacements are made by the Company to rectify any defects found during the original warranty period, the part repaired or replaced will be covered by the same warranty but with a new two (2)-year warranty period starting on the date that part has been retested and commissioned, and accepted by the Agency.

### **5.3.3 Breach**

The Agency will notify the Company of any breach of the general warranties referred to in Section 5.3.1 (*General Warranties*) specifying in as much detail as possible the circumstances of the breach and providing supporting data and records that may be available. At the Company's expense and within a reasonable period to be mutually agreed to by the Parties, the Company shall rectify all such breaches. Nevertheless, the Company's obligations under this Section 5.3 (*Warranties on Design and Construction*) are not conditional on notice being given by the Agency of such breach and the Agency's failure to send such notice should not be construed as a waiver of any general warranty.

## **5.4 Independent Verifier**

### **5.4.1 Role**

The Parties shall appoint an independent verifier with the appropriate national or international standing having relevant experience in the planning, design, development, construction, and operation of similar projects (the "***Independent Verifier***"), to review the detailed design to be submitted by the Company to the Agency pursuant to Section 5.5 (*Design, Drawings and Other Documents*), and to monitor and check the progress of the construction of the Facilities.

#### **5.4.2 Appointment Process**

The Independent Verifier shall be appointed through an open, transparent and competitive bidding process to be conducted by the Parties as follows:

- (a) Within thirty (30) Days from the Effective Date, the Agency shall prepare the terms of reference and request for proposals for the selection of the Independent Verifier, and shall submit those documents to the Company for comment and approval, which approval shall not be unreasonably withheld.
- (b) The Agency shall publish an open invitation for qualified persons to apply for eligibility and to submit bids.
- (c) The Agency shall receive all proposals submitted by candidates for appointment as Independent Verifier and a group comprised of an equal number of representatives from the Agency and the Company shall evaluate the proposals.
- (d) The candidate submitting the most responsive proposal shall be selected as the Independent Verifier for the Project.
- (e) Any dispute between the Parties arising from the selection of the Independent Verifier shall be resolved following the procedures for the settlement of disputes stipulated in Section 19 (*Dispute Resolution*).

#### **5.4.3 Specific Tasks**

The Independent Verifier shall carry out all tasks assigned to it under this Agreement, including the following:

- (a) supervision, monitoring, and inspection of work required of the Agency under this Agreement;
- (b) review of and determining whether the detailed designs meet the Design and Technical Specifications;
- (c) monitoring, inspection and verification of the state and progress of the construction including performance by the Agency of its construction-related obligations under this Agreement;
- (d) participation in testing and commissioning, and deciding whether the Company should be issued a provisional or final acceptance certificate;
- (e) determination of any time extensions for completing the Project Milestones; and

- (f) submission of reports and analyses that the Agency or the Company may reasonably request.

#### **5.4.4 Cost**

The fees and expenses of the Independent Verifier shall be shared and paid equally by the Agency and the Company.

#### **5.4.5 Access and Confidentiality**

- (a) The contract for the retention of the Independent Verifier shall include confidentiality and non-disclosure provisions that provide a level of protection for the intellectual property and other proprietary information of the Company and the Agency, which shall be commensurate with the level of protection provided in Section 21.4 of this Agreement.
- (b) The Company shall provide the Independent Verifier with access to all job sites, installations, documents, personnel and such other information as the Independent Verifier may request for the purposes of carrying out its tasks provided in this Agreement and as more specifically described in Section 5.4.3.

### **5.5 Design, Drawings and Other Documents**

#### **5.5.1 Submission**

The Company shall provide the Agency and the Independent Verifier with four (4) printed copies and one (1) electronic copy each of the final detailed engineering designs and plans not later than [●] Days prior to the Required Continuous Construction Date, subject to any agreement of the Parties to submit other designs and plans at a specified period after the Required Continuous Construction Date. These main drawings and technical plans shall include the following:

- (a) final drawings for the general layout of the Project including permanent access roads;
- (b) general and detailed drawings of the Facilities, including all ancillary facilities, structures and civil works;
- (c) final arrangements of plans for the general layout of machineries and equipment; and
- (d) test procedures that meet the requirements for testing provided in Schedule D (*Testing and Commissioning*).

#### **5.5.2 Review and Comment**

- (a) The Agency may, but shall have no obligation to, raise comments or questions on any of the documents submitted in line with this

Section 5.5 (*Design, Drawings and Other Documents*) within [●] Days from their submission, provided that such comments or questions relate to compliance of the documents with the Design and Technical Specifications including Prudent Utility Practice or the other engineering and design requirements of this Agreement. Following the receipt of those comments or questions, the Company shall modify the documents and submit the revised documents to the Agency within [●] Days for its final review.

- (b) If a written comment is not received by the Company on the original or revised design plans, the Agency shall be deemed to have no comments or further questions thereon.
- (c) The Independent Verifier shall be fully engaged by the Parties in the review, evaluation and analysis of the design plans to ensure that they comply with the Design and Technical Specifications. The Company shall consider the findings of the Independent Verifier in any revision of the documents regardless of the fact that the Agency may not have made any comments on the original design plans. If there is an inconsistency in the findings of the Independent Verifier and the comments of the Agency, the matter shall be resolved through mutual discussion involving the Parties and the Independent Engineer.

### **5.5.3 Disclaimer**

The submission of design plans for comment and the review by the Agency of such plans shall not constitute an approval or a warranty on its part of the technical soundness of the final detailed engineering design done by the Company. The Company acknowledges that the Agency does not assume any responsibility for the engineering or construction soundness, safety, or reliability of any part of the Facilities or the Project. A review done by the Agency or the Independent Verifier shall not relieve the Company of any obligation or liability under this Agreement or any other Project Agreement. It shall not also be construed as a waiver by the Agency of any of its rights under this Agreement. Neither the Agency nor the Independent Verifier shall have any liability to the Company or any other person by reason of its review of the design plans in line with this Section 5.5 (*Design, Drawings and Other Documents*).

## **5.6 Testing and Commissioning**

### **5.6.1 Testing Procedure; Provisional Acceptance**

- (a) The Company shall carry out the testing and commissioning of the Facilities at its cost in accordance with Schedule D (*Testing and Commissioning*). The Company shall give the Agency and the Independent Verifier not less than thirty (30) Days' prior written notice before commencing any testing and commissioning of the Facilities.
- (b) The Company shall procure and bear the cost of obtaining Raw Water energy, potable water and other consumables required for testing and commissioning of the Facilities.
- (c) The Agency shall accept delivery of Treated Water produced by the Company during testing and commissioning of the Facilities free of charge without payment of the Tariff for such Treated Water. If the Treated Water does not meet with the Treated Water Specifications, the Company shall be responsible for disposing of such Treated Water. The Company shall not be subject to any of the penalties provided under Section 8.2 (*Calculation of Payment*) during the testing and commissioning of the Facilities.
- (d) Within five (5) Business Days of the Company carrying out the testing and commissioning, the Independent Verifier shall be required to determine whether the testing has been done in accordance with the relevant testing and commissioning procedures and whether or not the Facilities have satisfied the applicable commissioning and acceptance standards provided in Schedule D (*Testing and Commissioning*). The determination made by the Independent Verifier shall be final and binding on the Parties, except in case of fraud or manifest error.
- (e) If the Independent Verifier certifies that the Facilities fully meet the commissioning and acceptance standards, the Agency shall issue a provisional acceptance certificate in favor the Company within five (5) Business Days from the receipt of such certification.
- (f) If the Independent Verifier certifies that the Facilities do not fully meet the commissioning and acceptance standards, it shall issue a report to the Parties detailing the reasons why the Facilities do not comply with the commissioning and acceptance standards and specifying the actions that the Company must take to meet such standards. Notwithstanding the assessment made by the Independent Verifier, the Company shall be solely responsible for the engineering or construction soundness, safety, or reliability of any part of the Facilities or the Project.
- (g) The Company shall immediately take the remedial actions necessary to ensure that the Facilities meet the commissioning and acceptance standards, taking into account the report of the

Independent Verifier, and shall notify the Agency and the Independent Verifier when they have been carried out. As soon as reasonably practicable, the Company shall conduct further testing and commissioning until a provisional acceptance certificate has been issued.

- (h) If the Company fails to obtain a provisional acceptance certificate on or before the Required Provisional Operations Start Date, such failure shall constitute a delay and a Company Event of Default.

#### **5.6.2 Final Acceptance**

If the Facilities meet the Operating Standards for a period of six (6) months from the Provisional Operations Start Date as certified by the Independent Engineer, the Agency shall issue a final acceptance certificate and the Facilities shall thereafter be operated by the Company in accordance with the Operating Procedures and Operating Standards.

#### **5.7 Performance Security**

- (a) On or before the Signature Date, the Company shall provide and deliver to the Agency an unconditional and irrevocable standby letter of credit substantially in the form set out in Schedule E (*Form of Performance Security*) as security for the performance by the Company of its obligations under this Agreement from the Signature Date until the Provisional Operations Start Date (the “**Performance Security**”). The Performance Security shall have a value equivalent to two percent (2%) of the Total Project Cost and shall be issued by a Performance Security Issuer in favor of the Agency.
- (b) The Performance Security shall be reduced proportionately as each Project Milestone is completed following the Project Milestone Schedule and unless forfeited or otherwise called on by the Agency in accordance with this Agreement, shall be returned to the Company on the date on which the provisional acceptance certificate is issued but only after submitting an Operating Security in exchange pursuant to Section 6.3 (*Operating Security*).

#### **5.8 Liquidated Damages for Delay in Meeting Project Milestones**

- (a) The Company undertakes to complete the Facilities and start the Services on or before the Required Provisional Operations Start Date. If the Provisional Operations Start Date does not occur on or before the Required Provisional Operations Start Date, the Company shall pay the Agency liquidated damages in the amount of [●] for each Day of delay from the Day immediately following the Required Provisional Operations Start Date to and including the Day

on which the Provisional Operations Start Date occurs ("**Delay Liquidated Damages**").

- (b) The Agency shall claim payment of Delay Liquidated Damages accruing under Section 5.8(a) (*Liquidated Damages for Delay in Meeting Project Milestones*) above through invoices. The Company shall pay any amount due not later than thirty (30) Days after its receipt of each invoice, which may be issued no more frequently than every fifteen (15) Days. If the Company fails to pay on the due date, then the Agency shall be entitled to draw from the Performance Security the amount of Delay Liquidated Damages due. Notwithstanding Section 15.1 (*Company Events of Default*), if the Company's liability for Delay Liquidated Damages exceeds the amount available to be drawn under the Performance Security, the Company shall pay the excess upon written demand by the Agency. The Agency shall also have the right to deduct any unpaid amount from any amount otherwise due the Company under this Agreement.

## **5.9 Project Milestone Schedule**

### **5.9.1 Compliance with Project Milestone Schedule**

The Company undertakes to complete the construction and commissioning of the Project in accordance with the Project Milestone Schedule, as they may be amended in line with Section 5.9.2 (*Extension of Project Milestone Schedule*) below. To meet the timetable, the Company shall cause the EPC Contractor to immediately start work on the Project when the Effective Date occurs.

### **5.9.2 Extension of Project Milestone Schedule**

- (a) Dates in the Project Milestone Schedule may be extended only if any of the following events causes or will cause a material delay in achieving one or more Project Milestones:
  - (i) an Agency Event of Default;
  - (ii) a Force Majeure Event;
  - (iii) a delay or failure on the part of the Agency to carry out an obligation under this Agreement, other than an obligation related to payments by the Agency, and which failure or delay directly and proximately prevents the Company from meeting a Project Milestone unless the delay or failure on the part of the Agency is excused under this Agreement, or is attributable to an action or inaction of the Company, its subcontractors, or agents that is inconsistent with this Agreement;
  - (iv) in case of discovered articles described in Section 5.10 (*Discovered Heritage Resources*); or
  - (v) upon mutual agreement by the Parties.

- (b) When any of the foregoing events occurs, the Company shall promptly submit to the Agency and the Independent Verifier a written report setting forth in detail reasonably satisfactory to the Agency the reasons for and the expected length of the delay. The Company shall also recommend measures to minimize the period of the delay and provide a supplemental plan that demonstrates that the Project will be completed within the shortest period possible taking into account the effects of the delay. After submission of the report, the Parties and the Independent Verifier shall meet within five (5) Days to consult about the delay and the supplemental plan. The Parties may thereafter agree to equitably adjust the Project Milestone Schedule to the extent that the Company is able to demonstrate that such delay is attributable to any of the events listed in Section 5.9.2(a) (*Extension of Project Milestone Schedule*).

#### **5.10 Discovered Heritage Resources**

If the Company, the EPC Contractor or any subcontractor finds any a fossil, antiquity or other object having artistic, cultural, historic or monetary value or importance discovered on the Site during construction, the Company shall promptly notify the Agency of such discovery and shall take all reasonable steps (including temporary stoppage of work) to prevent its loss or damage. The Company shall also consult with the Agency before incurring any substantial cost in relation to the discovered articles. If the Project Milestone Schedule is affected as a result of any direction given by the Agency, then the Project Milestone Schedule shall be equitably extended. The Company shall be reimbursed for any additional costs reasonably incurred in order to prevent the loss, removal or damage of the discovered articles.

### **6 OPERATION AND MAINTENANCE**

#### **6.1 Operation and Maintenance Responsibilities of the Company**

The Company shall be responsible for the management, operation, maintenance, safety and repair of the Facilities from the Provisional Operations Start Date until the Termination Date and shall ensure during such period that the Facilities operate in accordance with all Legal Requirements, Prudent Utility Practice, and the Operating Procedures and Operating Standards.

#### **6.2 Operating Procedures**

##### **6.2.1 Submission of Operating Procedures**

- (a) The Company shall devise and implement Operating Procedures for the Facilities consistent with Prudent Utility Practice that incorporate the operating and maintenance procedures specified or recommended by equipment suppliers and manufacturers and that



will enable the Company to comply with Schedule H (*Delivery Schedule and Operating Procedures*).

- (b) The Company shall submit the Operating Procedures to the Agency not later than one hundred eighty (180) Days before the expected Provisional Operations Start Date. The Agency shall review and may comment on the Operating Procedures following the same steps provided in Section 5.5.2 (*Review and Comment*).

#### **6.2.2 Disclaimer – Operating Procedures**

The review or approval by the Agency of the Operating Procedures shall not relieve the Company from any liability under this Agreement or any other Project Agreement nor shall it be considered a waiver by the Agency of any of its rights. The Agency and the Independent Verifier shall not be liable to the Company or any other person by reason of any review or approval of the Operating Procedures.

#### **6.3 Operating Security**

Within five (5) Days from the Operations Start Date, the Company shall provide and deliver to the Agency a surety bond callable on demand in the form set out in Schedule E (*Form of Performance Security*) as security for the performance by the Company of its obligations under this Agreement from the Provisional Operations Start Date until the Termination Date (the “**Operating Security**”). The Operating Security shall have a value equivalent to [●] and shall be issued by a Performance Security Issuer in favor of the Agency. The Company shall ensure that the Operating Security is always valid and regularly renewed or extended.

#### **6.4 Company Staff**

The Company shall ensure that a sufficient number of its personnel or those of its subcontractors with the necessary qualifications, expertise and experience most appropriate to provide the Services are on duty at the Facilities at all times in accordance with Prudent Utility Practice and the Operating Procedures.

#### **6.5 Planned Downtime; Maintenance Program and Schedule**

- (a) The Company shall conduct all regularly scheduled maintenance of the Facilities, including repairs, overhauls, improvements, and replacements, in accordance with the maintenance plans and schedules developed pursuant to this Section 6.5.
- (b) The Company shall submit to the Agency, not later than sixty (60) Days prior to the start of each Contract Year (in the case of Contract Year 1, prior to the Required Provisional Operations Start Date), a

maintenance plan and schedule for the Facilities for that Contract Year. The maintenance schedule for a Contract Year shall indicate the dates and times during which the normal delivery of Services will be interrupted for each Planned Downtime during that Contract Year (the “**Planned Downtime Period**” for such Planned Outage). The Company shall coordinate the maintenance schedules with the Agency so as to maximize overlap of any Planned Downtime Period with any scheduled maintenance of the Agency System. The Planned Downtime Period during any Contract Year shall not exceed [●] hours.

- (c) A Planned Downtime shall be confirmed by the Parties sixty (60) Days prior to such downtime and reconfirmed twenty-one (21) Days in advance. The Agency may request the Company to reschedule a Planned Downtime for any valid reason and the Company shall make reasonable efforts to accommodate the request consistent with Prudent Utility Practice. If the Company cannot accommodate the request, it shall inform the Agency in writing as early as possible, which should not be later than fifteen (15) Days after its receipt of a request for rescheduling any Planned Downtime.

## **6.6 Unplanned Downtime**

In case any Unplanned Downtime occurs or is foreseen to occur, the Company shall immediately notify the Agency in writing specifying the date and time of the commencement of the Unplanned Downtime and its expected duration. The period of time from the commencement of an Unplanned Downtime until the resumption of normal delivery of the Services shall be termed as an “**Unplanned Downtime Period**”. Any Unplanned Downtime Period with a duration of more than [●] hours shall be treated as a Non-Political Force Majeure Event affecting the Company.

## **7 SUPPLY OF TREATED WATER**

### **7.1 Supply of Raw Water**

The Company shall be responsible for obtaining Raw Water from *[indicate raw water source]* for treatment at the Facilities.

[OPTIONAL: The Agency shall be responsible for securing the water permit authorizing extraction from the selected Raw Water source. Notwithstanding, the Company shall remain liable for its obligations under Sections 6 (*Operation and Maintenance*) and 7 (*Supply of Treated Water*) of this Agreement.]

The Raw Water shall be tested in accordance with Schedule F (*Raw Water*).

### **7.2 Delivery and Acceptance of Treated Water**

From the Provisional Operations Start Date until the Termination Date, the Company shall treat and convert the Raw Water into Treated Water and sell and deliver the Treated Water to the Agency at the Delivery Point in the quantities determined in accordance with Section 7.3 (*Quantity of Treated Water Supplied*) and with the qualities prescribed in Schedule G (*Treated Water Specifications*). The Treated Water delivered to the Agency shall be measured in accordance with Schedule J (*Metering and Measurement Procedures*). The Agency shall accept and pay for the Treated Water in accordance with Section 8 (*Payment*).

If due to its fault or negligence, the Company fails to supply the Treated Water conforming to the quantity and quality required in this Agreement, the Agency shall be entitled to impose a penalty provided for in Section 8.2 (*Calculation of Payment*) and Schedule L (*Tariff*) and may enforce payment through the Operating Security if the Company is unable to pay the penalty when due.

### **7.3 Quantity of Treated Water Supplied**

#### **7.3.1 Nomination by Agency**

- (a) Within the last five (5) Days of each Billing Month, the Agency shall nominate the volume of Treated Water, expressed in cubic meters, that it requires for the subsequent Billing Month. For the first Billing Month of the contract term, the Agency shall make the nomination at least five (5) Days prior to the Provisional Operations Start Date. The Agency shall make these nominations using the form set out in Schedule I (*Quantity Nomination and Acceptance Form*).
- (b) The volume of Treated Water nominated by the Agency for any particular Day shall be designated as the ***“Nominated Daily Quantity”*** or ***“NDQ.”***
- (c) The NDQ shall be between [●] cubic meters (***“Minimum Nominated Daily Quantity”*** or ***“MinNDQ”***) and [●] cubic meters (***“Maximum Nominated Daily Quantity”*** or ***“MaxNDQ”***).

#### **7.3.2 Acceptance of Nomination and Off-Take Obligation of Agency**

- (a) The Company must accept the nomination made by the Agency if the NDQ is greater than or equal to MinNDQ and less than or equal to MaxNDQ.
- (b) The Company shall have the right to unilaterally change the nominations for any Day that does not meet the requirements of Section 7.3.1(c) (*Nomination by Agency*) such that the nomination

shall be MinNDQ for any Day for which the Agency nominated NDQ of less than MinNDQ and shall be MaxNDQ for any Day for which the Agency nominated NDQ of more than MaxNDQ.

- (c) The Company shall accept or reject a nomination by the Agency within five (5) Days of receiving the Quantity Nomination and Acceptance Form of the Agency. If the Company fails to accept or reject the nomination within this period, the nominations shall be deemed accepted by the Company with respect to each day that satisfies the requirements of Section 7.3.1(c) (*Nomination by Agency*) and shall be deemed accepted at MinNDQ for any Day for which the Agency nominated NDQ of less than MinNDQ and at MaxNDQ for any Day for which the Agency nominated NDQ of more than MaxNDQ.
- (d) Upon the acceptance or deemed acceptance of a Quantity Nomination and Acceptance Form, the Agency shall be obligated to take and pay for or to pay for if not taken the NDQ for each Day in the Billing Month provided that the Company is ready, willing, and able to deliver such NDQ at the Delivery Point in accordance with this Agreement.

### **7.3.3 Relief from Offtake Obligation**

For [●] days in each Contract Year, the Agency shall have the option to reject NDQ without incurring any penalty under the following conditions:

- (a) The Agency needs to undertake maintenance of the Agency System or is experiencing technical problems which affect its capacity to accept or distribute Treated Water and such is not the direct result of the Agency's fault or negligence or its preference to substitute Treated Water provided by the Company with water from a different source or a reduction in market demand for the Agency's services.
- (b) The Agency shall give the Company at least [●] Days/hours prior written notice of its decision to reject NDQ and shall specify the quantity of Treated Water to be delivered on that Day
- (c) Within [●] Days from the exercise of the option to reject NDQ, the Agency shall submit a written report to the Company describing the reason for the exercise of the option and how it affected the Agency's ability to accept the Treated Water that should have been delivered that Day.
- (d) The rejection by the Agency of the NDQ under the conditions in this Section 7.3.3 (*Relief from Off-take Obligation*) shall not be considered an Agency Event of Default.

#### **7.4 Quality of Treated Water Supplied**

The Company shall deliver Treated Water to the Company which meet the Treated Water Specifications as determined in accordance with Schedule G (*Treated Water Specifications*). The Agency may require a change in the quality of the Treated Water in accordance with Section 7.7 (*Improvement in Facilities or Treated Water Quality*).

#### **7.5 Title and Risk of Loss**

Title and all risks in respect of Treated Water delivered by the Company to the Agency shall pass from the Company to the Agency once the Treated Water passes the Delivery Point.

#### **7.6 Sale to Third Parties**

The Company shall be allowed to sell Treated Water to third parties subject to the consent of the Agency, which consent shall not be unreasonably withheld, and provided the supply requirements of the Agency are met in accordance with this Agreement.

#### **7.7 Improvement in Facilities or Treated Water Quality**

##### **7.7.1 Right to Request for Improvement**

The Agency may at any time, by written notice to the Company, propose an upgrade, expansion or alteration to the Facilities or an improvement of the Treated Water Specifications for any reason, including, without limitation, the following:

- (a) the availability of new proven technology in the Philippines or abroad;
- (b) a change in the demand from the Agency's customers; or
- (c) to comply with any Change in Law.

##### **7.7.2 Principles Governing Negotiations**

Upon the giving of notice by the Agency, the Parties must negotiate in good faith the terms required to implement the improvement proposed in accordance with the following principles:

- (a) The Company shall be entitled to recover all costs incurred by it to carry out the improvement and to make a reasonable rate of return on any additional investment made for that purpose having regard to existing market conditions at the time the improvement is done.

- (b) Except when a Tariff adjustment is authorized under Section 8.3.2 (*Extraordinary Tariff Adjustments*), the Agency shall be entitled to determine the method of compensating the Company for the improvement in the Facilities or the Treated Water Specifications, including but not limited to an adjustment to the Tariff pursuant to Section 8.3.2 (*Extraordinary Tariff Adjustments*) or an extension of the Operating Period.
- (c) The essential commercial terms and risk distribution embodied in this Agreement shall also apply to the works carried out in the adoption of the improvement.

### **7.7.3 Implementation of Improvement**

Upon agreement by the Parties, the improvement to the Facilities or the Treated Water Specifications shall be implemented in accordance with the agreed terms and the principles in Section 7.7.2 (*Principles Governing Negotiations*).

## **8 PAYMENT**

### **8.1 Tariff**

In consideration for the supply of Treated Water by the Company, the Agency will pay the Company a tariff, expressed in PHP per cubic meter, for each Billing Month which shall be computed by applying the formulas and procedures described in this Section 8 and in Schedule L (the "**Tariff**"). The Tariff, as computed, shall include the value-added tax that the Company may be required to pay in relation to the sale of Treated Water to the Agency.

### **8.2 Calculation of Payment**

*Commentary:*

*The Tariff should have two components, namely:*

*(1) Fixed Payments*

*- This is based on the capacity made available to the Agency.*

*(2) Variable Payments*

*- This is based on the actual amount of Treated Water delivered by the Company to the Agency.*

*The Tariff to be paid to the Company shall be reduced in the event the following occur:*

*(1) failure of the Company, due to its own action or inaction, to deliver Treated Water in an amount equivalent to NDQ;*

*(2) failure of the Company, due to its own action or inaction, to deliver Treated Water complying with Treated Water Specifications; or*

*(3) failure of the Company, due to its own action or inaction, to deliver Treated Water in accordance with the Agreement due to a Political Force Majeure Event.*

*In the event of a Political Force Majeure Event or should the availability of Raw Water be reduced due to causes not attributable to either Party (ex. drought), then the Agency should pay the Company an amount equivalent to the fixed component of the Tariff.*

The Tariff for each Billing Month shall be calculated using the following formula:

[●]

where:

[●]

### **8.3 Tariff Adjustment**

*Commentary:*

*8.3.1 Regular Tariff Adjustments*

*The tariff should be regularly adjusted for the following:*

- (1) adjustment for exchange rate fluctuations*
- (2) adjustment for inflation*

### 8.3.2 Extraordinary Tariff Adjustments

#### 8.3.2.1 Tariff Re-Opener Event

Each of the following shall be a ***“Tariff Re-Opener Event”***:

- (a) the Occurrence of an Exceptional Raw Water Quality Deterioration Event;
- (b) if due to causes not attributable to either Party the amount of Raw Water available falls below [*specify water levels*] and remains at such levels for [*specify period*];
- (c) the occurrence of a Force Majeure Event that results in losses that are not covered by insurance that the Company is required to obtain and maintain under this Agreement; or
- (d) a change in the Treated Water Specifications due to a Change in Law.

#### 8.3.2.2 Tariff Adjustment Request and Approval

(a) If one or more Tariff Re-Opener Events occur, either the Company or the Agency may request the Expert Panel for an adjustment to the Tariff (***“Tariff Adjustment Request”***). The NWRB shall have the right to select the members of the Expert Panel from the pool of independent experts nominated by the Parties in accordance with Section 19.2.2 (*Establishment and Operation of Expert Panel*).

(b) No Tariff Adjustment Request may be made unless the aggregate impact (positive or negative) on the present value of Company’s cash flows, as adjusted for exchange rate fluctuation and inflation, is greater than [●] Pesos (PHP [●]). The Party requesting the Tariff Adjustment Request must submit the necessary information to the Expert Panel to prove the occurrence of a Tariff Re-Opener Event and the change in cash flows.

(c) Upon receipt of a Tariff Adjustment Request, the Expert Panel shall verify the occurrence of the Tariff Re-Opener Event(s) claimed by the requesting Party and its impact on the Company’s cashflow. Within [●] Business Days of receiving the Tariff Adjustment Request, the Expert Panel may require the requesting Party to submit additional information in connection with its review.

(d) The Expert Panel shall approve or disapprove the Tariff Adjustment Request within [●] Business days following receipt of the Tariff



Adjustment Request or receipt of the additional information requested by the Expert Panel.

(e) The Parties shall amend the Agreement to implement the approved adjustment in the Tariff prospectively until the Termination Date (each such approved tariff adjustment, an ***“Extraordinary Tariff Adjustment”***).

The Tariff shall be adjusted every [●] following the formula indicated below:

[●]

where:

[●].

#### **8.4 Invoices**

At the end of each Billing Month, the Company shall submit to the Agency an invoice (each, a ***“Company Invoice”***) in the form set out in Schedule K (*Form of Invoice*) showing the computation for the Tariff and stating the total amount due and payable from the Agency for the previous Billing Month.

#### **8.5 Payment Terms**

The Agency shall pay the amount due in each Company Invoice within (30) Days after the date of receipt by the Agency of such invoice. If the last day for payment is not a Business Day, then payment shall be made on the next Business Day.

#### **8.6 Manner of Payment**

All sums payable by the Agency under this Agreement shall be paid in Pesos and remitted in same-day funds on the due date to an account maintained in a bank doing business in Metro Manila, Philippines to be specified in writing by the Company to the Agency.

#### **8.7 Taxes**

The Company shall be liable for all taxes imposed on the Project and the Facilities. However, any value-added tax on the sale of the Treated Water shall be passed on by the Company to the Agency and shall be separately stated in the Company Invoices.

#### **8.8 No Set-Off or Deductions**

All payments made by the Agency under this Agreement shall be made free and clear of and without deduction for or on account of any setoff,

counterclaim, Taxes, or otherwise, except those particularly allowed under the Civil Code of the Philippines or deductions required by Legal Requirements.

## **8.9 Penalty for Late Payment**

Any amount due which is not paid within the period indicated in this Section 8 shall bear interest at the Penalty Rate from the due date until payment is received by the Company.

## **8.10 Disputed Invoices**

- (a) If the Agency disputes an amount or a computation in a Company Invoice, the Agency shall: (i) send a written notice to the Company informing it of such fact and detailing the basis for the dispute; and (ii) pay the undisputed portion not later than its due date.
- (b) The Parties shall endeavor to settle the billing dispute within thirty (30) Days after receipt by the Company of the Agency's notice following the steps for the settlement of disputes provided in Section 19 (*Dispute Resolution*). If the dispute is resolved in the Company's favor, then the amount disputed shall bear interest at the Penalty Rate from the original due date until payment is received by the Company.

# **9 CONTRACT MANAGEMENT, MONITORING AND EVALUATION**

## **9.1 Contract Management Body**

Within five (5) Business Days after the Signature Date, each Party shall form a contract management body, either through the appointment of a contract manager or the creation of a contract management unit, which shall be responsible for monitoring, managing and evaluating the full implementation of the Project ("**Contract Management Body**"). Within two (2) Business Days from its creation, each Party shall immediately send written notice to the other naming the members of its Contract Management Body.

## **9.2 Project Reports**

- (a) Within fifteen (15) Business Days from receipt of the notice referred to in Section 9.1, the Contract Management Bodies of the Parties shall meet and agree on the form of the report which the Parties shall use as a tool to exchange information and to monitor, manage and evaluate the implementation of the Project ("**Project Report**"). At the same meeting, the Parties shall also agree on:

- (i) the method for monitoring and obtaining the information required;
  - (ii) the Party responsible for monitoring and reporting on each of the indicators; and
  - (iii) the frequency that each indicator should be monitored and reported.
- (b) The Parties shall ensure that Project Report will have the following basic information:
  - (i) performance indicators to determine the Company's compliance with its obligations under the Agreement;
  - (ii) performance indicators to determine the Agency's compliance with its obligations under the Agreement;
  - (iii) major risk factors for the Project and the indicators to determine how such risk factors are affecting the Project;
  - (iv) the costs of the Project and the Services measured against their expected costs;
  - (v) any information required by relevant Government Authorities including government oversight agencies and public regulators in accordance with applicable Legal Requirements;
  - (vi) significant contract management actions taken by each Party;
  - (vii) any event or condition that has occurred which materially affects the Project or a Party's ability to comply with its obligations under the Agreement or if any of the representations made or warranties given by a Party ceases to be true in any material respect; and
  - (viii) all other material information that may be included by the Parties.

### **9.3 Monitoring and Reporting Obligations**

- (a) The Parties shall comply with their monitoring and reporting obligations mutually agreed upon pursuant to this Section 9 and embodied in the Project Report.
- (b) For this purpose, the Company shall establish appropriate monitoring and reporting systems to obtain data and perform calculations in order to measure compliance with the Operating Standards and Procedures and other key performance indicators provided in the Project Report.
- (c) Performance of the Facilities and compliance with the Operating Standards and Procedures shall be measured and calculated by the Company on a [●] basis. The Company shall gather the results and make them available to the Contract Management Bodies.
- (d) The Project Reports shall be prepared in English and shall be submitted within [●] Business Days after the end of the calendar month to which they apply. Source data applicable to a Project Report shall be retained by the Parties for a period of at least sixty (60) months after the report is submitted and shall be furnished to the other Party upon demand. All reports and source data for purposes of validation shall also be stored electronically by the Parties.
- (e) Where a Project Report shows that the operation of the Facilities is below the Operating Standards and Procedures or other performance indicators, the Company shall also separately submit with the report: (i) a full explanation of the reasons for the below-target performance; (ii) the steps that it has or will be taking to ensure that performance is improved to meet the standard; and (iii) the timeframe for their implementation. In case the cause of the below-target performance is not entirely the responsibility of the Company, it shall include a recommended solution in its report that identifies the proposed steps to remedy the other factors that contributed to the below-target performance.
- (f) At the request of the Agency, the Company shall prepare and submit supplemental reports related to the performance of the Facilities or compliance with the Operating Standards and Procedures.

#### **9.4 Regular Meetings**

The Contract Management Body of the Parties shall meet once a month or more frequently if necessary in order to discuss the progress of the Project, including but not limited to the following:

- (a) the indicators and information reported using the Project Report;

- (b) any problems or issues in the implementation of the Project and solutions to the same, including preventive or remedial actions which should be taken when the agreed outputs or costs of the Project deviate from their expected values;
- (c) methods for managing significant Project risks; and
- (d) lessons learned from the monitoring and management of the Project and, based on such lessons, the necessary adjustments that can be made in the implementation of the Project in order to improve Project outcomes.

## **9.5 NWRB Regulation**

The Parties acknowledge that the Company is subject to regulation by the NWRB as a water resource developer and seller of Treated Water to the Agency. The Company shall fully comply with all applicable regulatory issuances and orders of the NWRB for bulk water suppliers.

## **9.6 Right of Agency to Monitor**

- (a) The Agency shall be entitled to inspect, check, test and monitor the Project and the Facilities during the construction period and the Operating Period. The purpose of such monitoring shall be to determine whether the Facilities are being designed, constructed, tested, commissioned, operated and maintained in accordance with the terms of this Agreement.
- (b) The Company shall allow the Agency, the Independent Verifier or its duly authorized representatives to conduct such inspection and monitoring during normal business hours upon reasonable prior written notice to the Company. The monitoring and review shall be conducted in the presence of a duly designated representative of the Company. All costs incurred by the Agency in exercising its monitoring rights pursuant to this Section shall be borne solely by the Agency.
- (c) The Parties shall use all reasonable efforts to minimize any disruption to the delivery of the Services during a Service inspection.
- (d) The Company shall ensure that the Agency or its agent or representative is given sufficient access to any part of the Facilities to carry out a Service inspection. For this purpose, the Company shall:
  - (i) provide assistance and make available equipment or materials as may be reasonably required;

- (ii) not make any part of the Facilities inaccessible; and
- (iii) promptly correct any deficiency identified by the Agency or its agent during such Service inspection.

## **9.7 Financial Reports**

### **9.7.1 Fiscal Year; Accounting Principles**

The Company shall have a fiscal year ending on December 31 of each year. The Company shall at all times comply with the Accounting Principles and maintain proper books and records in accordance with applicable Legal Requirements.

### **9.7.2 Financial Reports and Public Audit**

- (a) The Company shall keep accurate records of all receipts and expenses related to the operation of the Facilities and to any activity performed on the Facilities by the Company.
- (b) It shall prepare unaudited quarterly financial statements in accordance with the Accounting Principles consistently applied. The quarterly unaudited financial statements shall be duly signed by the Company's chief accountant and shall be submitted to the Agency within thirty (30) Business Days after the end of each quarter for the duration of the Operating Period.
- (c) The Company shall prepare audited annual financial statements in accordance with the Accounting Principles consistently applied. The annual financial statements shall be audited by the Auditors. Within one hundred twenty (120) Business Days after the end of each fiscal year for the duration of the Operating Period (including the fiscal year in which the Termination Date occurs), the Company shall submit to the Agency an annual report on the Company's management, operations, and finance during the preceding year, including copies of the audited financial statements with the Auditors' notes and comments.
- (d) In addition to the foregoing reports, the Company shall provide the Agency at its request and on a timely basis all financial information in respect of the Company's operations reasonably required to permit the Agency to satisfy its financial, tax, and other reporting requirements.
- (e) The Company acknowledges that the Agency is subject to public audit by the Commission on Audit ("**COA**"). For this purpose, the Company shall provide on a timely basis pertinent information as may be requested by the Agency or COA for purposes of such audit.

## **10 INSURANCE**

### **10.1 Required Insurance Policies; Endorsements**

- (a) The Company at its cost shall obtain and maintain or cause its subcontractors to obtain, at a minimum, the insurance coverage and policies described in Schedule N (*Insurance*) and required by the Legal Requirements, the Financing Agreements, and Prudent Utility Practice. The Company may procure additional insurance coverage not called for under this Agreement.
- (b) The insurance policies required to be obtained by the Company shall be issued by reputable and financially sound insurers or reinsurers duly licensed by the Insurance Commission and reasonably acceptable to the Agency. All policies shall have the endorsements and other terms set out in Schedule N (*Insurance*) but the Company shall not be required to obtain any insurance policy at a time when such policy or coverage is not available on reasonable commercial terms in the international or domestic insurance market.

### **10.2 Insurance Certificates**

The Company shall provide the Agency with true and certified copies of insurance policies or certificates of coverage required to be obtained in accordance with this Agreement within ten (10) Days after the date such insurance policies are obtained or renewed.

### **10.3 Failure to Secure and Maintain Required Insurance**

If the Company fails to obtain or maintain any insurance policy or endorsement required by this Agreement, the Agency shall have the right but not the obligation to procure such insurance policy or endorsement at the Company's expense. If the Company fails to reimburse the Agency within seven (7) Days after being notified of the Agency's payment of any insurance premium to obtain the needed insurance cover, the Agency can enforce reimbursement from the Performance or Operating Security in effect at that time. If the Performance or Operating Security is insufficient, the Agency shall deduct the cost of insurance from any amount due and payable by the Agency to the Company under this Agreement.

### **10.4 Application of Insurance Proceeds**

#### **10.4.1 Loss While the Financing Agreements are Effective**

If all or a portion of the Facilities is damaged, destroyed, or rendered unfit for normal operation, all insurance proceeds received under any

insurance policy other than proceeds of business interruption insurance shall be applied in accordance with the applicable terms of the Financing Agreements.

#### **10.4.2 Loss After the Financing Agreements Have Expired**

If after the expiration of the Financing Agreements all or a portion of the Facilities is damaged, destroyed, or rendered unfit for normal operation, the Company shall apply the insurance proceeds (except the proceeds of business interruption insurance) in accordance with the following provisions:

- (a) If the Company determines that the Facilities can be rebuilt, repaired, and restored to permit operation on a commercially viable basis and the insurance proceeds are sufficient to restore such Facilities, then all the proceeds shall be applied toward the cost of rebuilding, repairing, and/or restoring the Facilities.
- (b) If the Company determines that the Facilities cannot be rebuilt or can only be partially rebuilt, repaired, and restored or that the insurance proceeds are insufficient to restore such Facilities, then either Party may elect to terminate this Agreement in accordance with Section 20.2.3 (*Termination by Either Party*) and all of the insurance proceeds shall be distributed in the following order of priority:
  - (i) to the payment of any amount that may be due the Agency under this Agreement; then,
  - (ii) any remaining amount from such proceeds shall be given to the Company or its successors or assigns or to whomever may be lawfully entitled to receive it.

### **11 REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants to the other Party that as of the Signature Date and the Effective Date:

#### **11.1 Corporate Existence and Authority**

It is a corporation duly organized and validly existing under the laws of [●] and it has all requisite legal power and authority to conduct its business, to own its properties, and to execute, deliver and implement this Agreement.

#### **11.2 Government Consents and Approvals**

All Consents required to authorize the execution, delivery, and performance of this Agreement have been obtained and are in full force and effect except for those Consents identified in Schedule M (*Consents*) that the Parties have agreed to obtain at a later time.



### **11.3 Non-contravention of Legal Requirements**

The execution, delivery, and performance of this Agreement do not conflict with any Legal Requirements applicable to such Party.

### **11.4 Validity and Enforceability of Agreement**

This Agreement constitutes its legal, valid, and binding obligation, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or other similar laws affecting creditors' rights generally.

### **11.5 No Adverse Litigation**

There is no litigation, arbitration, investigation or proceeding pending, or to its best knowledge, threatened, against or affecting such Party that could reasonably be expected to materially adversely affect its ability to fulfill its obligations under this Agreement or that may affect the legality, validity, or enforceability of this Agreement.

### **11.6 Due Authorization & Non-contravention of Other Agreements**

The execution, delivery, and performance of this Agreement have been duly authorized by all requisite corporate action, and will not: (i) require any further consent or approval of its board of directors, shareholders, or any other third party, other than those that have been obtained, or (ii) violate its charter or incorporation documents, or other agreement or instrument to which it is a party or by which it or its property may be bound, or violate any law, judgment, order, writ, injunction, determination, or award presently in effect and applicable to it.

### **11.7 Continuing Representations and Warranties**

The representations and warranties in Sections 11.1 to 11.6 shall be deemed to be repeated by each Party as of the Effective Date and as of December 31 of each Contract Year. Each Party shall immediately notify the other Party in writing if any of the representations and warranties given under Sections 11.1 to 11.6 ceases to be true in any material respect.

## **12 COMPANY COVENANTS**

### **12.1 Conduct of Company**

The Company shall exercise complete control over its employees, contractors and subcontractors and require them to comply with this Agreement, all applicable Legal Requirements, and all applicable policies of the Company. The Company shall also require its employees, contractors and subcontractors to conform to the highest standards of professionalism and ethical conduct. To the extent permitted by applicable Legal Requirements, the Company shall dismiss or discipline any of its employees, contractors or subcontractors who do not conform

to such standards and shall take immediate action at its own expense to correct any violations of such standards.

## **12.2 Compliance with Legal Requirements and Consents**

The Company shall comply with all applicable Legal Requirements and shall comply in all material respects and shall keep in full force and effect all Consents required to be in its name for the performance of its obligations under this Agreement.

## **12.3 No Other Business**

Except with the prior written consent of the Agency, the Company shall not (a) engage in any business activity except those which are reasonably required to implement this Agreement, (b) enter into any merger, consolidation, or amalgamation with any entity or person, or (c) dispose of all or substantially all of its assets except as may be required by the Lenders to enforce any security interest permitted to be granted by the Company to such Lenders pursuant to Section 18.2 of this Agreement.

## **12.4 Local Content**

In cases where goods or services required for the Project are available from both Philippine and non-Philippine suppliers, the Company shall, and shall cause each of its contractors and subcontractors to, assure the participation of such Philippine suppliers, in the call for tenders. When the goods or services of such Philippine suppliers are reasonably comparable in cost, quality, and delivery time to non-Philippine suppliers of goods or services, the Company, or its contractors or subcontractors, shall acquire such goods or services from such Philippine suppliers.

## **12.5 Company's Employees**

### **12.5.1 Employment of Philippine Nationals**

The Company shall employ qualified Philippine citizens to the maximum extent possible. The Company shall cause its EPC Contractor to do the same.

### **12.5.2 Status of Company's Employees upon Termination of Agreement**

The Agency shall have no obligation to employ or hire any employees of the Company upon the termination of this Agreement. The Company shall be liable for all costs and expenses associated with the termination of the employment or contract of the Company's employees.

### **12.5.3 Education and Training**

The Company shall implement education and training programs designed to upgrade the skills of its employees with a view to bringing the skills of such employees to international standards in accordance with Prudent Utility Practice.

## **12.6 Anti-Corruption Warranty**

The Company warrants that neither it nor its representatives have offered any officer, official or employee of any Government Authority any consideration or commission for this Agreement nor has it or its representatives exerted or utilized any corrupt practice or unlawful influence to secure or solicit this Agreement for any consideration or commission. The Company shall not subcontract any portion or portions of its obligations under this Agreement to any public officer or Agency official or employee or to persons known by the Company to be relatives within the third degree of consanguinity or affinity of any public officer or Agency official or employee directly or indirectly involved in the award of this Agreement or the implementation of the Project. If any consideration or commission is paid to any private person, the Company shall disclose the name of the person and the amount paid. Any breach of the warranties and undertakings in this Section 12.6 shall constitute sufficient ground for the rescission or cancellation of this Agreement or the deduction of the consideration or commission paid from payments otherwise owed to the Company under this Agreement, without prejudice to the filing of civil or criminal actions against the Company and/or its representatives and officials and employees of the Agency under the Anti-Graft and Corrupt Practices Act and other applicable laws.

## **12.7 Transactions with Affiliates of Company**

Any contract or other transaction entered into by the Company with any of its Affiliates in connection with the Project, whether for the purchase of goods or services or otherwise, shall be entered into on an arms length basis and on commercial terms that would reasonably be expected to apply in the open market between contracting parties that are not Affiliates. Without limiting the generality of the foregoing, in no event shall the Company, directly or indirectly, pay more than the fair market value for goods or services supplied to it by its Affiliates.

## **13 FORCE MAJEURE**

### **13.1 Force Majeure Events**

#### **13.1.1 Definition of Force Majeure Event**

A “**Force Majeure Event**” means any event, condition, or circumstance and the effects thereof not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that:

- (a) such event, condition, or circumstance is not the direct or indirect result of the breach by such Party of any of its obligations under this Agreement or the fault or negligence of such Party, its Affiliates, or any person under the Party’s or its Affiliates’ reasonable control;
- (b) despite the exercise of reasonable diligence, such event, condition, or circumstance cannot be prevented, avoided, or removed by such Party;

- (c) such event, condition, or circumstance has a material adverse effect on the ability of such Party to perform all or a material portion of any of its obligations under this Agreement, and such Party has taken all reasonable precautions, due care, and alternative measures in order to avoid or mitigate the effects of such event on such Party's ability to perform its obligations under this Agreement; and
- (d) such Party has given the other Party notice in accordance with Section 13.2.1 (*Notice of Force Majeure Event*).

#### **13.1.2 Political Force Majeure Event**

Subject to Section 13.1.1 (*Definition of Force Majeure Event*), Force Majeure Events may include any of the following (each, a "**Political Force Majeure Event**"): war (declared or not); hostilities or belligerence; blockade; revolution or insurrection; riot or public disorder; Change-in-Law, expropriation, requisition, confiscation, or nationalization; export or import restrictions other than any in effect as of the Signature Date; closing of harbors, docks, canals, or other assistance to or adjuncts of the shipping or navigation of or within any place; rationing or allocation, whether imposed by law, decree, or regulation by, or by compliance of industry at the insistence of, any Government Authority.

#### **13.1.3 Non-Political Force Majeure Event**

Subject to Section 13.1.1 (*Definition of Force Majeure Event*), Force Majeure Events may include any of the following (each, a "**Non-Political Force Majeure Event**"): fire; unusual flood or drought; earthquake, volcano, storm, lightning, tide (other than normal tides), tidal wave, unusually severe weather conditions; perils of the sea; accidents of navigation or breakdown or injury of vessels; accidents to harbors, docks, canals, or other assistance to or adjuncts of the shipping or navigation; epidemic or quarantine; strikes or combination of workmen, lockouts, or other labor disturbances (other than those solely affecting the Party claiming the same as a Force Majeure Event); or any other cause similar to the foregoing that meets the requirements of Section 13.1.1 (*Definition of Force Majeure Event*).

### **13.2 Responsibilities of the Parties during Force Majeure Event**

#### **13.2.1 Notice of Force Majeure Event**

The Party seeking to be excused from any delay in the performance of its obligations (other than the payment of money) under Section 13 (*Force Majeure*) of this Agreement shall advise the other Party in writing of the date of commencement of such Force Majeure Event, the nature and expected duration thereof, and the actions to be taken to prevent or reduce the effects of such event. The notice shall be sent by such Party not later than ten (10) Days after the date on which such Party first gains knowledge of such Force Majeure Event. If it fails to deliver such notice in

accordance with this provision, such Party shall not be entitled to invoke the benefits of this section.

### **13.2.2 Mitigation**

Each Party shall exert all reasonable efforts in accordance with Prudent Utility Practice or other applicable standard to prevent or mitigate the consequences of the Force Majeure Event on the performance of its obligations under this Agreement. The Parties shall consult with each other in good faith and shall use all reasonable endeavors to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued implementation of the Project. The Parties shall exert all reasonable efforts to resume the performance of their obligations as soon as practicable following the declaration of a Force Majeure Event.

### **13.2.3 Additional Information about Force Majeure Event**

Within three (3) Days following the termination of any Force Majeure Event, the Party having invoked such Force Majeure Event as a cause for the failure or delay in the performance of any obligation under this Agreement (other than the payment of money) shall submit to the other Party reasonable proof of the cause and nature of such delay and its effect upon the performance of the obligations of such Party under this Agreement.

## **13.3 Effect of Force Majeure Events**

### **13.3.1 Delayed Performance Excused**

The affected Party shall be excused from performance and shall not be in default of any obligation under this Agreement for so long as its failure to perform such obligation is due to a Force Majeure Event, provided that:

- (a) The affected Party makes continuous diligent efforts to prevent or mitigate the effects of the Force Majeure Event;
- (b) The Agency shall not be entitled to the benefit of this Section 13.3.1 (*Delayed Performance Excused*) in case of Political Force Majeure Events;
- (c) The Party claiming a Force Majeure Event shall not be entitled to suspend performance or be excused for delayed performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure Event or the delay occasioned thereby and there shall be no presumption that a Party is entitled to or limited by a day-for-day extension of time equal to the period of the Force Majeure Event;
- (d) Neither Party shall be relieved of or excused from its obligations under this Agreement solely because there may be increased costs or other adverse economic consequences incurred through the performance of such obligations; and

- (e) The provisions of this Section 13.3.1 shall not excuse:
  - (i) Late payment of money;
  - (ii) Late performance by either Party due to such Party's fault or negligence; or
  - (iii) Delays resulting from an event, condition, or circumstance which is reasonably foreseeable such as but not limited to (A) weather conditions that are no more severe than any weather condition reported in or predictable from weather data for the period of fifty (50) years prior to the date of this Agreement or (B) unsuitable ground conditions (other than earthquakes or other geologic calamities).

### **13.3.2 Force Majeure Events prior to Operations Start Date**

If a Force Majeure Event occurs prior to the Provisional Operations Start Date that results or will result in a delay in achieving that Project Milestone, then, immediately after the giving of the notice required under Section 13.2.1 (*Notice of Force Majeure Event*), the Project Milestone Schedule shall be equitably adjusted upon the written agreement of the Parties. If the Parties are unable to agree on an equitable adjustment to the Required Provisional Operations Start Date or other affected Project Milestones within a period of sixty (60) Days after the giving of the notice required in Section 13.2.1 (*Notice of Force Majeure Event*), such inability to agree shall be considered a Dispute and either Party thereafter shall be entitled to bring such Dispute to arbitration in accordance with this Agreement.

### **13.3.3 Force Majeure Events on or after Operations Start Date**

If a Force Majeure Event occurs on or after the Provisional Operations Start Date, the Tariff payable to the Company shall be reduced accordingly to correspond to the level of Services actually rendered to the Agency during the period that such Force Majeure Event was persisting. The adjustment to the Tariff shall be done in accordance with Section 8.3 (*Tariff Adjustment*) hereof.

## **14 INDEMNITY**

### **14.1 Indemnification by the Company**

The Company shall indemnify, defend, and hold harmless the Agency, its directors, officers, employees, and representatives, its Affiliates, agents, advisors, contractors, or licensees and their respective directors, officers, and employees (the "**Agency Parties**"), from and against all Claims asserted against the Agency or any Agency Party by any third party as a result of the following:

- (a) For any loss of or damage to property or death or injury to persons (except for workers' compensation claims), resulting from any

negligent act or omission of the Company or any Company Parties that results from the performance of this Agreement;

- (b) Failure of the Company to comply with any Legal Requirement in the performance of its obligations under this Agreement;
- (c) Failure of the Company to comply with its representations and warranties under Section 11 (*Representations and Warranties*) of this Agreement; or
- (d) Failure of the Company to comply with its covenants under Section 12 (*Company Covenants*) of this Agreement.

The Company shall not be obliged to indemnify the Agency to the extent that any of the matters referred to in paragraphs (a) to (d) above is caused by the negligence, misconduct, or breach of this Agreement by the Agency or any Agency Parties or arises as a direct result of the Company acting upon the instruction of the Agency.

#### **14.2 Indemnification by Agency**

The Agency shall indemnify, defend, and hold harmless the Company, its shareholders, directors, officers, employees, and representatives, its Affiliates, agents, contractors, or licensees and their respective directors, officers, and employees (the “**Company Parties**”), from and against all Claims asserted against the Company or any Company Parties for any loss of or damage to property or death or injury to persons (except for workers’ compensation claims) resulting from any negligent act or omission of the Agency or any Agency Parties that results from the performance of this Agreement by the Agency, except to the extent such loss, damage, injury, or death is attributable to the negligence, misconduct, or breach of this Agreement by the Company or any Company Parties.

#### **14.3 Indemnification Procedures**

##### **14.3.1 Notice of Claim**

Each Party shall provide the other Party with written notice of any matter constituting or that may lead to a Claim under this Agreement which may give rise to a request for indemnification under this Section 14 (*Indemnity*) as soon as such Party becomes aware of the potential Claim.

##### **14.3.2 Defense of Claim**

- (a) The indemnifying Party may, at its option and at its expense, control the contest and defense of any claim with respect to which it is or may be obligated to indemnify the indemnified Party under this Agreement and with respect to which it or the indemnified Party is named as a party.
- (b) If the indemnified Party is also named as a party to any such proceeding, the indemnified Party shall have the right to retain its own counsel at its own expense. Except when the interests of the

Parties with respect to such Claim are adverse, the indemnifying Party shall (i) keep the indemnified Party and its counsel reasonably informed as to the progress of such contest and defense, (ii) to the extent reasonably practicable give the indemnified Party and its counsel the opportunity to review and comment in advance on all written submissions and filings relevant to the Claim, and (iii) consider in good faith any reasonable suggestions made by the indemnified Party or its counsel or permit the indemnified Party and its counsel to submit documentation or attend those portions of any meetings and proceedings that relate to the Claim.

#### **14.3.3 Payment of Claim**

The indemnifying Party shall pay the indemnified Party within thirty (30) Days after notice to the indemnifying Party of the actual payment of a Claim by the indemnified Party.

### **15 EVENTS OF DEFAULT**

#### **15.1 Company Events of Default**

The occurrence of any of the following events shall constitute a ***“Company Event of Default”***:

- (a) The Provisional Operations Start Date has not occurred by one hundred eighty (180) Days after the Required Provisional Operations Start Date.
- (b) The Operations Start Date has not occurred by one hundred eighty (180) Days after the Required Operations Start Date.
- (c) The Company fails to perform any of its obligations under this Agreement (other than a failure that constitutes a Company Event of Default under any other clause of this Section 15.1) which materially and adversely affects the performance of the Service.
- (d) At any time prior to the Operations Start Date, the aggregate amount (without double-counting) of all costs, expenses, and liabilities incurred or reasonably expected to be incurred in order to achieve the Operations Start Date exceeds the amounts available to the Company under the Financing Agreements and any other sources of funding including Equity that are unconditionally available to the Company.
- (e) The Company (i) becomes voluntarily or involuntarily the subject of rehabilitation, receivership, or suspension of payment proceedings under any bankruptcy or insolvency law or other law or procedure for the relief of financially distressed debtors; (ii) does not, is unable, or admits in writing its inability to pay its debts when due or as they mature; or (iii) becomes insolvent, takes or suffers any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any substantial part of its assets and,



in the event any such occurrence is involuntary, it results in the entry of an order for relief or the adjudication of the Company or any such guarantor of the Company as bankrupt or insolvent and it remains undismissed or undischarged for a period of thirty (30) Days.

- (f) The Company abandons the Project for more than fifteen (15) Business Days within any period of twenty (20) consecutive Business Days.
- (g) The Company ceases to provide all or a substantial part of the Services in accordance with this Agreement for more than fifteen (15) Business Days within any period of twenty (20) consecutive Business Days.
- (j) The Company defaults in the payment of any amount due and payable (which amounts are not in dispute) under this Agreement, which amount exceeds the sum of PHP[●] and such default continues unremedied for a period of sixty (60) Days from receipt by the Company of a notice in writing from the Agency of the amount due and payable.
- (k) The Company fails to provide a suitable replacement Performance Security Issuer with the required qualifications under this Agreement within sixty (60) Days when such Performance Security Issuer (i) fails to satisfy the requirements for the Performance Security Issuer set out in Section 1.1 (*Definition of "Performance Security Issuer"*) of this Agreement, (ii) becomes voluntarily or involuntarily the subject of rehabilitation, receivership, or suspension of payment proceedings under any bankruptcy or insolvency law or other law or procedure for the relief of financially distressed debtors, (iii) does not or is unable to pay its debts when due or as they mature, or (iv) becomes insolvent, takes or suffers any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any substantial part of its assets and, in the event any such occurrence is involuntary, it results in the entry of an order for relief or the adjudication of the Company's guarantor as bankrupt or insolvent and it remains undismissed or undischarged for a period of thirty (30) Days.
- (l) A representation or warranty by the Company under Section 11 (*Representations and Warranties*) is incorrect in any material respect and is reasonably likely to have a material adverse effect on the ability of the Company to carry out the Project.
- (m) The Company breaches any provision of Section 12.6 (*Anti-Corruption Warranty*).
- (n) The Company assigns or transfers any of its rights or obligations under this Agreement, except as permitted by Section 18.2 (*Permitted Assignment to Financing Parties*).

- (o) There is a transfer of an interest in the Company that does not comply with Section 18.3 (*Ownership of Company*).
- (p) The Operating Security originally provided pursuant to Section 6.3 (*Operating Security*) or any replacement Operating Security has been fully drawn and the Company has failed to procure within twenty-one (21) Business Days thereafter replacement Operating Security in the amount of PHP[●] and otherwise satisfying the requirements of Section 6.3 (*Operating Security*).

## **15.2 Agency Events of Default**

The occurrence of any of the following events shall constitute an “**Agency Event of Default**”:

- (a) The Company is ready, willing, and able to perform the Services but the Agency refuses to accept them without justifiable reason or completely obstructs the Company’s ability to perform the Services.
- (b) The Agency defaults in the payment of any amount due and payable (which amounts are not in dispute) under this Agreement, which amount exceeds the sum of PHP[●] and such default continues unremedied for a period of sixty (60) Days from receipt by the Agency of a notice in writing from the Company of the amount due and payable.
- (c) The Agency fails to perform any of its material obligations under this Agreement which renders it impossible for the Company to perform its own obligations under this Agreement for a continuous period of sixty (60) Days.
- (d) There is an expropriation, sequestration or requisition of a material part of the Project assets and/or shares of the Company by the Agency or other Government Authority.
- (e) A representation or warranty by the Agency under Section 11 (*Representations and Warranties*) is incorrect in any material respect and is reasonable likely to have a material adverse effect on the ability of the Company to carry out the Project.
- (f) There is a breach by the Agency of Section 18.1 (*No Assignment*).

## **16 LIMITATION OF LIABILITY**

### **16.1 Limitation of Consequential Damages; Other Rights, Remedies, etc.**

Neither Party shall be liable to the other Party whether in contract, tort, negligence, warranty, strict liability, breach of a statutory duty, or otherwise for (i) any special, consequential, moral, or punitive damages, (ii) indirect losses, costs, or expenses, or (iii) loss of actual or anticipated profits, loss of opportunities (including opportunities to enter into arrangements with third parties), or loss of use or production. However, this Section shall not limit the liquidated damages specifically provided in

this Agreement and the termination payments set forth in Schedule O (*Termination Buy-Out and Transfer Provisions*).

## **16.2 Limitation of Liability for Liquidated Damages**

- (a) The total liability of the Company for liquidated damages if the Agency terminates this Agreement pursuant to Sections 2.3.1 (*Termination due to Non-Occurrence of Effective Date*) and 2.3.2 (*Consequences of Termination*) due to non-occurrence of the Effective Date on or before the Required Effective Date shall be the amount of the Performance Security.
- (b) The total liability of the Company for Delay Liquidated Damages pursuant to Section 5.8 (*Liquidated Damages for Delay in Meeting Project Milestones*) shall not be more than PHP[●].

## **17 AGENCY STEP-IN RIGHTS**

### **17.1 Step-in Rights**

- (a) The Agency shall have the option to assume operational responsibility for the Facilities (in the capacity of an operator only) in order to continue operation of the Facilities or complete any necessary repairs to assure the continued delivery of the Services ("**Agency Step-in Rights**"). Agency Step-in Rights shall arise only upon the occurrence and continuance of a Company Event of Default that could reasonably be expected to materially adversely affect the Company's ability to operate and maintain the Facilities in accordance with this Agreement.
- (b) The Agency shall notify the Company in writing of the following:
  - (i) its intention to exercise Agency Step-in Rights
  - (ii) the reason for its exercise of Agency Step-in Rights; and
  - (iii) the date it will commence exercise of Agency Step-in Rights.
- (c) The Agency may only exercise the Agency Step-in Rights under the following conditions:
  - (i) Any applicable cure period specified in Section 15 (*Events of Default*) and Section 20 (*Termination*) has expired, unless the Agency is requested by the Lenders to step in earlier on their behalf pursuant to the Financing Agreements.
  - (ii) For so long as the Financing Agreements remain in effect, the Agency must first obtain the consent of the Lenders.
- (d) During the period of the Agency's exercise of the Agency Step-in Rights, the Agency shall be the operator of the Facilities. The Company's obligation to provide part of the Services covered by the exercise of the Agency Step-in Rights shall be suspended, but the Agency shall retain the right to terminate the Agreement due to a Company Event of Default. The exercise of the Agency Step-in Rights

shall not be deemed as or result in a transfer of title to the Facilities or a transfer of the Company's obligations as owner of the Facilities.

## **17.2 Implementation of Agency Step-in Rights**

### **17.2.1 Agency's Contracts, Consents, etc.**

- (a) Within three (3) Days of the Company's receipt of the Agency's notice of its exercise of Agency Step-in Rights, the Company shall assign to the Agency the Company's rights under all agreements necessary to operate the Facilities, provided that such assignment shall automatically cease upon the reversion of operation responsibility to the Company.
- (b) The Company shall promptly take all steps necessary to permit the Agency to exercise as operator of the Facilities the Company's rights under all Consents to the extent such rights are necessary for the Agency to operate the Facilities during the Agency's exercise of Agency Step-in Rights. The Company shall give the Agency access to all design manuals, construction drawings, and other documentation required to operate the Facilities.

### **17.2.2 Payments to Company and Agency**

- (a) During any period in which the Agency exercises the Agency Step-in Rights, the Agency shall continue making payments to the Company in accordance with the terms of this Agreement.
- (b) During the exercise of the Agency Step-in Rights, the Agency shall be entitled to remuneration for the Agency's reasonable costs as an operator.

### **17.2.3 Payment of Company's Obligations**

- (a) The Agency shall have the right to make any payments due from and on behalf of the Company which are necessary to operate the Facilities, including payments for fuel, maintenance, repairs, insurance, taxes, and other operating costs of the Facilities, together with all regularly scheduled payments under the Financing Agreements (pro-rated for the amount attributable to such period), but only to the extent that the Company is unable to meet any such payments.
- (b) The Parties shall cooperate with each other and shall execute and deliver all documents necessary or desirable to make those payments in a timely and proper manner. The remuneration and payments referred to in Section 17.2.2(b) (*Payments to Company and Agency*) and Section 17.2.3(a) that become payable during this period shall be regarded as funds advanced by the Agency to the Company. The Agency shall send invoices for such amounts and the Company shall promptly reimburse the Agency. The Parties shall resolve disputed amounts on the same terms and conditions as the settlement of disputed invoices provided in Section 8.10 (*Disputed*

*Invoices*). Notwithstanding the provisions of Section 8.8 (*No Set-Offs or Deductions*), the Agency may obtain payment by making deductions from any amounts due to the Company pursuant to this Agreement, provided that such payments shall be subordinated to sums owed to the Lenders.

#### **17.2.4 Standards of Operation**

During any period when the Agency is operating the Facilities, the Agency shall operate and maintain the Facilities in accordance with Prudent Utility Practice. The Company shall have the right to monitor the Agency's operation of the Facilities to the extent reasonably required to ascertain whether the Agency is operating and maintaining the Facilities in accordance with that standard. The Agency shall have no more liability to the Company than would a third party operation and maintenance contractor with respect to the operation and maintenance of the Facilities by the Agency during the exercise of such step-in rights.

#### **17.2.5 Reversion of Operational Responsibility to Company**

The Agency shall return operational responsibility for the Facilities to the Company following any exercise by the Agency of the Agency Step-in Rights reasonably promptly following the cure of the Company Event of Default that led to the exercise of the Agency Step-in Rights. The Agency shall return the Facilities to the Company in a physical condition no worse than the condition of the Facilities at the time the Agency assumed operational responsibility for the Facilities pursuant to such exercise of the Agency Step-in Rights, ordinary wear and tear excepted. The Agency shall not be responsible for or have any liability resulting from any condition of the Facilities or the Site that existed prior to such exercise of Agency Step-in Rights.

### **18 ASSIGNMENT OF RIGHTS; OWNERSHIP OF THE COMPANY**

#### **18.1 No Assignment**

Neither Party may sell, assign, or transfer its rights or obligations under or pursuant to this Agreement without the prior written consent of the other Party, except that the Company may assign its rights to the Lenders in accordance with Section 18.2 (*Permitted Assignment to Lenders*).

#### **18.2 Permitted Assignment to Lenders**

- (a) The Agency consents to the collateral assignment of the Company's rights under this Agreement to the Lenders pursuant to the Financing Agreements and agrees:
  - (i) To afford the Lenders a reasonable opportunity to remedy any default by the Company or any other event or occurrence which gives the Agency the right to terminate or suspend this Agreement;

- (ii) In the event of a default under the Financing Agreements and a foreclosure sale of the Company's interest in the Facilities, to accept the purchaser of the Company's interest as the successor to the Company under this Agreement, provided that such purchaser (A) if the Operations Start Date has not occurred, has reasonable access to funding necessary to achieve the Operations Start Date on or before the Required Operations Start Date, and (B) meets all legal, technical, and financial qualifications of an operator set by the Agency for the Project, assumes the performance of the Company's obligations under this Agreement (except those obligations that by their nature cannot be performed by any person other than the Company), cures all outstanding payment defaults of the Company under this Agreement, and makes provision reasonably satisfactory to the Agency for the cure of all other outstanding defaults of the Company under this Agreement; and
- (iii) In the event of an acceleration of the loans under the Financing Agreements, to enter into, at the request of the Lenders, a replacement agreement substantially similar to this Agreement but that in no event increases the Agency's liabilities with the Lenders or their designee.

The Company acknowledges and agrees that any collateral assignment to the Lenders pursuant to the Financing Agreements shall not relieve the Company of its obligations to the Agency under this Agreement.

- (b) The Agency agrees to enter into an acknowledgment and consent agreement with the Lenders as to the foregoing matters and as to such other matters of a type customarily dealt with in a consent to an assignment for security purposes of a borrower's interest in a contract as the Lenders may reasonably request.

### **18.3 Ownership of Capital Stock of Company**

#### **18.3.1 Company's Capital Stock**

Subject to the rights of the Lenders under the Financing Agreements and except as otherwise provided in Section 18.3.2 (*Restrictions on Transfer of Capital Stock of Company*), the Company covenants that:

- (a) The proportionate direct and indirect ownership of the capital stock of the Company held by each of the Initial Shareholders shall be as set out in Schedule P (*Ownership Interests in Company*);
- (b) Each Initial Shareholder is the registered, legal, and beneficial owner of the number of shares of the Company set out opposite its name in Schedule P (*Ownership Interests in Company*);

- (c) All issued shares shall, when issued, have been authorized, allotted, and called-up and validly issued and registered and fully paid; and
- (d) There are no outstanding Liens, options, warrants, rights, calls, commitments, conversion rights, rights of exchange, plans, or other agreements of any character (including rights of first refusal or rights of first offer of any Initial Shareholder with respect to other Initial Shareholders) providing for the purchase, issuance, or sale of any shares of the capital stock in, or the voting of, the Company, other than as created under the Financing Documents.

### **18.3.2 Restriction on Transfer of Capital Stock of Company**

- (a) From the Signature Date until the second (2<sup>nd</sup>) anniversary of the Operations Start Date (the ***“Lock-in Period”***), no Change of Ownership may occur, except a Change of Ownership arising as a consequence of:
  - (i) the grant or enforcement of security in favor of the Lenders over or in relation to any of the shares of the Company pursuant to the terms of the Financing Agreements;
  - (ii) any transfer by an Initial Shareholder to its Affiliate of such Initial Shareholder’s capital stock in the Company; or
  - (iii) any change in legal or beneficial ownership of any shares that are listed on a registered securities exchange.
- (b) After the Lock-in Period, any Initial Shareholder may transfer its direct and indirect ownership interests in the capital stock of the Company, provided, however, that collectively and at any given time the Company’s Shareholders shall have the legal, financial, and technical capabilities of successfully carrying out the implementation and operation of the Project that are equal to or better than those of the Initial Shareholders’ legal, financial, and technical qualifications.
- (c) If a Shareholder desires to transfer any part of its direct or indirect ownership of the capital stock of the Company, the Company must first submit to the Agency a description of:
  - (i) The proposed transfer of the Shareholder’s direct or indirect interest in the capital stock of the Company;
  - (ii) The identity of the proposed transferee; and
  - (iii) If applicable, any proposed amendment to the articles of incorporation and by-laws of the Company.

The Agency may request the Company to and the Company shall provide the Agency within five (5) Days following such request, any additional information that the Agency considers necessary for its evaluation of the proposed transfer.

## **19 DISPUTE RESOLUTION**

### **19.1 Mutual Discussions**

In case any Dispute occurs, the Parties shall attempt in good faith to settle such Dispute by mutual discussions between the Parties held at the principal office of the Agency and beginning not later than seven (7) Days after the receipt by one Party of a written notice from the other Party of the existence of the Dispute.

### **19.2 Expert Proceedings**

#### **19.2.1 Referral of Disputes to Expert Panel**

If a Dispute cannot be settled by mutual discussion within thirty (30) Days or such longer period as may be agreed in writing by the Parties after the commencement of such discussions under Section 19.1 (*Mutual Discussions*), then the Dispute shall be referred to the Expert Panel for determination.

#### **19.2.2 Establishment and Operation of Expert Panel**

- (a) Not later than sixty (60) Days after the Signature Date, each Party shall nominate six (6) independent experts comprising: (i) two (2) water engineers, (ii) two (2) regulatory economists, and (iii) two (2) financial analysts (the “**Expert Panel**”). The Parties will agree on the panel of experts selected from the experts so nominated by the Parties. The Expert Panel shall be constituted and called upon only when required within thirty (30) Days from receipt of a Party of the written notice of the other Party’s decision to refer a matter to the Expert Panel. If the Parties are unable to agree on the composition of the Expert Panel within such thirty (30)-Day period, then either Party may request the International Chamber of Commerce’s International Centre for Expertise to appoint the members of the Expert Panel.
- (b) Decisions of the Expert Panel shall be made by simple majority vote of the members. The members of the Expert Panel shall develop their own internal conduct and procedural rules based upon principles of transparency, impartiality, and efficiency. Proceedings of the Expert Panel shall not be required to follow the procedural laws related to arbitrations. The Expert Panel need not be bound by strict rules of law where it considers the application thereof to particular matters to be inconsistent with the spirit of this Agreement and the underlying intent of the Parties.
- (c) All costs incurred in connection with the convening of the Expert Panel and the referral and resolution of a Dispute before it, including reasonable compensation of the members of the Expert Panel, shall be equally shared by the Parties.



### **19.2.3 Decisions of Expert Panel**

Except as otherwise expressly provided in this Agreement, all decisions of the Expert Panel shall be taken within not more than sixty (60) Days after the receipt by the Expert Panel of a request by either Party for a decision of the Expert Panel pursuant to this Agreement or by such later time as may be agreed by the Parties.

### **19.3 Arbitration**

If a Dispute cannot be settled by mutual discussion within thirty (30) Days after the commencement of such discussions under Section 19.1 (*Mutual Discussions*) and either:

- (a) The Parties agree in writing to refer the Dispute to arbitration rather than to the Expert Panel, or
- (b) There was fraud or manifest error in connection with the decision of the Expert Panel,

then either Party may submit such Dispute to arbitration in [●] in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) for the time being in force, which rules are deemed to be incorporated by reference in this Agreement. The arbitration proceedings shall be conducted in the English language. The Parties agree that the arbitrators may apply equitable principles if they consider their application to particular matters to be consistent with the spirit of this Agreement and the underlying intent of the Parties.

### **19.4 Expert Panel and Arbitral Award**

All Expert Panel and arbitral awards shall be in writing and shall state the reasons upon which they are based. The awards shall be final and binding on the Parties. The awards may include an award of costs, including reasonable attorneys' fees and disbursements. Judgments upon the awards may be entered by any court having jurisdiction thereof or having jurisdiction over the Parties or their assets.

### **19.5 Enforcement of Award**

By execution and delivery of this Agreement each Party hereby accepts and consents to the jurisdiction of the aforesaid Expert Panel and arbitral panel and, solely for purposes of the enforcement of an Expert Panel and arbitral award under this Section 19 (*Dispute Resolution*), to the jurisdiction of any court of competent jurisdiction, for itself and in respect of its property, and waives in respect of both itself and its property any defense it may have as to or based on sovereign immunity, jurisdiction, improper venue, or inconvenient forum. Each Party hereby irrevocably consents to the service of any process or other papers by the use of any of the methods and to the addresses set for the giving of notices in Section 21.1 (*Notices*). Nothing herein shall affect the right of any Party to serve such process or papers in any other manner permitted by law.

## 19.6 Continuing Obligations

Pending settlement of any Dispute pursuant to this Section 19 (*Dispute Resolution*), the Parties shall continue to comply with and perform their obligations under this Agreement without prejudice to a final adjustment in accordance with a final award rendered by the Expert Panel or by an arbitral panel in accordance with this Section 19 (*Dispute Resolution*).

## 19.7 Exclusive Procedure for Resolving Disputes

This Section 19 (*Dispute Resolution*) sets forth the sole procedures for resolving any Dispute between the Parties, and neither Party may commence or maintain any suit or legal or equitable proceeding concerning a Dispute hereunder until the Dispute has been determined in accordance with the arbitration procedure provided for herein, and then only to enforce or facilitate the execution of the award rendered in such arbitration. The Parties agree to waive, to the maximum extent permitted by Legal Requirements, the right of appeal to a court of law.

# ARTICLE IV

## CONTRACT TERMINATION

## 20 TERMINATION

### 20.1 Termination due to an Event of Default

#### 20.1.1 Termination Procedure

Upon the occurrence of a Company Event of Default or an Agency Event of Default, the following procedure shall apply:

- (a) The non-defaulting Party may give a notice (a “**Termination Notice**”) to the defaulting Party, specifying in reasonable detail the Event of Default and the date on which the non-defaulting Party proposes to terminate this Agreement. Except in the case of paragraphs (b) and (c) below, the Agreement may be terminated on any date specified by the non-defaulting Party in the Termination Notice.
- (b) If a Company Event of Default occurs under Section 15.1 (c), (d) or (l) (*Company Events of Default*), the Agency may provide written notice of default to the Company (a “**Notice of Company Event of Default**”) within five (5) Days of becoming aware of the Company Event of Default. The Company shall have thirty (30) Days from its receipt of the Notice of Company Event of Default in which to cure such Company Event of Default. If the Company needs more than that period to cure the default, the Company shall deliver to the Agency a plan (the “**Company Rectification Plan**”) within ten (10) Days from the receipt of the Notice of Company Event of Default (or within such longer time as the Agency may approve), specifying the remedial actions the Company plans to take and the number of

Days necessary to correct such Company Event of Default. The Company Rectification Plan shall be subject to the Agency's prior written approval, which should not be unreasonably withheld. If (i) such Company Event of Default is not cured within the thirty (30)-Day period (or such longer period as the Agency may have approved), (ii) the Company is not consistently striving to cure such Company Event of Default, or (iii) the Agency withholds its approval of the proposed Company Rectification Plan for valid reasons after not less than ten (10) Days following its submittal, the Agency shall have the immediate right to terminate this Agreement by delivering a Termination Notice to the Company, which termination shall be effective as of the date specified by the Agency in the Termination Notice, which shall be not less than thirty (30) Days from the date the Company receives the Notice of Company Event of Default.

- (c) If an Agency Event of Default occurs under Section 15.2 (a), (c) or (e) (*Agency Events of Default*), the Company may provide written notice of default to the Agency (a "**Notice of Agency Event of Default**") within five (5) Days of becoming aware of the Agency Event of Default. The Agency shall have thirty (30) Days from its receipt of the Notice of Agency Event of Default in which to cure such Agency Event of Default. If the Agency needs more than that period to cure the default, the Agency shall deliver to the Company a plan (the "**Agency Rectification Plan**") within ten (10) Days from the receipt of the Notice of Agency Event of Default (or within such longer time as the Company may approve), specifying what remedial actions the Agency plans to take and the number of Days necessary to cure such Agency Event of Default. The Agency Rectification Plan shall be subject to the Company's prior written approval, which should not be unreasonably withheld. If (i) the Agency Event of Default is not cured within the thirty (30)-Day period (or such longer period as the Company may approved), (ii) the Agency is not consistently working to cure such Agency Event of Default, or (iii) the Company reasonably withholds its approval of the proposed Agency Rectification Plan after not less than ten (10) Days following its submittal, the Company shall have the immediate right to terminate this Agreement by delivering a Termination Notice to the Agency, which termination shall be effective as of the date specified by the Company in the Termination Notice, which shall be not less than thirty (30) Days from the date the Agency receives the Notice of Agency Event of Default.

#### **20.1.2 Default Termination Buy-Out Provisions**

- (a) In the event of termination of this Agreement by the Agency under this Section 20.1 (*Termination due to an Event of Default*) due to a Company Event of Default, the Agency shall allow the Lenders to enforce their rights under the Financing Agreements. If the Lenders

do not exercise their rights under the Financing Agreements or if the Financing Agreements are no longer effective, the Agency shall have the right in its sole discretion to take over and purchase all of the Company's right, title, and interest in the Facilities and the Project for the purchase price and in accordance with the procedures set forth in Schedule O (*Termination Buy-Out and Transfer Provisions*).

- (b) In the event of termination of this Agreement by the Company due to an Agency Event of Default, the Agency shall purchase from the Company, and the Company shall transfer to the Agency, all of the Company's right, title, and interest in the Facilities and the Project for the buyout price and following the procedures set forth in Schedule O (*Termination Buy-Out and Transfer Provisions*).
- (c) Section 20.1 (*Termination due to an Event of Default*) does not preclude either Party from resorting to dispute resolution pursuant to Section 19 (*Dispute Resolution*).

## **20.2 Termination due to Prolonged Force Majeure Event**

### **20.2.1 Termination by Company**

The Company may terminate this Agreement if a Force Majeure Event prevents either Party from performing any of its material obligations under this Agreement for a continuous period of one hundred eighty (180) Days. The Agency may require the Agreement to continue if the Agency pays the Company the Tariff and complies with the procedures in Section 20.2.4 (*Termination Procedure*).

### **20.2.2 Termination by Agency**

The Agency may terminate this Agreement if:

- (a) A Non-Political or Political Force Majeure Event prevents the Agency from performing any of its material obligations under this Agreement for a continuous period of more than one hundred eighty (180) Days;
- (b) A Political Force Majeure Event prevents the Company from performing any of the Services for a continuous period of more than one hundred eighty (180) Days.

### **20.2.3 Termination by Either Party**

Either Party may terminate this Agreement if an event of loss prevents the Company from rebuilding, repairing, and restoring the Facilities or the affected portion thereof as determined in accordance with Section 10.4.2 (*Loss After the Financing Agreements Have Expired*).

### **20.2.4 Termination Procedure**

If a Party has the right to terminate this Agreement pursuant to this Section 20.2 (*Termination due to Prolonged Force Majeure Event*), it may give notice to the other Party specifying the date on which this

Agreement shall terminate, which date shall not be less than ninety (90) Days from the date of such notice. When such date occurs, subject to the satisfaction of any payment or other obligations hereunder, this Agreement shall terminate and shall no longer be binding.

#### **20.2.5 Force Majeure Termination Buy-Out Provisions**

Except for termination of this Agreement as a result of an event of loss caused by a Non-Political Force Majeure Event, in case of termination of this Agreement in accordance with the provisions of this Section 20.2 (*Termination due to Prolonged Force Majeure Event*), the Agency shall purchase from the Company, and the Company shall transfer to the Agency, the Facilities and the Project for the buyout price and following the procedures set forth in Schedule O (*Termination Buy-Out and Transfer Provisions*).

#### **20.3 Effect of Termination : Transfer of Facilities**

When the Termination Date occurs, the Company shall transfer the Facilities and the Project to the Agency in accordance with the provisions of Schedule O (*Termination Buy-Out and Transfer Provisions*). The Company shall, at its cost, take all the steps necessary in advance to ensure that the Facilities, including all contracts and licenses, are fully transferable on the Termination Date.

## **ARTICLE V**

### **GENERAL PROVISIONS**

#### **21 GENERAL PROVISIONS**

##### **21.1 Notices**

##### **21.1.1 Addresses**

All notices, requests, agreements, or consents shall be in writing and in English and shall be deemed to have been duly given: (i) upon delivery if delivered by hand against written acknowledgment of receipt; (ii) on the Business Day following confirmed transmission if sent by e-mail or telefacsimile; *provided* that such e-mail telefacsimile transmission shall be followed by notification by mail postmarked within three (3) Days; and (iii) upon delivery if sent by certified, registered (return receipt requested), or express mail, first-class postage prepaid, or by an express courier service, marked for overnight delivery. The word “notify” shall be construed accordingly. All notices shall be addressed as follows:

To the Agency:

**[Full Agency Name]**

[Agency Address]

Telephone: [●]  
Facsimile: [●]  
Attention: [●]

To the Company:

[Full Company Name]  
[Company Address]

Telephone: [●]  
Facsimile: [●]  
Attention: [●]

#### **21.1.2 Change of Address**

A Party may change its address by giving the other Party written notice of such change pursuant to Section 21.1.1 (*Addresses*), provided that any such change shall not be effective until notice of such change has been received by the other Party in accordance with Section 21.1.1 (*Addresses*).

#### **21.2 Entire Agreement**

This Agreement, together with its Schedules, constitutes the entire agreement between the Parties with respect to the transactions contemplated herein. All previous documents, undertakings, and agreements, whether oral, written or otherwise, between the Parties concerning the subject matter of this Agreement are hereby cancelled and shall not affect or modify any of the terms or obligations set forth in this Agreement.

#### **21.3 Waivers**

The failure of a Party to insist upon a strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of any right thereafter to insist upon a strict adherence to that term or any other term of this Agreement. No waiver by a Party of any default or breach of this Agreement shall be construed as a waiver of any other provision, condition, or term hereof or of any other default or breach of the same provision, condition, or term. No delay in the exercise and no single or partial exercise by a Party of any right, remedy, or power hereunder, in equity, or at law, shall preclude any other or further exercise thereof or the exercise of any other right, remedy, or power existing hereunder, in equity, or at law. Any waiver must be in writing and signed by a duly authorized representative of the Party issuing the waiver.

## **21.4 Confidentiality and Disclosure**

### **21.4.1 Confidentiality**

Each Party shall hold in strict confidence from any other person all documents and information concerning any other Party or any of its Affiliates furnished to it or its advisors, consultants, contractors, or agents by the other Party in connection with this Agreement or the transactions contemplated hereby ("**Confidential Information**"), unless that Party is:

REQUIRED TO DISCLOSE ANY SUCH INFORMATION BY JUDICIAL OR ADMINISTRATIVE PROCESS (INCLUDING IN CONNECTION WITH OBTAINING FROM GOVERNMENT AUTHORITIES THE NECESSARY APPROVALS OF THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY) OR BY OTHER LEGAL REQUIREMENTS;

- (a) Disclosed to persons providing or proposing to provide financing to Seller; or
- (b) Disclosed in an action or proceeding brought by either Party in pursuit of its rights or in the exercise of its remedies hereunder.

Notwithstanding the foregoing, this Section 21.4.1 shall not apply to such documents or information that were (i) previously known by the Party receiving such documents or information, (ii) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through no fault of such receiving Party, or (iii) later acquired by such receiving Party from another source so long as such receiving Party is not aware that such source is under an obligation to the other Party to keep such documents and information confidential.

### **21.4.2 Required Disclosure**

Any Party required by any Legal Requirement or in the course of administrative or judicial proceedings or in accordance with required disclosures of publicly-listed companies by registered securities exchanges to disclose information that is otherwise required to be maintained in confidence pursuant to Section 21.4.1 (*Confidentiality*), may disclose such information notwithstanding the provisions of Section 21.4.1 (*Confidentiality*); *provided, however*, that the Party making the disclosure shall give prior notice to the other Party of the requirement and the terms thereof and shall cooperate to the maximum extent practicable to resist or minimize the disclosure of the information. The Party disclosing such information shall use reasonable efforts, at the other Party's cost, to obtain proprietary or confidential treatment of such information by the third party to whom the information is disclosed, and to the extent such remedies are available, shall use reasonable efforts to seek protective orders limiting the dissemination and use of the information at the other Party's cost. For avoidance of doubt, this Agreement does not alter the rights of the Parties to object to the Legal Requirement or proceedings requiring the disclosure.

### **21.5 Further Assurances**

The Parties will do, execute, and deliver, or will cause to be done, executed, and delivered, all such further acts and such other things as each Party may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties, and covenants of this Agreement.

The Parties further assure that they shall perform their obligations in a highly professional and diligent manner, with due efficiency and economy and timely execution of works and other obligations, in all respects with that degree of skill, diligence, prudence and foresight required from them, and with due attention to the need for fairness, openness and good faith in their dealings.

### **21.6 Severability**

The validity of the remaining articles, clauses, provisions, terms, and parts of this Agreement shall not be affected by a court, administrative board, or other proceeding of competent jurisdiction deciding that an article, section, provision, term, or part of this Agreement is illegal, unenforceable, in conflict with any law, or contrary to public policy. In such event the Parties hereto shall, by amendment of this Agreement, properly replace such provision by a reasonable new provision or provisions that, as far as legally possible, approximate what the Parties intended by such original provision and the purpose thereof.

### **21.7 Language**

This Agreement is being executed in the English language only. All documents, notices, waivers, and all other communications written or otherwise between the Parties in connection with this Agreement shall be in the English language. Any translation of this Agreement or any such communication, if any, shall be for convenience only and shall not be binding upon the Parties.

### **21.8 Counterparts**

This Agreement may be executed in one or more duplicate counterparts and when signed by each of the Parties shall constitute an original and a single binding agreement. Any Party hereto may execute this Agreement by signing any such counterpart (including by facsimile). Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same counterpart.

### **21.9 Remedies Cumulative**

Except with respect to liquidated damages payable pursuant to this Agreement for non-occurrence of the Effective Date and for delay in achieving the Provisional Operations Start Date, no remedy or right herein conferred is intended to be exclusive of any other remedy or right,



but every such remedy or right shall be cumulative and shall be in addition to every other remedy or right herein conferred or now or hereafter existing at law or in equity.

**21.10 Amendments**

No amendments or modifications of this Agreement shall be valid except by written agreement signed by duly authorized representatives of the Parties. Minutes of meetings or other informal documents shall not constitute a written agreement for purposes of the preceding sentence.

**21.11 Governing Law**

This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of the Philippines and shall for all purposes be conclusively deemed to be a Philippine contract.

**21.12 Survival**

All express representations, warranties, indemnities, and limitations of liability included in this Agreement shall survive its completion or termination for any reason.

## **BULK WATER SUPPLY – SCHEDULES**

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## SCHEDULE A

### PROJECT MILESTONE SCHEDULE

#### A.1 Definitions

Except as otherwise defined in this Schedule A, capitalized terms used in this Schedule A have the respective meanings assigned to them in the Bulk Water Supply Agreement between the Agency and the Company to which this Schedule A is annexed (the “**Agreement**”). Unless otherwise specified, all references to Sections without other attribution are references to Sections of the Agreement and references to Sections beginning with the letter “A” are references to Sections within this Schedule A.

#### A.1 Project Milestones

As of the Signature Date, the Project Milestones and the required dates for achieving them are as follows:

Project Milestone	Required Project Milestone Completion Date (As of Signature Date)
Required Effective Date	[●] months after Signing Date
Required Continuous Construction Date	[●] months after Effective Date
Required Provisional Operations Start Date	[●] months after Effective Date
Required Operations Start Date	[●] months after Effective Date

These dates shall be subject to amendment only in accordance with this Agreement.

## **SCHEDULE B**

### **DESIGN AND TECHNICAL SPECIFICATIONS**

#### **B.1 Definitions**

Except as otherwise defined in this Schedule B, capitalized terms used in this Schedule B have the respective meanings assigned to them in the Bulk Water Supply Agreement between the Agency and the Company to which this Schedule B is annexed (the “**Agreement**”). Unless otherwise specified, all references to Sections without other attribution are references to Sections of the Agreement and references to Sections beginning with the letter “B” are references to Sections within this Schedule B.

#### **B.2 Overview**

The Facilities shall be designed and constructed to take Raw Water at the intake point on the [*insert source of Raw Water*], treat it to the standards specified in Schedule G (*Treated Water Specifications*), and store, pump, and convey the Treated Water as necessary to deliver at least [●] cubic meters per Day of Treated Water to the Agency at the Delivery Point according to daily schedules of flow rate and pressure agreed between the Agency and the Company within the limits set out in Schedule H (*Delivery Schedule and Operating Procedures*).

#### **B.3 Components and Capacities of the Facilities**

The Facilities shall include the following major components:

- Diversion Structure
- Raw Water Pipeline
- Water Treatment Plant
- Treated Water Holding Reservoir
- Treated Water Pumping Station
- Treated Water Conveyance Pipeline
- Booster Station(s)
- Treated Water Reservoir
- Treated Water Relift Pumping Station
- Treated Water Supply Pipeline
- Interconnection Facilities

##### **B.3.1 Diversion Structure**

[Provide technical specifications for Diversion Structure.]

### **B.3.2 Raw Water Pipeline**

*[Provide technical specifications for Raw Water Pipeline.]*

### **B.3.3 Water Treatment Plant**

*[Provide technical specifications for Water Treatment Plant.]*

### **B.3.4 Treated Water Holding Reservoir**

*[Provide technical specifications for Treated Water Holding Reservoir.]*

### **B.3.5 Treated Water Pumping Station**

*[Provide technical specifications for Treated Water Pumping Station.]*

### **B.3.6 Treated Water Conveyance Pipeline**

*[Provide technical specifications for Treated Water Conveyance Pipeline.]*

### **B.3.7 Booster Station(s)**

*[Provide technical specifications for Booster Station(s).]*

### **B.3.8 Treated Water Reservoir**

*[Provide technical specifications for Treated Water Reservoir.]*

### **B.3.9 Treated Water Relift Pumping Station**

*[Provide technical specifications for Treated Water Relift Pumping Station.]*

### **B.3.10 Treated Water Supply Pipeline**

*[Provide technical specifications for Treated Water Supply Pipeline.]*

## **B.4 Compliance and Compatibility**

### **B.4.1 Compliance with Legal Requirements, etc.**

The Company shall design, construct, operate and maintain the Facilities in accordance with all applicable Legal Requirements (including all applicable Legal Requirements arising as the result of a Change-in-Law), Prudent Utility Practice, best international practice and standards, and manufacturers' recommendations, and, without limitation, the Philippine and international standards listed in Section B.4.3 below.

### **B.4.2 Compatibility with Agency System**

The Agency shall provide the Company with the Agency's operating routines for the Agency's System (particularly its water supply and pressure management parameters). The Company shall design, construct, operate, and maintain the Facilities such that they are compatible with the Agency's operating routines.

### **B.4.3 Non-Exclusive List of Philippine and International Standards**

#### **B.4.3.1 Philippine Standards**

- Philippine National Standards (PNS)
- National Structural Code of the Philippines (NSCP)
- National Building Code (NBC)

- National Plumbing Code (NPC)
- Philippine Sanitation Code (PSC)
- Philippine Electrical Code (PEC)
- Bureau of Products Standards (BPS)
- National Electric Code of the Philippines (NECP)
- Regulations of the National Fire Protection Association (NFPA)
- LWUA Standard Specifications for Water System Construction (Contract Documents Volume II)

#### **B.4.3.2 International Standards**

- U. S. Environmental Protection Agency (EPA)
- American Water Works Association (AWWA)
- American Society for Testing and Materials (ASTM)
- American Concrete Institute (ACI)
- American Society of Sanitary Engineering (ASSE)
- Uni-Bell PVC Pipe Association (UBPPA)
- Underwriters Laboratories (UL)
- American National Standards Institute (ANSI)
- American Institute of Steel Construction (AISC)
- National Electrical Manufacturers Association (NEMA)
- Uniform Plumbing Code (UPC)
- American Welding Society (AWS)
- International Standard Organization (ISO)
- International Electromechanical Commission (IEC)
- US Bureau of Reclamation (USBR)
- American Association of the State Highway and Transportation Officials (ASSHTO)
- Other equivalent international standards

#### **B.4.4 Environment Laws and Regulations**

- DENR DAO 96-37 and DAO 2003-30, otherwise known as the Revised Implementing Rules and Regulation of PD 1586 (Environmental Impact System)
- PD 984 and related issuances such as DAO 35 (Revised Effluent Regulation of 1990) and DAO 34 (Revised Water Usage and Classification/Water Quality Criteria)
- RA 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990)

- REPUBLIC ACT 8749 (Philippine Clean Air Act of 1999) and IRR
- DENR ADMINISTRATIVE ORDER NO. 26-A Series 1994 (Philippine Standards For Drinking Water 1993 Under The Provision of Chapter II Section 9 of PD 856, otherwise known as the Code on Sanitation of the Philippines)
- NWRB (Water Rights Permit)

#### **B.4.5 Resolution of Conflict between Standards**

- (a) In the event of conflict between the foregoing standards, the regulations of the appropriate Philippine Government Authority shall take precedence.
- (b) Any reference to a specification, standard, or publication shall be understood to refer to the latest edition of the specification, standard, or publication in effect as of the date of the Request for Proposals. Internationally accepted standards equal to or better than specified standards or specifications are acceptable.

#### **B.5 Design Provisions for Testing of Standby Devices**

The Company shall design the electrical wiring and instrumentation system such that all standby devices are operated on a duty rotation basis.

#### **B.6 Structural Design Specifications**

##### ***B.6.1 Design Loads***

The Company shall be responsible for the selection of the appropriate design loads or pressures that the structures must be designed to withstand. In no case, however, shall the design loads and factor of safety be less than the values specified in the reference standards listed in Section B.4.3 above.

##### ***B.6.2 Design for Durability***

Components of the Facilities shall be designed to have the following economic design life:

<b>System Components</b>	<b>Economic Design Life (years)</b>
Concrete dams and other concrete structures such as buildings, basins, storage tanks, etc.	[●]
Transmission Pipes, Valves and Mechanical Piping Works	[●]
Steel Dam (if used)	[●]
Rubber dam (if used) or dam made from any material other than concrete or steel	[●]
Electro-mechanical works/Instrumentation Works	[●]
Access Road Pavement(Asphalt)	[●]
Power Transmission Lines	[●]

The Company shall submit to the Agency evidence of track record showing that the proposed materials have a safety factor of at least 1.25 on design parameters required to achieve the economic design life specified above. For this purpose concrete materials shall be designated by design mix and compressive strength. The rest shall be designated by the appropriate industry standard quality classification. Materials or equipment without appropriate industry standard quality classification shall not be used.

### ***B.6.3 Strength of Materials***

Where applicable, the Company shall determine for the Facilities the optimal strength of materials and combinations thereof considering water tightness, durability, and other serviceability requirements.

## **B.7 Construction Methods and Quality Assurance System**

The documents to be submitted under this Section B.7 shall present the construction methods and procedures including the reason for choosing them. The choice of the construction methods shall be consistent with the Quality Assurance System described in Section B.7(b), the Health and Safety Management Program described in Section B.8, and the Environmental Management Program described in Section B.9.

The Quality Assurance System (QAS) shall conform to ISO 9001/9002:2000.

The QAS shall include the following components:

- Inspection procedures and guidelines;
- Test procedures and guidelines;
- List of Do's and Don'ts in construction operations;
- Organizational chart showing the flow of documents;
- Manning schedule;
- List of equipment and vehicles needed;
- Documentation system that shall provide audit trail and cover the entire spectrum of quality control including but not limited to the following:
  - ♦ Forms needed in recording results of tests and inspections;
  - ♦ Accountability of the certifying officers or employees;
  - ♦ Systematic recordkeeping, with at least one back-up file at the Agency Project Management Office, of all inspection and test results that will allow easy retrieval and identification of the location of the structural element represented by each inspection or test certificate; and
  - ♦ Periodic performance audit of the documentation system.



## **B.8 Health and Safety Management Program**

- (a) The Health and Safety Program to be submitted under this Section B.8 shall be in accordance with Occupational Health and Safety Standards (ISO 18001) being enforced by the Philippine Department of Labor and Employment.
- (b) The Health and Safety Program shall include but not limited to the following:

A construction work plan, which must discuss the merits of the planned construction methods and sequencing of activities with respect to safety and health management;

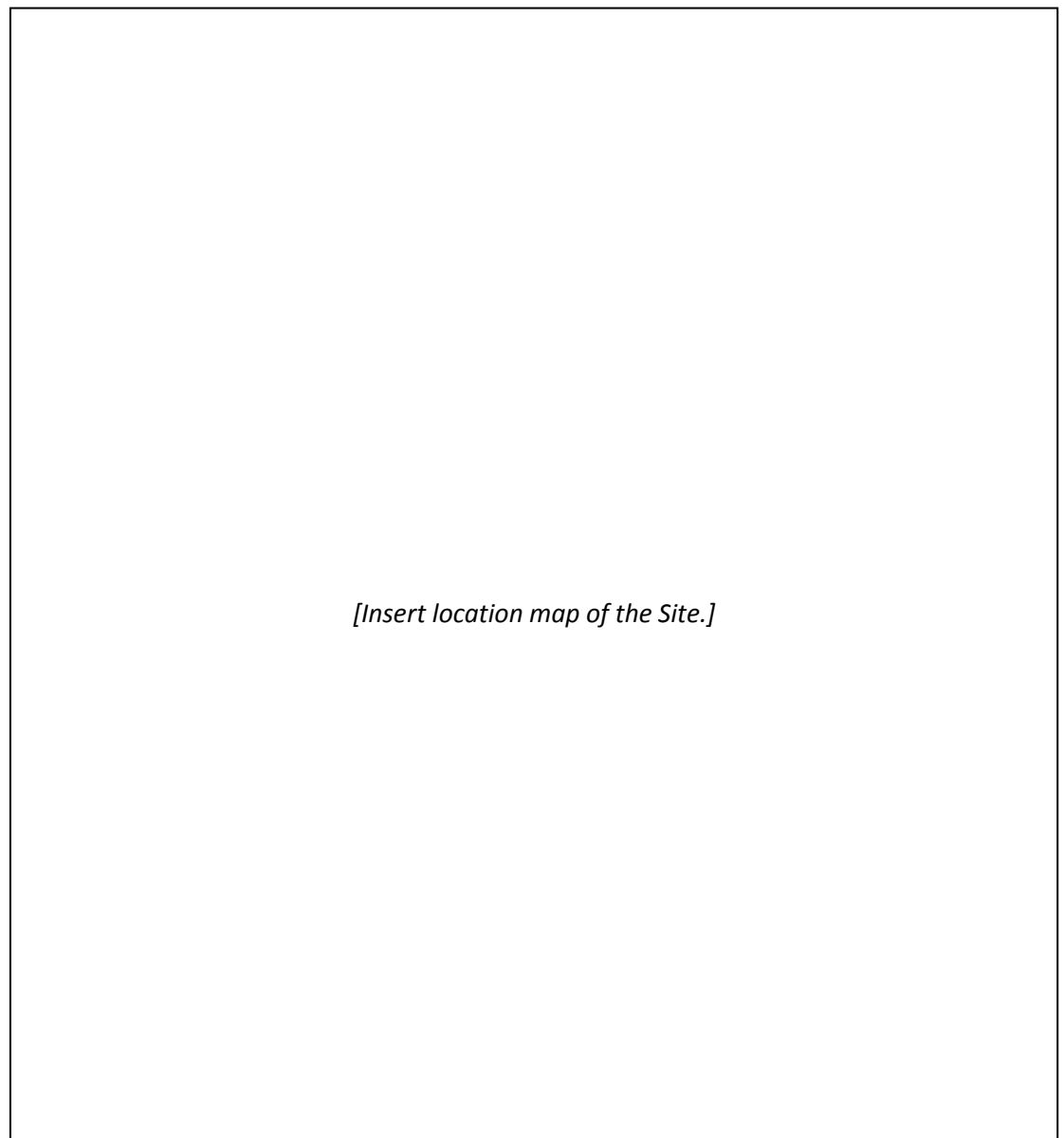
- Emergency response procedures;
  - Telecommunication system;
  - Routine inspection check list;
  - Responsibility assignments;
  - Safety job instructions;
  - Safety paraphernalia;
  - Safety training program;
  - Medical and first-aid system;
  - Recording system that will provide audit trail;
  - Manning schedule; and
  - Budget allocation for the Health and Safety Program spread over the cooperation period.
- (c) As a minimum requirement, the Health and Safety Program must be administered by the following practitioners:
    - one (1) Chief Safety Officer;
    - two (2) Safety Officer;
    - one (1) physician; and
    - two (2) first-aid nurses.

## **B.9 Environmental Management Program**

- (a) The Environmental Management Program shall be in accordance with ISO 14001 and shall implement the requirements of the ECC, including but not limited to the following concerns:
  - Maintenance of ecological balance; and
  - Provision of drainage and sanitation facilities that will prevent human and animal waste from draining into the water stream to be tapped.

- (b) The Environmental Management Program shall include:
- Bar chart of the implementation of sanitation facilities and other activities to be done;
  - Manning schedule;
  - List of equipment and vehicles needed in the program;
  - Budget allocation for the Environmental Management Program spread over the cooperation period.
- (c) As a minimum requirement, the Environmental Management Program must be administered by one (1) environmental engineer.

**Figure B-1. The Site**



## SCHEDULE C

### INTERFACES AND DELIVERY POINT

#### C.1 Definitions

Except as otherwise defined in this Schedule C, capitalized terms used in this Schedule C have the respective meanings assigned to them in the Bulk Water Supply Agreement between the Agency and the Company to which this Schedule C is annexed (the “**Agreement**”). Unless otherwise specified, all references to Sections without other attribution are references to Sections of the Agreement and references to Sections beginning with the letter “C” are references to Sections within this Schedule C.

#### C.2 Location of Agency Interfaces

*[Describe coordinates describing the connections, interfaces, and physical tie-ins at the Delivery Point between the Facilities and the Agency System.]*

## **SCHEDULE D**

### **TESTING AND COMMISSIONING**

#### **D.1 Definitions**

Except as otherwise defined in this Schedule D, capitalized terms used in this Schedule D have the respective meanings assigned to them in the Bulk Water Supply Agreement between the Agency and the Company to which this Schedule D is annexed (the “**Agreement**”). Unless otherwise specified, all references to Sections without other attribution are references to Sections of the Agreement and references to Sections beginning with the letter “D” are references to Sections within this Schedule D.

#### **D.2 Construction Completion**

*[Describe the steps and procedures for determining completion of all construction activities including civil works and structures, buildings, installation of mechanical and electrical equipment, and instrumentation, communication and control systems.]*

#### **D.3 Commissioning Tests**

*[Describe the steps and procedures to demonstrate that all items of infrastructure, plant, equipment and systems that form part of the Facilities are capable of operating in accordance with this Agreement. There can be separate pre-commissioning and commercial operation tests.]*

#### **D.4 Provisional Operations Start Date and Operations Start Date**

*[Describe the particular events, circumstances and test results that will lead to the issuance of the provisional and final acceptance certificate by the Agency in accordance with the Agreement.]*

## **SCHEDULE E**

### **FORM OF PERFORMANCE SECURITY**

The forms of the Performance Security and the Operating Security are set out below:

## SCHEDULE E-1

### PERFORMANCE SECURITY

#### IRREVOCABLE STANDBY LETTER OF CREDIT

*[Letterhead of Bank]*

[Agency Name]

[Agency Address]

Place:

Standby Letter of Credit No.

Date:

Dear Sirs:

**KNOW ALL MEN BY THESE PRESENTS** that we, [●], a corporation organized and existing under the laws of the Republic of the Philippines (the “**Issuer**”), hereby establish our Irrevocable Standby Letter of Credit No. [●] (the “**Letter of Credit**”) in your favor and for the account of *[insert name of Company]* (“**Company**”) relating to the obligations of the Company from the Signature Date until the Provisional Operations Start Date under the Bulk Water Supply Agreement dated [●] (the “**Agreement**”) between yourselves and Company. Capitalized terms used in this Letter of Credit shall have the meanings given to them in the Agreement except as otherwise expressly defined herein.

1. The maximum aggregate amount available under this Letter of Credit is [●] Pesos (PHP [●]) (the “**Stated Amount**”). The Stated Amount shall be reduced from time to time by drawings made hereunder and by express notice in writing from Agency to Issuer.
2. Subject to the other provisions of this Letter of Credit, Agency is hereby irrevocably authorized to make one or more drawings under this Letter of Credit by presenting to the Issuer, at its address set forth above, a demand for payment from Agency in substantially the form attached as Annex A, duly completed, and that is in the form of (a) a letter on Agency’s letterhead signed by any of its authorized signatories, or (b) a tested telex sent by any of its authorized signatories.
3. Multiple drawings may be made hereunder, provided that each drawing honored by the Issuer shall reduce the amount available under this Letter of Credit. The Issuer shall be deemed to have honored a drawing if the Issuer deposits the amount of such drawing in the account (the “**Designated Account**”) designated by Agency in accordance with Annex A. Forthwith upon any such drawing being honored, the Stated Amount shall be reduced by an amount equal to the amount of such

drawing. Any such drawing made hereunder shall be free and clear of all interest and charges and any sums due to the Issuer.

4. We hereby agree to honor each drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds to the Designated Account the amount specified in a demand for payment at the opening of business on the first or second Business Day succeeding the date of such demand. As used herein, the term “**Business Day**” means any day other than (i) a Saturday or Sunday or (ii) a day on which banking institutions in [•], Philippines are authorized or obligated by law or executive order to remain closed.
5. If a demand for payment does not conform to the terms and conditions of this Letter of Credit, we shall give prompt notice (but within the first Business Day succeeding the date of such demand) to Agency that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons for the same. Upon being notified that a demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand and re-submit such demand in accordance with the terms and conditions hereof.
6. This Letter of Credit shall expire (unless otherwise extended in accordance with the provisions hereof) on the earliest of (i) 5 p.m. at the place of presentation on [*insert date no less than one year from date of the Letter of Credit*], (ii) the date on which we receive confirmation from you that the Stated Amount has been reduced to zero, and (iii) the date on which we have honored a drawing or drawings in an aggregate amount equal to the Stated Amount (the “**Expiration Date**”). With respect to subclause (i), on the Business Day immediately preceding such Expiration Date, the Expiration Date shall be automatically extended to the date one year after such Expiration Date, unless the Issuer notifies Agency in writing not less than [•] Days prior to such Expiration Date that such Expiration Date will not be extended. In case Agency receives a notification from the Issuer that this Letter of Credit will not be extended, Agency may draw the full undrawn portion of this Letter of Credit by Agency’s written certificate of demand for payment, in substantially the form of Annex A, which must be received by the Issuer before the then current Expiration Date.
7. All documents presented to the Issuer in connection with any drawing hereunder, as well as all notices and other communications to the Issuer in respect of this Letter of Credit, must comply with the following conditions:
  - a. They must be in writing.
  - b. They must make specific reference to this Letter of Credit by number.

- c. They must be addressed and delivered or sent by courier to the Issuer at its address set forth above (or at such other address as the Issuer shall have specified in writing to Agency) or sent to the Issuer by tested telex to the following number:

Telex No. [ ] (Answerback: [ ]).

8. This Letter of Credit may not be cancelled or amended without the prior written consent of the Issuer and Agency.
9. This Letter of Credit sets forth our undertaking and our agreement with you and such undertaking and such agreement may not in any way be modified, amended, amplified, or limited by reference to any other document, instrument, or agreement referred to herein.
10. The Issuer hereby agrees that it shall have no recourse to Agency if the Company fails at any time to pay any amounts which may from time to time to be due and payable by it to the Issuer in relation to this Letter of Credit.
11. References in this Letter of Credit to the Agreement or any other document or instrument, except to the Annexes hereto, are for identification purposes only. The Agreement and such other documents and instruments are not incorporated herein, nor are they made a part of this Letter of Credit.
12. This Letter of Credit is issued subject to the Uniform Customs and Practice for Documentary Credits, 1993 revision, International Chamber of Commerce Publication No. 500 (“**UCP 500**”), the provisions of which are incorporated into this Letter of Credit, except to the extent superseded by the express terms and conditions of this Letter of Credit and excluding Article 41 (Installment Shipments/Drawings) and Article 48 (Transferable Credit) in their entirety, excluding the last sentence of Article 17 (Force Majeure) and substituting therefor the following: If this Letter of Credit should expire during an interruption of our business as described in Article 17, the Issuer hereby agrees to honor any demand presented in accordance with this Letter of Credit within thirty (30) days after the resumption of our business.
13. To the extent that the provisions of this Letter of Credit are not governed by UCP 500 this Letter of Credit shall be governed by the laws of the Republic of the Philippines and construed in accordance with said laws, without regard to principles of conflicts of law.

**IN WITNESS WHEREOF**, we, Issuer, have caused these presents to be executed in our name and our corporate seal to be affixed by our attorney-in-fact on this [ ] day of

[ ].

**[ISSUER]**

By:

Name:

Title:



Irrevocable Standby Letter of Credit

DEMAND FOR SIGHT PAYMENT

To: [Name of Issuer]

[Address]

Attn: [•]

Re: Irrevocable Standby Letter of Credit No. [•]

The undersigned, a duly authorized officer of [Agency], a [description of Agency], with its principal office at [•], Philippines (together with its successors and assigns in such capacity, "**Agency**") make reference to the Bulk Water Supply Agreement dated as of [•] between Agency and [Company], a corporation duly organized and existing under the laws of [•], having its principal office at [•], Philippines ("**Company**") (the "**Agreement**").

1. Agency hereby demands payment (the "**Drawing**") under the Letter of Credit in the aggregate amount of [•] Pesos (PHP [•]) in order to satisfy liabilities of Company under the Agreement for one or more of the following reasons:
  - (a) [•]; and/or
  - (b) [•]; and/or
  - (c) Issuer has notified Agency pursuant to Section 6 of the Letter of Credit that Issuer will not extend the Expiration Date (as defined in the Letter of Credit) and Agency is entitled to draw the full Stated Amount.
2. The amount of the Drawing does not exceed the Stated Amount, as the Stated Amount has been reduced by all prior Drawings made under the Letter of Credit and honored by Issuer.

Please wire transfer the amount of the Drawing to [account details to be inserted by Agency] (the "**Designated Account**").

IN WITNESS WHEREOF, Agency has executed and delivered this certificate as of the [•] day of [•],

**AGENCY**

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE E-2**  
**OPERATING SECURITY**  
**SURETY BOND**

Know All Men By These Presents:

That we, **[COMPANY]**, a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at *[address]* and represented by *[name of representative]*, as **PRINCIPAL**, and **[PERFORMANCE SECURITY ISSUER]**, a corporation duly organized and existing under and by virtue of the laws of *[country]*, with office address at *[address]* and represented by *[name of representative]*, as **SURETY**, are held and firmly bound unto **AGENCY** in the sum of *[●]* Pesos (PHP *[●]*) for the payment of which sum well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

The conditions of this Surety Bond are as follows:

WHEREAS, PRINCIPAL, on *[date]*, executed a Bulk Water Supply Agreement ("**Agreement**") with AGENCY to develop, finance, design, construct, test, commission, own, operate, manage and maintain facilities required to abstract up to *[volume]* cubic meters per day of raw water from the *[insert raw water source and location]*, Philippines, to treat such raw water into potable water, and to deliver such bulk treated water through a transmission pipeline into the Agency's pipeline network for transmission and distribution of water;

WHEREAS, except as otherwise defined in this Surety Bond, capitalized terms used herein shall have the meanings assigned to them in the Agreement.

WHEREAS, Section 6.3 of the Agreement requires PRINCIPAL to post and deliver a surety bond callable on demand in favor of AGENCY for the faithful performance by PRINCIPAL of its obligations under the Agreement from the Provisional Operations Start Date until the Termination Date of the Agreement;

NOW THEREFORE, if PRINCIPAL shall faithfully perform all the undertakings, covenants, terms, conditions and agreements under the Agreement from Provisional Operations Start Date until the Termination Date of the Agreement, then this Surety Bond shall be null and void; otherwise, it shall remain in full force and effect.

This bond is a penal bond callable on demand by AGENCY upon the failure of PRINCIPAL faithfully to perform its obligations under the Agreement from the Provisional Operations Start Date until the Termination Date.

AGENCY is hereby irrevocably authorized to make one or more claims for payment against this Surety Bond by presenting to SURETY, at its address set forth above, a written notice, in substantially the form attached as Annex A hereof, that PRINCIPAL has failed to faithfully to perform any of its obligations under the Agreement from the Provisional Operations Start Date until the Termination Date. The aggregate amount of all claims for payment made by AGENCY shall not exceed [●] Pesos (PHP [●]).

Upon receipt of a written notice, SURETY shall pay the amount specified in the notice at the opening of business on the first or second Business Day succeeding the date of such claim for payment notwithstanding any objection which PRINCIPAL might raise against AGENCY's entitlement to payment.

The liability of SURETY under this Surety Bond shall expire on termination of the Agreement and SURETY does not assume responsibility for any liability incurred or created thereafter. This Surety Bond will be cancelled ten (10) days after the expiration unless SURETY is notified in writing of any existing obligation hereunder.

This Surety Bond shall be governed by and construed in accordance with the laws of the Republic of the Philippines.

IN WITNESS WHEREOF, we have set our hands and signed our names on the [date] day of [month] [year] at [city/province], Philippines.

**[COMPANY]**

**Principal**

**By:**

**Authorized Representative**

**[PERFORMANCE SECURITY ISSUER]**

**Surety**

**By:**

**Authorized Representative**



Australian Government  
AusAID

**Philippines – Australia  
Partnership for Economic  
Governance Reforms (PEGR)**

An Australian Government, AusAID Initiative

**ACKNOWLEDGMENT**

REPUBLIC OF THE PHILIPPINES                    )  
[City/Province]    ) S.S.

**BEFORE ME**, a Notary Public for and in [City/Province] this [date] day of [month] [year]  
personally appeared:

	CTC No.	Date of Issue	Place of Issue
[Company]			
[Authorized Representative        of Company]			
[Performance Security Issuer]			
[Authorized Representative of Performance Security Issuer]			

all known to me and to me known to be the same persons who executed the foregoing Surety  
Bond and they acknowledged to me that the same is their own free voluntary act and deed.

**WITNESS MY HAND AND SEAL**, on the date, year and place written above.

Notary Public

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 200\_.

## Annex A

## Surety Bond

## NOTICE OF DEMAND

To: ***[PERFORMANCE SECURITY ISSUER]***  
*[Address]*

Attn: [•]

Re: Surety Bond No. [•]

The undersigned, a duly authorized officer of *[Agency]* ("**Agency**"), *[description of Agency]*, with its principal office at [•], Philippines make reference to the Bulk Water Supply Agreement ("**Agreement**") dated as of [•] between Agency and *[Company]*, a corporation duly organized and existing under and by virtue of the laws of [•], with office address at [•].

Agency hereby demands payment under the Surety Bond in the amount of [•] Pesos (PHP [•]) as penalty payment by *[Company]* under the Agreement for one or more of the following reasons:

*[specify breach by Company and proof of consequent damages]*

The aggregate amount of this claim and the other previous claims paid under the Surety Bond do not exceed the amount of [•] Pesos (PHP [•]).

IN WITNESS WHEREOF, Agency has executed and delivered this notice on the *[date]* day of *[month]* 200[•] at *[city/province]*, Philippines.

**AGENCY**

By:

***[Name of Authorized Representative]***  
*[Title]*

## SCHEDULE F

### RAW WATER

#### F.1 Definitions

Except as otherwise defined in this Schedule F, capitalized terms used in this Schedule F have the respective meanings assigned to them in the Bulk Water Supply Agreement between the Agency and the Company to which this Schedule F is annexed (the “**Agreement**”). Unless otherwise specified, all references to Sections without other attribution are references to Sections of the Agreement and references to Sections beginning with the letter “F” are references to Sections within this Schedule F.

#### F.2 Raw Water Source

*[Describe source of Raw Water.]*

#### F.3 Raw Water Impurities; Responsibility of Company

- (a) Raw Water will contain mineral and biological impurities that must be removed, destroyed, neutralized, rendered harmless, or otherwise transformed at the Water Treatment Plant such that after processing therein it meets the requirements of the Treated Water Quality Specifications specified in Schedule G.
- (b) The Company shall be solely responsible for determining the nature, quantities, and concentrations of the impurities contained in and carried by the Raw Water and for providing the structures, means, processes, plant, energy, labor, and materials and any other provisions necessary for the transformation of Raw Water into Treated Water at the Facilities at all times of the year such that the agreed supply of Treated Water can be delivered to the Delivery Point.
- (c) The Company shall design, construct, operate, and maintain the Facilities such that they are capable of transforming, into Treated Water, the Raw Water containing impurities of the types and in the concentrations that can be expected to occur during the term of this Agreement.

#### F.4 Raw Water Sampling and Data Collection Program

- (a) The Company shall commence a program of sampling and analysis of the Raw Water not later than the Signature Date, except for the program of turbidity sampling and testing which shall commence no later than 2 month(s) after the Signature Date, in order to establish jointly with the Agency before the Required Provisional Operations Start Date a baseline (“**Raw Water Quality Baseline**”) for the types, quantities, and concentrations of the impurities contained in and transported by the Raw Water that the Company shall use for designing the Facilities.
- (b) The Company shall engage the services of an independent laboratory or laboratories, which shall be subject to the prior written approval of the Agency (each, an “**Independent Laboratory**”), to take samples and analyze Raw Water.

The analyses of the Raw Water shall include but not be limited to the Raw Water Quality Parameters listed in Table F.1 (Raw Water Quality Parameters). Each Independent Laboratory shall be at least certified by the Department of Health and/or the Department of Environment and Natural Resources and shall be independent of and have no conflict of interest with the Company or the Agency. The results of this program shall be communicated to the Agency at monthly intervals in reports that provide details of the time and quantity of each sample and the results of every analysis carried out. The Agency shall also be notified in advance of when the samples are to be taken and shall be given the opportunity to be present or represented when the samples are taken.

- (c) The Company shall provide the Agency with a design report detailing the results of the sampling and analysis program and setting out and substantiating the margins of increased levels of impurities in the Raw Water over the present levels that the Company has allowed for in the design of the Facilities, and contingent planned reinforcements and extensions.
- (d) After the Provisional Operations Start Date, the Company shall continue to take samples of the Raw Water in accordance to Table F.1 and analyze these for the impurities the Company considers to be critical for the continued ability of the Facilities to convert Raw Water into Treated Water at the rates and to the standards specified in this Agreement. The Company shall provide the Agency with monthly reports indicating the minimum, average, and maximum values for each Raw Water Quality Parameter when any of the Critical Parameters or Non-Critical Parameters has exceeded the corresponding maximum level as specified in Table G-1 (*Treated Water Quality Specifications*) of Schedule G (*Treated Water Quality Specifications*).
- (e) If (i) a Raw Water Quality Parameter has continuously exceeded the average value, as established in the Raw Water Quality Baseline, by at least 50% for more than twelve (12) months and (ii) such condition is outside the design conditions of the Facilities set out in Schedule A (*Design and Technical Specifications*), then the Company shall be deemed to be affected by an **"Exceptional Raw Water Quality Deterioration Event"** and the provisions of Section 8.3.2 shall apply. If a Raw Water Quality Parameter has exceeded its maximum recorded value, as established in the Raw Water Quality Baseline, by at least 100% continuously for forty-eight (48) hours and such condition is outside the design conditions of the Facilities set out in Schedule A (*Design and Technical Specifications*), the Clause G.5.1 (b) shall not apply for the lesser period of time of that the Raw Water parameter remains continuously at least 100% above maximum recorded value in Raw Water Baseline or fifteen (15) Days. If a Raw Water Quality Parameter has exceeded its maximum recorded value, as established in the Raw Water Quality Baseline, by at least 100% continuously for fifteen (15) days and such condition is outside the design conditions of the Facilities set out in Schedule A (*Design and Technical Specifications*), then the Company shall be deemed to be affected by an **"Exceptional Raw Water Quality Deterioration Event"** and the provisions of Section 8.3.2 shall apply and the Clause G.5.1 (b) shall not apply for the period of time period of time required by the Company to upgrade the Facilities. The Company must, however, exert , and document, best efforts to identify the

cause of the change in the Raw Water quality and undertake all necessary measures to correct, and if not possible, to mitigate, the cause of the change in the Raw Water quality before exercising its right to an Exceptional Raw Water Quality Deterioration Event under Section 8.3.2.

- (f) If the Raw Water quality deteriorates to the point that as a direct consequence the Treated Water, as defined in Schedule G, cannot be provided, testing of the Raw Water shall be conducted as frequently as the Company deems necessary to determine if the deterioration of the Raw Water is a temporary or permanent condition that can only be cured with a change in the design of the Treatment Facility.

**Table F-1: Raw Water Quality Parameters for Baseline Data Gathering before Provisional Operations Start Date**

Parameters	Unit	Method*	Frequency of Testing
Chloride	mg/L	Argentometric	Monthly
Total Hardness	mg/L	Edta Titration	Monthly
Iron	mg/L	Colorimetric	Monthly
pH	-	Electrometric pH meter	Monthly
Total Solids	mg/L	Gravimetric	Monthly
Total Diss. Solids	mg/L	Gravimetric	Monthly
Total Susp. Solids	mg/L	Gravimetric	Monthly
Nitrate as NO <sup>2</sup>	mg/L	Diazotization Method	Monthly
Sulphate	mg/L	Turbidimetric	Monthly
Manganese	mg/L	AAS	Monthly
Arsenic	mg/L	AAS	Monthly
Barium	Mg/L	AAS	Six Monthly
Boron	Mg/L	Photometric	Six Monthly
Cadmium	Mg/L	AAS	Six Monthly
Chromium	mg/L	AAS	Monthly



<u>Copper</u>	<u>mg/L</u>	<u>AAS</u>	Monthly
Cyanide	mg/L	Pyridine/ Spectrophotometry	Monthly
<u>E. Coliforms/Fecal Coliforms</u>	<u>mg/L</u>	<u>Membrane Filter Technique</u>	Monthly
<u>Fecal Coliforms</u>	<u>MI</u>	<u>Membrane Filter Technique</u>	Monthly
<u>Total Coliforms</u>	<u>MI</u>	<u>Membrane Filter Technique</u>	Monthly
Total Pesticides and herbicides	µG/L	Gas Chromatography	Six Monthly
Surfactants	mg/L	Colorimetric, MBAS	Monthly
Biochemical Oxygen Demand	mg/L	Azide Modification	Monthly
Phenols	mg/L	Photometric	Monthly
Phosphate as P	mg/L	Colorimetric (Stannous Chloride)	Monthly
Biological Examination	Total Count/mL	Microscopial Strip Counting	Monthly
Oil and Grease	mg/L	Soxhlet Extraction	Monthly
Dissolved Oxygen	mg/L	Azide Modification	Monthly
<i>[Insert other locally relevant parameters]</i>			
<i>[Insert other locally relevant parameters]</i>			
<i>[Insert other locally relevant parameters]</i>			

\* method(s) of analysis under the PNSDW not listed above are acceptable method(s)

## SCHEDULE G

### TREATED WATER SPECIFICATIONS

#### G.1 Definitions

Except as otherwise defined in this Schedule G, capitalized terms used in this Schedule G have the respective meanings assigned to them in the Bulk Water Supply Agreement between the Agency and the Company to which this Schedule G is annexed (the “**Agreement**”). Unless otherwise specified, all references to Sections without other attribution are references to Sections of the Agreement and references to Sections beginning with the letter “G” are references to Sections within this Schedule G.

#### G.2 Treated Water Specifications

Treated Water will at least meet whichever is the stricter standard of, either the Philippine National Standards for Drinking Water and its Secondary Standards shall apply on the Signing Date of this Agreement, or standards outlined in the Table G-1, for each individual parameter.

#### G.3 Water Testing Procedure

##### G.3.1 Routine Sampling and Testing by the Company

Routine sampling and testing of Treated Water shall be undertaken by the Company according to the schedule and methods specified in Table G.1. The Company may analyze the samples at a laboratory forming part of the Facilities or at an external laboratory or a combination of the two provided only that the competence of the equipment, staff, procedures and record-keeping of the laboratory shall be certified for each analysis required by the Company to be performed there by regular inspection and testing by an internationally recognized laboratory testing organization or, by the Department of Health and Department of Environment and Natural Resources. Copies of the certification and renewal of accreditation of each laboratory shall be provided to the Agency within one (1) week of their receipt by the Company.

The results of the sampling and testing of Treated Water shall be fully reported to the Agency at weekly intervals. Any sample failing to meet the specification for Treated Water shall be reported to the Agency within 24 hours of the analysis results becoming available for Non-Critical Parameters and within 1 hour of the results becoming available for Critical Parameters.

The Company shall allow the Agency unrestricted access to the records of the taking and testing of Treated Water samples and to the original records of the results of the laboratory analyses, which the Company shall keep for a minimum of three (3) years before archiving.

The Company shall bear the cost of all routine taking and analysis of Treated Water samples in accordance with Table G.1.

In the event that the Company shall be found to have omitted to take a sample of Treated Water or to have omitted to perform a test required in accordance with Table G.1 then for the purposes of this Agreement each Treated Water parameter listed in Table G.1 that is

untested as a consequence of such omission shall be deemed to have exceeded its maximum permitted value and the consequent provisions of this Agreement shall apply.

### **G.3.2 Sampling and Testing by the Agency**

The Company shall allow the Agency or its nominees access to the Facilities for the purpose of taking samples of Treated Water for testing at the Agency's laboratory or at an external laboratory. The Agency shall give the Company at least two (2) hours notice of its intention to visit the Facilities for the purpose of taking samples of Treated Water and shall at all times respect and obey the same written safety and hygiene procedures that the Company requires of its own staff.

The Agency shall bear the full cost of the taking and analysis of its own samples of Treated Water and shall indemnify the Company for any damage or contamination that can be shown to have been caused by the actions of the Agency staff or nominees in the course of taking Treated Water samples.

### **G.3.3 Joint Sampling and Testing by the Company and the Agency**

In the event that the Agency shall assert and the Company shall deny that the concentration at the Delivery Point of a Non-Critical or Critical Treated Water Parameter has exceeded its maximum permitted value the Company and the Agency shall in the first instance within 24 hours constitute a sampling and analysis team made up of equal numbers of suitably qualified staff nominated by the Company and the Agency respectively (the ***"Joint Sampling And Analysis Team"***). The Joint Sampling And Analysis Team shall together immediately take samples for testing at the laboratories used by the Company and the Agency for the analysis of Treated Water for the Critical or Non-Critical Parameters whose concentration in Treated Water is contested. The Joint Sampling and Testing Team or its representatives shall jointly certify the validity and accuracy of the results obtained or shall in writing describe the shortcomings in equipment or procedures that shall have given them cause to refuse such certification and shall have the right to undertake or witness the analysis of the samples at each laboratory.

In the event that the two results obtained by the Joint Sampling And Analysis Team are both certified and in agreement that the concentration of the Critical or Non-Critical Treated Water Parameter asserted by the Agency to have exceeded its maximum permitted value has or has not exceeded its maximum permitted value then this result shall be binding on both the Company and the Agency and the applicable terms of this Agreement shall apply. Otherwise the Company and the Agency shall either agree to request the Joint Sampling And Analysis Team to take and analyze two additional samples or the dissenting party shall invoke and bear the cost of the procedure for Independent Sampling And Testing specified in Section G.3.4.

### **G.3.4 Independent Sampling and Testing**

If the procedure for Joint Sampling and Testing specified in Section G.3.3 is inconclusive and either the Company or the Agency refuses to request the Joint Sampling and Analysis Team to take and analyze additional samples then the dissenting Party shall invoke the requirements of this Section G.3.4 by notifying the other Party in writing. The written notification shall include the name, address and contact details of a laboratory, certified and accredited to the standards required by Section G.3.1 (the ***"Independent Laboratory"***), that the dissenting Party proposes to employ at its sole cost to take and analyze definitive samples of Treated

Water. The non-dissenting Party shall within one (1) working day from the receipt of the dissenting Party's notification give its written agreement to the engagement of the proposed Independent Laboratory or shall propose an alternative and similarly accredited laboratory to be the Independent Laboratory. If within a further two (2) working days the Company and the Agency are unable to agree on the nomination of the Independent Laboratory then the dissenting Party shall have the right to invoke the process for the independent selection of the Independent Laboratory set out in Section G.3.5.

The Independent Laboratory shall be required to immediately take a sample of Treated Water in the quantities and conditions for the analyses required to determine the concentrations of the Critical or Non-Critical Parameters whose concentration in Treated Water is contested (the "***Independent Sample***").

The Company and the Agency shall immediately grant the Independent Laboratory access to the Facilities for the purpose of taking the Independent Sample. The Company and the Agency may witness but shall on no account interfere with or obstruct the taking, labeling and dispatch of the Independent Sample by the Independent Laboratory for analysis. The Independent Laboratory shall be required to transmit the results of the analysis of the Independent Sample simultaneously to the Company and the Agency within one (1) working day of completion of the analysis. The results of the analysis by the Independent Laboratory shall be binding on both the Company and the Agency in the determination of whether the Treated Water is or is not compliant with the requirements of this Agreement.

### **G.3.5 Independent Selection of the Independent Laboratory**

If the Company and the Agency are unable to agree on an Independent Laboratory fulfilling the requirements of Section G.3.4 above within three (3) working days of the receipt by the other Party of the dissenting Party's first notification in accordance with Section G.3.4 then the dissenting Party invoking the provisions of Section G.3.4 shall notify the other Party in writing of its intention to nominate two experts to carry out the selection of the Independent Laboratory in accordance with the provisions of this Section G.3.5. This written notification shall include the names and contact addresses of two experts who shall be independent of both the Company and the Agency and shall hold internationally recognized qualifications in water chemistry and analysis (the "***Independent Experts***"). Upon receipt of this written notification the other Party shall have one (1) working day to require that the dissenting Party replace one of the proposed Independent Experts with an Independent Expert of its own choosing by giving written notification to the dissenting Party of the name of the Independent Expert it wishes to be replaced and the name and contact details of the Independent Expert it proposes as a substitute or it shall be deemed to have accepted both of the Independent Experts nominated by the dissenting Party. The dissenting Party shall then engage the services of the Independent Experts to select the Independent Laboratory in accordance with the remaining provisions of this Section G.3.5.

The two Independent Experts shall jointly select a third similarly qualified Independent Expert and by simple majority the three Independent Experts shall between themselves and without consultation with the Company or the Agency:

- i) select and engage a sampling team consisting of one or more individuals meeting the requirements of Section G.3.5 but not including employees of the

Company and the Agency who shall be competent and available to take samples of Treated Water in accordance with the provisions of this Section G.3.4 (the “**Independent Sampling Team**”)

- ii) commission the Independent Sampling Team to take two samples of Treated Water in the quantities, conditions and containers required for the analyses required to determine the concentrations of the Critical or Non-Critical Parameters whose concentration in Treated Water is contested (the “**Independent Sample**”)
- iii) identify and engage the services of a laboratory certified by an internationally recognized laboratory testing and certification organization as competent to determine the concentrations of the Critical or Non-Critical Parameters whose concentration in Treated Water is contested that shall analyze the Independent Sample (the “**Internationally Certified Independent Laboratory**”).

### **G.3.6 Manpower**

All personnel involved in the water quality analysis shall be qualified and trained to perform all works related to the day to day operations of the laboratory accredited by Department of Health.

## **G.4 Monitoring Program**

### **G.4.1 Frequency of testing**

The testing will be done in accordance with Table G-1. Any Party may, however, request to have more frequent or less frequent testing upon written notice to the other Party in accordance with Table G-1. Such change of frequency of testing will be implemented once the requesting Party receives written approval from the other Party

### **G.4.2 Parameters to be Tested Daily**

Parameters to be tested daily are as specified in Table G-1.

### **G.4.3 Parameters to be Tested Monthly**

Parameters to be tested monthly are as specified in Table G-1. However, if a Critical Parameter that is specified in Table G-1 for testing once per month is found to be greater than 95% of the allowed limit, the parameter shall thereafter be tested daily until it is less than 95% of the allowed limit, at which point it reverts back to monthly testing. If a Non-Critical Parameter that is specified in Table G-1 for testing once per month is found to be greater than 95% of the allowed limit, the parameter shall thereafter be tested bi-weekly until it is less than 95% of the allowed limit, at which point it reverts back to monthly testing.

### **G.4.4 Parameters to be Tested Six Monthly**

Parameters to be tested six-monthly are as specified in Table G-1, provided however, that (i) if a Critical Parameter that is specified for testing every six months is found to be greater than 90% of the allowed limit, the parameter shall thereafter be tested monthly until it is less than 90% of the allowed limit, at which point it reverts back to six monthly testing, and (ii) if a Non-Critical Parameter that is specified for testing every six months is found to be greater than

10% of the allowed limit, the parameter shall thereafter be tested quarterly until it is less than 90% of the allowed limit, at which point it reverts back to six monthly testing.

#### **G.4.5 Parameters to be Tested Annually**

Parameters to be tested annually are as specified in Table G-1, provided however, that (i) if a Critical Parameter that is specified for testing annually is found to be greater than 90% of the allowed limit, the parameter shall thereafter be tested monthly until it is less than 90% of the allowed limit, at which point it reverts back to annual testing, and (ii) if a Non-Critical Parameter that is specified for testing every six months is found to be greater than 90% of the allowed limit, the parameter shall thereafter be tested quarterly until it is less than 90% of the allowed limit, at which point it reverts back to annual testing.

### **G.5 Non-Compliance with Treated Water Specifications**

#### **G.5.1 Non-Compliance of Critical Parameters with Allowed Limits**

- (h) Where the results of the analyses of Treated Water samples carried out in accordance with the provisions of Section G.3 show that the concentration of one or more of the Critical Parameters has exceeded the maximum concentration specified in Table G-1 then the Agency shall have the right to reject delivery of Treated Water starting from the date and time that the first such sample was taken and continuing until the date and time of the first subsequent sample whose analysis carried out in accordance with the provisions of Section G.3 shows that the concentration of every Critical Parameter does not exceed the maximum concentration specified in Table G-1. The quantity of such water rejected by the Agency shall not be paid for by the Agency in accordance with Section 8.2 (*Calculation of Payment*) of the Agreement.
- (i) Failure of Treated Water to comply with the requirements of Table G-1 for Critical Parameters such that the provisions of Section G.5.1 (a) shall have given the Agency the right to reject delivery of Treated Water for a period of more than seventy two (72) consecutive hours or on four or more occasions within a period of sixty (60) consecutive Days regardless of the duration shall be a Company Event Default in accordance with Section 15.1 (*Company Events of Default*), and the Agency shall have the right to terminate this Agreement pursuant to Section 20.1.1 (*Termination Procedure*).
- (j) Any non-compliant Critical Parameter shall be tested daily or more frequently, and as soon as the Company shall have undertaken necessary measures to address the problem resulting in delivered water not being compliant with Critical Parameter. Once the test result show that the Critical Parameter is at or below its allowed limit specified in Table G-1, it shall be deemed compliant and the testing frequency shall revert back to the monitoring schedule for that Critical Parameter, including the monitoring schedule required if the Critical Parameter is greater than 95% or 90% of the standard.

#### **G.5.2 Non-Compliance of Non-Critical Parameters with Allowed Limits**

- (a) The Agency shall have the right to reject delivery of any water that does not comply with the allowed limit for any Non-Critical Parameter specified in

Table G-1. The quantity of such water rejected by the Agency shall not be paid for by the Agency in accordance with Section 8.2 (*Calculation of Payment*) of the Agreement.

- (b) Any non-compliant Non-Critical Parameter shall be tested (i) daily or more frequently, (ii) as soon as the Company shall have undertaken necessary measures to address the problem resulting in delivered water not being compliant with Non-Critical Parameter. Once the test result show that the Non-Critical Parameter is at or below its allowed limit specified in Table G-1, it will be deemed compliant and the testing frequency shall revert back to the regular monitoring schedule for that Non-Critical Parameter including the monitoring schedule required if the Non-Critical Parameter is greater than 95% or 90% of the standard.

Table G-1: Treated Water Specifications

Parameter	Unit	Treated Water Standard	Parameter Importance	Testing Method*	Frequency of Testing
1. Bacteriological					
Treated water entering distribution					
E. Coliforms/Fecal Coliforms	mL	[●]	Critical	Membrane Filter Technique	Daily
Water in distribution system					
Fecal Coliforms	MI	[●]	Critical	Membrane Filter Technique	Daily
Total Coliforms	MI	[●]	Critical	Membrane Filter Technique	Daily
2. Biological Organisms					
Total count/mL	mL	[●]	Non-Critical	Microscopy	Six Monthly
3. Physical and Chemical – Health					
Antimony	mg/L	[●]	Non-Critical	AAS	Six Monthly
Arsenic	mg/L	[●]	Critical	AAS	Monthly

Parameter	Unit	Treated Water Standard	Parameter Importance	Testing Method*	Frequency of Testing
Barium	mg/L	[●]	Critical	AAS	Six Monthly
Boron	mg/L	[●]	Critical	Carmine/AAS	Six Monthly
Cadmium	mg/L	[●]	Critical	AAS	Six Monthly
Chromium	mg/L	[●]	Critical	AAS	Six Monthly
Cyanide	mg/L	[●]	Critical	Pyridine/Spectrophotometry	Monthly
Fluoride	mg/L	[●]	Critical	SPADNS/ Spectrophotometry	Monthly
Lead	mg/L	[●]	Critical	AAS	Six Monthly
Mercury	mg/L	[●]	Critical	AAS	Six Monthly
Nitrate as NO <sup>3</sup>	mg/L	[●]	Critical	Cadmium Reduction/ Spectrophotometry	Monthly
Selenium	mg/L	[●]	Non-Critical	AAS	Six Monthly
4. Pesticides and Herbicides					
Total Pesticides and Herbicides	µg/L	[●]	Critical	Gas Chromatography	Six Monthly
5. Physical and Chemical Aesthetic					
Taste	mg/L	[●]	Non-Critical		Daily
Odor	mg/L	[●]	Non-Critical		Daily
Color	mg/L	[●]	Non-Critical	Pt-Co Colorimetry/Visual	Daily
Turbidity	NTU or HU	[●]	Non-Critical	Nephelometric Method	Daily
Aluminum	mg/L	[●]	Non-Critical	AAS	Daily
Chloride	mg/L	[●]	Non-Critical	Argentometric	Six Monthly
Copper	mg/L	[●]	Non-Critical	AAS	Six Monthly
Hardness	mg/L	[●]	Non-Critical	EDTA Titration	Monthly
Hydrogen	mg/L	[●]	Non-Critical	Methylene Blue/Iodometric	Monthly



Parameter	Unit	Treated Water Standard	Parameter Importance	Testing Method*	Frequency of Testing
Sulphide					
Iron	mg/L	[●]	Non-Critical	Phenanthroline/AAS	Daily
Manganese	mg/L	[●]	Non-Critical	AAS	Monthly
PH	mg/L	[●]	Non-Critical	Ion Electrode	Six Monthly
Sodium	mg/L	[●]	Non-Critical	AAS	Monthly
Sulphate	mg/L	[●]	Non-Critical	Turbidimetric	Monthly
Total dissolved solids	mg/L	[●]	Non-Critical	Gravimetry	Monthly
Zinc	mg/L	[●]	Non-Critical	AAS	Six Monthly
LSI (Langelier Saturation Index)	mg/L	[●]	Non-Critical	By LSI Formula Computation	Six Monthly
Corrosivity	mg/L	[●]	Non-Critical	Visual	Six Monthly
6. Disinfectant and By-products					
Chloride residual	mg/L	[●]	Critical	DPD	Daily
THM Total	mg/L		Critical	Gas Chromatography	Six Monthly
7. Radiological					
Gross alpha activity	Bg/L	[●]	Non-Critical		Annually
Gross beta activity	Bg/L	[●]	Non-Critical		Annually
Gross beta activity	Bg/L	[●]	Non-Critical		Annually
[Insert other locally relevant parameters]					
[Insert other locally relevant parameters]					
[Insert other locally relevant parameters]					

## SCHEDULE H

### DELIVERY SCHEDULE AND OPERATING PROCEDURES

#### H.1 Definitions

Except as otherwise defined in this Schedule H, capitalized terms used in this Schedule H have the respective meanings assigned to them in the Bulk Water Supply Agreement between the Agency and the Company to which this Schedule H is annexed (the “**Agreement**”). Unless otherwise specified, all references to Sections without other attribution are references to Sections of the Agreement and references to Sections beginning with the letter “H” are references to Sections within this Schedule H.

#### H.2 Flow Rates and Pressure

- (a) The Company shall control the rate of flow to the Delivery Point to maintain flow and pressure at the Delivery Point within the limits defined in Table H-1 (*Flow Rate and Pressure*). Each Day shall be divided into the [●] Delivery Periods specified in Table H-1 or into such shorter Delivery Periods as may be specified by the Agency from time-to-time by written notice to the Company (each, a “**Delivery Period**”). The Agency shall specify for each Day not later than [●] p.m. of the preceding Day the quantity, subject to the limits set out in Table H-1 and expressed in cubic meters, of Treated Water to be conveyed to the Delivery Point by the Company during each Delivery Period (the “**Period Deliverable Quantity**”). If the Agency requests a “**Period Deliverable Quantity**” which is outside limits set out in Table H-1, the Company shall have the right to accept or reject the Agency request. The sum of the Period Deliverable Quantities for all Delivery Periods for a Day shall be equal to the Nominated Daily Quantity for that Day determined in accordance with Section 7.3 (*Quantity of Treated Water Supplied*). Except as otherwise previously agreed in writing by the Agency, the rate of flow during each Delivery Period shall be controlled by the Company to be within  $\pm$ [●]% of the flow required to provide the Period Deliverable Quantity at a constant rate over the full duration of each Delivery Period, subject to the limits set out in Table H-1 (*Flow Rate and Pressure*) and to the flow of Raw Water available at the intake point. In consideration of the above, the Agency acknowledges that the pressure at the Delivery Point will be determined entirely by the capacity of the Agency’s water supply and distribution systems to distribute the specified volume within the prevailing Delivery Period.
- (b) The maximum pressure limits in Table H-1 (*Flow Rate and Pressure*) are intended to prevent the occurrence of leakage caused by excessive stress to the Agency’s pipes and fittings. The Company shall constantly monitor the pressure and rate of flow of Treated Water at the Delivery Point to ensure that this parameter is met.

**Table H-1: Flow Rate and Pressure**

Delivery Period	Flow Rate at the Delivery Point (Factor of Nominated Daily Quantity)		Pressure
	Minimum	Maximum	Maximum
[●]	[●]	[●]	[●]
[●]	[●]	[●]	[●]
[●]	[●]	[●]	[●]
[●]	[●]	[●]	[●]
[●]	[●]	[●]	[●]
[●]	[●]	[●]	[●]

**SCHEDULE I**  
**QUANTITY NOMINATION AND ACCEPTANCE FORM**

Date of Submission: \_\_\_\_\_

Nomination for Billing Month Number: \_\_\_\_\_

<b>Calendar Day</b>	<b>Nominated Daily Quantity (NDQ) (m<sup>3</sup>)</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
xxx	

Submitted by AGENCY:	Accepted by COMPANY:
Name	Name
Date	Date
Signature	Signature

## SCHEDULE J

### METERING AND MEASUREMENT PROCEDURES

#### J.1 Definitions

Except as otherwise defined in this Schedule J, capitalized terms used in this Schedule J have the respective meanings assigned to them in the Bulk Water Supply Agreement between the Agency and the Company to which this Schedule J is annexed (the “**Agreement**”). Unless otherwise specified, all references to Sections without other attribution are references to Sections of the Agreement and references to Sections beginning with the letter “J” are references to Sections within this Schedule J.

#### J.2 Treated Water Meters

*[Describe the (1) technical specifications for Treated Water meters, (2) procedure for making readings from Treated Water meters, (3) procedure for recalibration of Treated Water meters.]*

#### J.3 Raw Water Meters

*[Describe the (1) technical specifications for Raw Water meters, (2) procedure for making readings from Raw Water meters, (3) procedure for recalibration of Raw Water meters.]*

**SCHEDULE K**  
**FORM OF INVOICE**

TO: THE AGENCY

Billing Month Number: \_\_\_\_\_

Date of Submission: \_\_\_\_\_

Date of Receipt: \_\_\_\_\_

Due Date: \_\_\_\_\_

1. Tariff Computation:
2. Computation of Penalties Applicable to Billing Month
3. Computation of Total Amount Due
4. Payment Instructions

## SCHEDULE L

### TARIFF

#### **L.1 Definitions**

Except as otherwise defined in this Schedule L, capitalized terms used in this Schedule L have the respective meanings assigned to them in the Bulk Water Supply Agreement between the Agency and the Company to which this Schedule L is annexed (the “**Agreement**”). Unless otherwise specified, all references to Sections without other attribution are references to Sections of the Agreement and references to Sections beginning with the letter “L” are references to Sections within this Schedule L.

#### **L.2 Tariff Computation Formulae**

*[Describe the formulae for the computation of the Tariff in accordance with Section 8.]*

## SCHEDULE M

### CONSENTS

#### M.1 Definitions

Except as otherwise defined in this Schedule M, capitalized terms used in this Schedule M have the respective meanings assigned to them in the Bulk Water Supply Agreement between the Agency and the Company to which this Schedule M is annexed (the “**Agreement**”). Unless otherwise specified, all references to Sections without other attribution are references to Sections of the Agreement and references to Sections beginning with the letter “M” are references to Sections within this Schedule M.

#### M.2 List of Anticipated Consents

The list of Consents that the Parties anticipate as of the Execution Date will be required for the implementation of the Project is set out in Table M-1. The Parties acknowledge and agree that (i) this list is illustrative and not exclusive and that other Consents may be required in order to implement the Project and (ii) except as provided in the Agreement or as Agency may otherwise agree in writing, Company shall be responsible at its sole cost and expense for obtaining and maintaining all Consents, including any Consents that are not listed in Table M-1 that may be required.



**TABLE M-1****LIST OF ANTICIPATED CONSENTS**

	<b>CONSENT</b>
<b>1.</b>	National Water Resources Board (NWRB)
<b>1.1</b>	Water Permit
<b>1.2</b>	Certificate of Public Convenience, if applicable
<b>1.3</b>	Approval of Tariff Adjustment Formula
<b>2</b>	Department of Environment and Natural Resources (DENR)
<b>2.1</b>	Environmental Compliance Certificate
<b>2.2</b>	Soil Disposal Site Permit/Industrial Waste Permit
<b>2.3</b>	Special Land Use Permit, if applicable
<b>2.4</b>	Proof of compliance with DENR Administrative Order No. 97-05 on the retention of areas within certain distances along the banks of rivers and streams, if applicable
<b>3</b>	National Commission on Indigenous People (NCIP)
<b>3.1</b>	Certification from the National Commission on Indigenous People that no ancestral land is affected by the Project or, if ancestral land is affected, that free and prior informed consents of the indigenous communities concerned have been secured.
<b>4</b>	Concerned LGUs
<b>4.1</b>	Business/Mayor's permit and license
<b>4.2</b>	Sanitary/plumbing permit
<b>4.3</b>	Electrical, mechanical permit
<b>4.4</b>	Building, excavation permit
<b>4.5</b>	Health/sanitation certificate

## SCHEDULE N

### INSURANCE

#### N.1 Definitions

Except as otherwise defined in this Schedule N, capitalized terms used in this Schedule N have the respective meanings assigned to them in the Bulk Water Supply Agreement between the Agency and the Company to which this Schedule N is annexed (the “**Agreement**”). Unless otherwise specified, all references to Sections without other attribution are references to Sections of the Agreement and references to Sections beginning with the letter “N” are references to Sections within this Schedule N.

#### N.2 Insurance Policies and Terms

##### N.2.1 Insurance Coverage During the Construction Period

*[List all required insurances during the construction period which may include:*

- *Marine cargo/transit*
- *Delay in start-up*
- *Construction/erection all risks*
- *Third party liability*
- *Workmen’s compensation/employer’s liability*
- *Motor vehicle and other personal property.]*

*For each type of insurance, specify the following:*

<i>Minimum Cover:</i>	<i>[●]</i>
<i>Minimum Sum Insured:</i>	<i>[●]</i>
<i>Minimum Sub-limits:</i>	<i>[●]</i>
<i>Maximum Deductible:</i>	<i>[●]</i>
<i>Period of Cover:</i>	<i>[●]</i>
<i>Insured Parties:</i>	<i>[●]</i>
<i>Required Coverage:</i>	<i>[●]</i>
<i>Required Extensions:</i>	<i>[●]</i>
<i>Permitted Exclusions:</i>	<i>[●]</i>

##### N.2.2 Insurance Coverage after Operations Start Date

The insurance coverage under this Section L.2.2 shall be reviewed [●] Days before the Required Operations Start Date.

*[List all required insurances during the Operating Period which may include:*

- *All risks insurance*
- *Business interruption*
- *Comprehensive general liability*

- *Terrorism*
- *Workmen's compensation/employer's liability*
- *Motor vehicle and other personal property.]*

*For each type of insurance, specify the following:*

Minimum Cover:	[●]
Minimum Sum Insured:	[●]
Minimum Sub-limits:	[●]
Maximum Deductible:	[●]
Period of Cover:	[●]
Insured Parties:	[●]
Required Coverage:	[●]
Required Extensions:	[●]
Permitted Exclusions:	[●]

### **N.2.3 Insurance Policy endorsements**

*[State the provisions or other clauses which should be incorporated in the insurance policies required under the Agreement.]*

## SCHEDULE O

### TERMINATION BUY-OUT AND TRANSFER PROVISIONS

#### **O.1 Definitions**

Except as otherwise defined in this Schedule O, capitalized terms used in this Schedule O have the respective meanings assigned to them in the Bulk Water Supply Agreement between the Agency and the Company to which this Schedule O is annexed (the “**Agreement**”). Unless otherwise specified, all references to Sections without other attribution are references to Sections of the Agreement and references to Sections beginning with the letter “O” are references to Sections within this Schedule O.

#### **O.2 Buy-Out Price upon Termination by Company**

*[Describe formula for buyout price in the event that the Company terminates the Agreement pursuant to the Agreement.]*

#### **O.3 Buy-Out Price upon Termination by Agency**

*[Describe formula for buyout price in the event that the Agency terminates the Agreement pursuant to the Agreement.]*

#### **O.4 Termination at end of [●] Anniversary of Provisional Operations Start Date**

If the Termination Date occurs, the Company shall transfer the Facilities and the Project to the Agency at no cost to the Agency.

#### **O.5 Computation and Payment of Buy-Out Price**

- (a) All amounts payable pursuant to this Schedule O shall be paid in Pesos in immediately available funds within ninety (90) Days of the date of termination of this Agreement, provided that all of the Company’s rights, title, and interest in the Facilities and the Project are transferred to the Agency, free and clear of all Liens and encumbrances, concurrently with the payment of the proper buyout price.
- (b) It is understood that there shall be no double-counting in the calculation of any buyout price or any other amount payable pursuant to this Schedule O.

#### **O.6 Termination Costs**

The Parties agree to carry out the transfer of the Company’s rights, title, and interest in the Facilities and the Project and the payment of the Buy-Out Price in a way that would minimize Termination Costs.

#### **O.7 Transfer of Facilities and Project**

##### **O.7.1 Assets to be Transferred**

If the Company’s right, title, and interest in the Facilities and the Project is required to be transferred to the Agency pursuant to this Agreement, upon payment by the Agency of the

relevant buyout price, if any, determined in accordance with Section N.2 or Section N.3 of this Schedule N or, if no payment is required to be made by the Agency hereunder, immediately upon termination of this Agreement:

- 8 (a) The Company shall transfer to the Agency, free and clear of all Liens, all of the Company's right, title, and interest in the Facilities and the Project, including, insofar as they are part of or used in, to, and for the Facilities and the Project, all of the Company's right, title, and interest in, to and under: (i) all raw materials, consumables, and spare parts; (ii) all tangible personal property; (iii) all intangible personal property, including patents, patent licenses, patent applications, tradenames, trademarks, trademark registrations, and applications therefor, trade secrets, copyrights, know-how, secret formulae, and any other Intellectual Property Rights; (iv) all Consents, including without limitation the water permit, (v) all buildings and fixtures; (vi) computerized and non-computerized records, reports, data, files, and information; (vii) all drawings, test results, and documents; (viii) all warranties of equipment, materials and work; (ix) all contract rights and insurance policies; (x) all work in progress under contracts with vendors, suppliers, contractors, and subcontractors; and (xi) all rights with respect to any insurance proceeds payable to or for the account of the Company, but unpaid at the date of termination of this Agreement, in respect of Company's right, title, and interest in, to and under the Facilities and the Project; and
- 9 (b) The Company shall pay to the Agency amounts, if any, required to be paid by the Company to the Agency hereunder.

#### **O.7.2 Pre-Termination Date Inspection and Repair**

Not later than the [●] anniversary of the Provisional Operations Start Date or, in the event the Termination Date will occur earlier than the [●] anniversary of the Provisional Operations Start Date, as soon as practicable after such earlier Termination Date is known to the Parties, the Company shall permit the Agency to inspect the Facilities. Based on the Agency's inspection, the Agency shall issue to the Company a schedule of replacements and repairs of the Facilities that are required in accordance with Prudent Utility Practice and to meet the technical specifications indicated in Schedule B. Thereafter, the Company shall promptly carry out the required replacements and repairs. The Agency shall issue a certificate of compliance after the satisfactory completion of repairs and replacements by the Company and before the payment of the buyout price.

**O.7.3 Pre-Termination Date Inspection and Repair**

Not later than [●] Days prior to the expected Termination Date, the Company shall deliver to the Agency the required maintenance spare parts and consumables sufficient for three (3) months operation after the Termination Date. For the purpose of determining the quantities required, the Company shall furnish the Agency, within one month (1) following the end of the Contract Year preceding the Contract Year in which the Termination Date is expected to occur, a copy of its annual record of spare parts and consumables utilization and consumption.

**O.7.4 Responsibility for Obtaining Consents to Transfer**

The Agency shall be responsible for obtaining or effecting, at its own cost, all Consents needed in order to obtain title to the Facilities and the Project and otherwise effectuate the transfer of all of the Company's right, title, and interest in the Facilities and the Project. The Company shall cooperate with the Agency in the identification and acquisition of such Consents, including providing reasonable assistance in the preparation of requests for such Consents.

**O.7.5 Training of Personnel**

On or before the date falling not later than twelve (12) months before the Termination Date, the Company shall arrange for the training of such personnel as the Agency shall determine are required to operate the Facilities after the Termination Date in accordance with the Operating Standards and Operating Procedures.

**SCHEDULE P**

**OWNERSHIP INTERESTS IN COMPANY**

**Table P-1: Sponsors' Initial Ownership Interests**

<b>Sponsor</b>	<b>No. of Common Shares</b>	<b>Direct and Indirect Ownership Percentage</b>

**Table P-2: Initial Shareholders**

<b>Shareholder</b>	<b>No. of Common Shares</b>	<b>Ownership Percentage</b>