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The Arabic Republic of Egypt
Ministry of Housing, Utilities and Urban Communities

Legal, Institutional, and Regulatory Reform of the Water/Wastewater Sector in Egypt (LIRR II)

A USAID-funded Project

BOOK II

COMPONENT B DELIVERABLES

PRIVATE SECTOR PARTICIPATION UNIT CAPACITY BUILDING

Project Life-Cycle Toolkit

Volumes I-III

Task Area B.5

August 2002

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BOOK II TABLE OF CONTENTS

LEGAL, INSTITUTIONAL, AND REGULATORY REFORM OF THE WATER/WASTEWATER SECTOR IN EGYPT — LIRR II

Consulting product submissions under three components

BOOK II
Component B:
Private Sector Participation Unit Capacity Building

Task Area

Project Life-Cycle Toolkit — Volumes I-III B. 5

2

TOOLKIT TABLE OF CONTENTS

Relevant Laws and Decrees

Volume I: Central Department for Private-Sector Projects (CDPSP)

Selected Acronyms, Abbreviations and Definitions

Section I *CDPSP Mission and Role*

Section II CDPSP Role in the Project Life-Cycle

Section III CDPSP Tools and Guidelines for Project Screening

Volume II: Strategic Framework, General Guidelines, Contracting Options, and Financial Tools

Selected Acronyms, Abbreviations and Definitions

Section I Strategic Framework for Delivering Public Services Through Private-Sector Participation (PSP)

Section II Guidelines for Private-Sector Participation (PSP)

Annex A Tariff-Setting in Private-Sector Projects

Section III Contracting Options for Private-Sector Participation (PSP)

Section IV Guidelines for Financial Analysis and Modeling

Annex A Financial Analysis Tools and Credit Enhancements
Annex B Project Pre-feasibility Model

Section V Procurement Guidelines

Volume III (1): Model Procurement Documents

Selected Acronyms, Abbreviations and Definitions

Section I Standard Prequalification Document

Annex A Why Prequalification?
Annex B Guidance on Notes for Users
Annex C Prequalification Evaluation Summary

Section II Standard Bid Documents for Performance-Based Management Contract

Section III Standard Bid Evaluation Form

Annex A Evaluation Guide
Annex B Bid-Opening and Bid-Evaluation Summary Checklists

Volume III (2): Model Contracts

Section I Concession Agreement

Section II Performance-Based Management Contract

Appendix A. Description of the Services
Appendix B. Reporting Requirements
Appendix C. Key Personnel and Subcontractors
Appendix D. Hours of Work for Key Personnel
Appendix E. Duties of the Employer
Appendix F. Cost Estimates in Foreign Currency
Appendix G. Incentive Payments
Appendix H. Form of Bank Guarantee for Advance Payments
Appendix I. Guarantee
Appendix J. Procurement Procedures

Section III Service Contract

Appendix A. Facilities
Appendix B. Request for Proposal (RFP)

Section IV Lease

Section V BOT/BOOT Concept

Section VI Performance Target Index

Volume III (3): Guidance on Contract Monitoring Compliance

Section I Introduction to Guidance on Contract Monitoring and Compliance

Section II Contract Monitoring Case Study: Buenos Aires Water Concession

Volume III (4): Model Terms of Reference for Advisors

Section I Introduction to Model Terms of Reference for Advisors

Section II Model Terms of Reference for Private-Sector Participation Options Studies

Section III Model Terms of Reference for Feasibility Studies

Section IV Model Terms of Reference for Transaction Advisors

Section V Negotiations for Consulting Services

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May 2002

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5

Preface to Toolkit

This Toolkit is a set of comprehensive documents and materials designed to help Egyptian government agencies and private sector bidders facilitate private-sector participation (PSP) in the water and wastewater (W/WW) sector in Egypt. It was prepared in 2001-2002 by the USAID-funded project Legal, Institutional, and Regulatory Reform of the Water/Wastewater Sector in Egypt, Phase II (LIRR-II) for the Central Department for Private Sector Projects (CDPSP) of Egypt's Ministry for Housing, Utilities and Urban Communities (MHUUC).

The objectives of the Toolkit are to promote consistency and regularity in the planning, tendering, bidding, award, and implementation of PSP projects in the W/WW sector by providing documents and related materials reflecting international best practices in the sector. The documents and materials in the Toolkit are public and intended mainly for the use of: a) agencies of the Government of Egypt (GOE) and local governmental entities that tender W/WW projects; and b) potential private-sector bidders on such projects.

The Toolkit is a dynamic set of documents. Its contents and related materials are subject to change and modification to make them applicable to specific projects and to account for subsequent changes in national and local laws and regulations.

While some documents include notes on their relationship to Egyptian law at the time they were drafted, we recommend that Toolkit users consult legal counsel to ensure that that any proposed use of the documents and materials complies with current law and regulations.

The Toolkit is comprised of three volumes:

- *Volume I* describes the mission and role of the CDPSP, including its role in the project life-cycle, and project screening.

- *Volume II* explains the underlying principles of PSP and provides guidance on project planning activities such as selecting the appropriate form of PSP contract and performing financial analysis and modeling.

- *Volume III* contains: a) model documents governing procurement, tendering, and bid evaluation; b) model contracts for concessions, management contracts, service contracts, and leases; c) a discussion of BOOT/BOT; d) a performance target index; e) guidance on contract monitoring and compliance; and f) model terms of reference for hiring outside advisors and consultants.

Please refer to the table of contents immediately following this preface for a high-level overview of the entire contents of the three-volume Toolkit. Individual volumes will contain detailed tables of contents pertaining to each part.

The CDPSP actively solicits comments and suggestions on how the Toolkit documents and materials might be improved or made more useful.

RELEVANT LAWS AND DECREES

This document sets out available relevant laws and decrees. Some of the volumes include the Arabic law/decree along with its English translation.

English translated copies of these laws and decrees were obtained from Middle East for Economic Services (MELES). For more information, contact:

Mr. Nabil Fouda, General Manager
6 Soliman Abdel Hamid Street, Agouza
Email: meles@soficom.com.eg
Telephone & Fax: 760-6804; 335-1141

Arabic copies of these laws were obtained from the official print house authority "EL-Amirya print shop," sales center for governmental prints. Contact information is as follows:

22 El Nile Street, Imbaba
Telephone: 311-8248 311-9891
Fax: 311-9451

A. List of Available Laws and Decrees from Arabic Translated into English

1. Decree No. 1638/1968 by the President of the Arab Republic of Egypt Establishing The General Authority For Greater Cairo Water Utility as amended by Minsterial Decree No. 455/1974.

2. Decree of the President of the Arab Republic of Egypt No. 281 of the year 1995 Setting Up A Public Economic Authority for Potable Water and Wastewater in Some Governorates.

3. Code 29 Decree Tenders Law – April 2001.

4. Cabinet Decree No. 1 of the year 2001 Issuing The Executive Statutes of the Real Estate Finance Law – December 2001.

5. Law No. 148 of the year 2001 Promulgating The Real Estate Finance Law – Serial No. 48/2001.

6. Decree No. 749/2001 Promulgating The Executive Statutes of The General Sales Tax Law.

7. Law No. 8/1997 on Investment Guarantees and Incentives – April 2002.

8. BOT Regulations.

9. Code 354/C The Constitution – September 2001.

10. Code 20 The Civil Code – March 2002.

11. Code 10/1 Prime Minister's Decree No. 1900 of the year 1991 Concerning The Forms of Articles of Agreement and Articles of Association for Public Sector Business Companies – Serial No. 5.

12. Law No. 48/1978 Promulgating the Law on Public Sector Workers Regulations.

13. Code 55/X Set of Laws and Decrees on New Urban Communities – February 2002.

14. The Executive Statutes of Companies Law No. 159/1981 as amended up to June 2001.

15. Companies law – No. 159/1981 as amended up to January 2002.

16. Code 300 – The Executive Regulations of The Law on Investment Guarantees and Incentives – March 2002.

17. Code 300/1 Primer Minister's Decree No. 465 of The Year 2002 Amending Certain Provisions of The Executive Statutes of Investment Guarantees and Incentives Law – Serial No. 12/2002.

18. Law No. 27 of the year 1994 Enacting a Law Concerning Arbitration in Civil and Commercial Matters – October 2000.

19. Code 29 D/1 Decree No. 1367 For The Year 1998 Promulgating The Executive Statutes of Tenders Law – February 2002.

20. The Law And The Executive Statutes of the Law on Environment – August 2001.

21. Social Insurance Law – modified up to September 2000.

22. Code 231/1 Law No. 19/2001 Increasing The Pensions and Amending Certain Provisions of The Social Insurance Law – Serial No. 39/2001.

23. The Executive Decrees of Labor Law – No. 137/1981 modified up to June 2001.

24. Code 295 Decree Labour Law – modified up to February 2002.

25. Customs Exemptions Law With its Executive Statutes – March 2002.

26. Code 60 Law No. 38/1994 Reorganizing Dealings in Foreign Currency With Its Executive Statutes – February 2002.

27. Customs Law modified up to September 2000.

28. Code 158/1 Law No. 13/2001 Amending Certain Provisions of Customs Law as Promulgated by Law No. 66/1963.

29. Code 40/W Law No. 11/1991 Promulgating The General Sales Tax Law – January 2002.

30. 354/H Local Government System – December 2001.

31. Code 9 – Public Business Sector Law With Its Executive Statutes – October 1998.

32. Code 9/A Law No. 149/2001 Amending Certain Provisions of The Public Business Sector Companies Law as Promulgated by Law No. 203/1991 – Serial No. 44/2001.

33. Code 9/B Prime Minister's Decree No. 905/2001 Amending The Texts of Articles (37, 43) of The Executive Statutes of The Public Business Sector Companies Law – Serial No. 49/2001.

B. List of Available Laws and Decrees in Arabic

1. Law No 203 of the year 1991 on Public Sector Companies and its Executive Statutes issued by Prime Minister Decree No 1590 / 1991 and the Relevant Decrees, Third Edition, Cairo 2000.

2. Law No 89 of the year 1998 on Tenders and Bids, and its Executive Statutes issued by Minster of Finance Decree No 1367/1998 and MOF Periodicals and Publications, Seventh Edition 2001.

3. Law No 11 of the year 1991 on Sales Tax and its Relevant Decrees up to Date, amended First Edition 1999.

4. Law No 4 of the Year 1994 on Environment and its Executive Statutes issued by Prime Minster Decree No. 338/1995, Sixth Edition 1999.

5. Companies Law No 159 of the Year 1981 and its Explanatory Memorandums and Relevant Decrees, 22nd Edition 2001.

6. Companies Law Executive Statutes issued by The Minster of Investment Affairs and International Corporation, Decree No 96/1982, 15th Edition 2000.

7. The Constitution of the Arabic Republic of Egypt and the Integrated Principal laws, Eighth Edition 1991.
8. Civil Code, Eighth Edition 1999

9. Civil and Commercial Proceddings Law and Ledigation Law , amended First Edition 1999

10. Law No 38 of the Year 1994 on Foreign Currency and its Executive Regulations issued by Minister of Economy and Foreign Trade Decree No 331/1994, Third Edition 1998.

11. Prime Minster Decree No 1900 of the year 1991 on Preliminary Contracts and Articles on Incorporation for Public Sector Companies, Holding Companies and Their Affiliated Companies, Second Edition 1992.

12. Presidential Decree Issuing Law No 186 of the year 1986 on Customs Exemptions and its Executive Regulations, Seventh Edition 1999.

13. Labor Law No 137 of the Year 1981 in Compliance With up to Date Amendments (inclusive of its explanatory memorandum and executive decrees) 23rd Edition 2002.

VOLUME I

Central Department for Private-Sector Projects (CDPSP)

TABLE OF CONTENTS

Volume I: Central Department for Private-Sector Projects (CDPSP)

Selected Acronyms, Abbreviations, and Definitions i

SECTION I CDPSP MISSION AND ROLE

A. Rationale and Mission I-1
B. Role, Authority, and Responsibilities I-1
C. Institutional Linkages, Project Involvement, and the PDF I-3
D. Structure and Resources I-5

SECTION II CDPSP ROLE IN THE PROJECT LIFE CYCLE

A. Phase 1: Project Identification II-1
B. Phase 2: Project Planning II-2
C. Phase 3: Project Implementation II-7
D. Phase 4: Project Termination II-10

SECTION III CDPSP TOOLS AND GUIDELINES FOR PROJECT SCREENING

A. CDPSP Project Screening III-1
B. Screening Process Sequence III-2
C. Private Sector Participation Screening Forms and Tables III-6

SELECTED ACRONYMS, ABBREVIATIONS, AND DEFINITIONS

Acronyms and Abbreviations

BOOT	Build-Own-Operate-Transfer
BOT	Build-Operate-Transfer
CAD	Central Authority for Development
LAN	Local Area Network
MIS	Management Information System
MHUUC	The Ministry of Housing, Utilities and Urban Communities
NOPWASD	National Organization for Potable Water and Sanitary Drainage
NUCA	New Urban Communities Authority
O&M	Operations and Maintenance
PDF	Project Development Fund
PEA	Public Economic Authority
PSC	Public Service Company
PSP	Private-Sector Participation

Definitions

Bid Deadline	The date and time beyond which the project sponsor will not accept bids
Bid Documents	The terms of reference (TOR), request for proposal (RFP), letter of invitation (LOI), information to consultants (or contractors) (ITC), feasibility study, draft concession agreement, and any other documents that the project sponsor includes in the information that it makes available to potential bidders that have been officially prequalified (short-listed) to submit a Bid
Bid Evaluation Report	The report of the evaluation committee that ranks the responsive bids after they have been evaluated pursuant to the evaluation criteria contained in the bid documents
Bid-Opening	The report that the evaluation committee makes immediately
Examination Report	Following the opening of the bids, rejecting nonresponsive bids
Bidder	The entity or group that submits a bid in a tender
Bidders Conference	The pre-bid meeting of bidders convened by the project sponsor at which bidders may seek clarification of the bid documents or other details of the tender
Guidelines	The standards that the CDPSP uses to perform its official functions
High Tender Committee	The MHUUC committee that supervises tenders
Invitation to Prequalify	The document advertised by the project sponsor inviting potential bidders to submit their technical and financial qualifications to perform the project that is the subject of the tender
Project	Private-sector participation project
Project Model	The project form that the project sponsor recommends to the CDPSP
Project Sponsor	The public, private, or public-private group or legal entity (including, but not limited to, an Egyptian utility) that is proposing a project.
Screening or Screening Process	The process by which the MHUUC or other project sponsor selects projects for tendering
Short List	The list of bidders that have prequalified to participate in a tender
Stakeholder	A person, group, or legal entity that has a substantial, individual interest in a proposed project based on financial, employment, social, environmental, or other such factors
Study	Feasibility study
Tender	The competitive process by which the MHUUC procures projects in the water/wastewater sector

SECTION I

CDPSP Mission and Role

This section sets out the mission and role of the Central Department for Private-Sector Projects (CDPSP). This section has four parts:

1. Rationale and mission
2. Role, authority, and responsibilities
3. Institutional linkages, project involvement, and the Project Development Fund (PDF)
4. Structure and resources

A. Rationale and Mission

The CDPSP was created to serve as the Government of Egypt's (GOE's) focal point for the development of private sector participation projects in the water and wastewater sector in Egypt. Project planning, development, and implementation will continue to take place at the utility and project level. At the national level, the CDPSP provides guidance and technical assistance to implementing agencies and ensures project compliance with GOE policies and standards.

The mission of the CDPSP is four-fold:

1. Ensure the quality, consistency, and uniformity of water and wastewater private-sector projects in Egypt through the application of and compliance with GOE-adopted policies, standards and guidelines

2. Promote the development of private-sector projects in the country, including the promotion of Egypt as a market for the international private-sector project industry and support of Egyptian contractors and service providers

3. Provide technical and advisory services to GOE agencies, Public Economic Authorities (PEAs), Public Service Companies (PSCs), and other agencies that seek to implement projects based on private-sector participation principles

4. Facilitate, accelerate, streamline, and reduce the costs of the private-sector project development process by standardizing key development-cycle elements and facilitating and expediting project-specific GOE approvals, authorizations, permits, and licenses.

B. Role, Authority, and Responsibilities

B1. Principal Role

The CDPSP is an advisory, compliance-assurance, and facilitation agency. As such, it maintains independence from project sponsors, developers, and regulators. Direct, substantive participation in the planning and development of individual projects would

jeopardize and prejudice its independence and call into question the legitimacy of its advice, reviews, and recommendations.

The CDPSP is *proactive* in developing policies, standards, practices, and guidelines and in promotion and training. It is *reactive* in terms of conducting sponsor-requested project screening, performing project-specific review functions, and providing direct technical assistance. It is also *reactive* in providing to utilities access to funding and advisory services through a dedicated funding facility — the PDF — and through its information services and databases.

The CDPSP's involvement in private-sector project development efforts occurs at defined stages in the development cycle for all private-sector projects in the country.

B2. Authority

As an advisory, compliance-assurance and facilitating agency, the CDPSP's authority does not extend to outright project approval or denial. It is not an executive, regulatory, or implementation agency and has limited "veto power." However, through its advisory and review responsibilities, it has a high degree of operating authority and is able to directly influence the course and quality of project-development efforts that are undertaken by the Ministry of Housing Utilities and Urban Communities (MHUUC's) departments, utilities, and other implementing agencies.

B3. Primary and Secondary Responsibilities

The primary responsibilities of the CDPSP include:

- Formulating GOE tendering, transaction, and financial support policies, standards, and guidelines
- Preparing and periodically updating the Toolkit document and other guidance materials
- Performing mandatory project-reviews at critical defined development-cycle points
- Recommending project-approval/denial to appropriate GOE authorities
- Performing project screening, on request by project sponsors
- Providing technical assistance, on request by project sponsors
- Establishing a working relationship with the PDF
- Coordinating/facilitating the process of obtaining project-specific GOE permits, licenses, and authorizations

The secondary responsibilities of the CDPSP include:

- Providing ongoing training and professional development
- Promoting the concept of private-sector projects within the sector in Egypt
- Serving as the entry point for service-industry contact, input, and involvement in the Egyptian market
- Promoting the Egyptian market to the international service industries
- Conducting outreach programs to stimulate and strengthen the Egyptian consulting and services industries
- Handling press, public relations, and information

C. Institutional Linkages, Project Involvement, and the PDF

C1. Institutional Linkages

As the focal point for private-sector project development in the sector, the CDPSP has the following principal institutional linkages:

Institutional Linkages

With pertinent GOE departments and agencies:	Provide reviews and recommendations regarding projects that require the approval of the GOE
	Facilitate and expedite the various permits, licenses, and authorizations required to site, construct, and operate projects
	Coordinate with agencies such as the Ministry of International Cooperation to enhance relations with donor countries and promote Egypt as a market
With utilities and other project sponsors:	Bring definition to projects through project screening and position them for PDF funding
	Provide or coordinate development funding through the PDF or other sources
	Provide technical assistance throughout the project-development cycle, including reviews at critical, specified points
	Provide training and other professional development services
With the market and the service industry:	Serve as the "entry point" and information clearinghouse for the private-sector-project industry
	Promote Egypt as a market for the international service industry
	Stimulate and strengthen the domestic consulting and service industries

C2. Project Involvement

The CDPSP is involved in the following activities:

- All investment projects, including but not limited to Build-Operate-Transfers (BOTs), Build-Own-Operate-Transfers (BOOTs), and concessions that involve material capital investment

- Concessions, leases, and management and service contracts with terms of more than five years and annual values of more than LE 3 million

- Projects for which central GOE approval (e.g., MHUUC, Cabinet, High Tender Committee) is required.

The CDPSP supports smaller concession, lease, management, and service contract development efforts through the promulgation of implementing rules and procedures, process and Toolkit documents, guidance materials, and technical advisory services.

The CDPSP has the lead role in project screening (in response to requests from sponsoring utilities), as the first step in overall project-specific compliance-assurance and "quality control" and in recommending projects for PDF funding.

The project-specific scopes of work, which constitute the post-screening project development cycle {prefeasibility, prequalification, tendering, tender evaluation, contract negotiation) are undertaken at the project level by the utilities and/or MHUUC's departments (e.g., New

Urban Communities Authority [NUCA] or Central Authority for Development [CAD]) that are sponsoring the projects and their consultants. To ensure cost-efficient and -effective development efforts, this work is done under the standards and procedures specified in CDPSP guidelines.

To maintain distance and independence, the CDPSP's role is one of advice, assistance, and compliance-review, rather than direct substantive participation in development efforts.

While available to provide advice and technical assistance on long-term project monitoring and oversight, actual monitoring and oversight activities are performed by the sponsoring/contracting utilities or MHUUC agencies (through contract oversight and enforcement) and the proposed Egyptian Water and Wastewater Regulatory Agency (EWRA) (through regulatory enforcement).

A significant degree of the CDPSP's activity will come through its interaction with the PDF and its review and recommendation responsibilities regarding PDF funding. However, some utilities or MHUUC development agencies may elect to undertake project development activities without PDF involvement. In those cases (or in cases where utilities elect to proceed using their own resources if continuing PDF funding is denied), GOE policies and guidelines still provide for reviews by the CDPSP at the time of contractor selection and contract award. As will be provided for in GOE regulations, utilities and MHUUC agencies will be able to develop projects without PDF funding or intensive CDPSP involvement. However, the mandatory CDPSP reviews give them an incentive to comply with CDPSP procedures and guidelines or run the risk of negative CDPSP reviews at critical stages, jeopardizing final GOE approval and the issuance of needed authorizations, permits, or licenses by regulatory and other relevant GOE agencies.

C3. Project Development Fund

The PDF will be overseen by a Board of Directors (the Board) and be constituted as a subunit of an existing fund in the MHUUC. With consulting assistance, the CDPSP will work with the PDF's fund administrator to develop project consultants' scopes of work, oversee project-development efforts, and report to the Board.

Through project-screening exercises, the CDPSP will identify the projects that it deems eligible for further study (prefeasibility stage) and possible tendering. This will constitute the inventory of projects that will be eligible for PDF funding. At the discretion of the CDPSP, other projects not screened, but otherwise proposed by sponsors, can also be presented to the Board.

Based on screening results, the CDPSP will present project and development funding proposals to the PDF Board. These will include CDPSP-prepared, project-specific development budgets for each project submitted. The PDF Board will approve or disapprove PDF funding for individual projects (the CDPSP will reconsider and revise projects not approved and resubmit them to the Board).

PDF funding will be made in three tranches, based on CDPSP reviews and recommendations made prior to the disbursement of each tranche:

- Tranche 1 Pre-feasibility Study
- Tranche 2 Bid-Document Preparation and Bidder Prequalification
- Tranche 3 Project Tendering and Closing

D. Structure and Resources

CDPSP staffing is currently at the level needed to perform its screening, review, advisory, compliance and promotion functions. As needed, the staff may be supported by specialized consultants, who will undertake transaction- and program-related activities, as well as provide mentoring.

Consultants engaged to directly support the staff will be retained under personal-service agreements or seconded from the consulting firms currently engaged. To the extent practicable, the involvement of such consultants will diminish over time.

The funding of the CDPSP's routine personnel and operating costs — separate and apart from funding of the PDF — is provided in full by the GOE. Donors will fund project-specific development activities (through either the PDF or directly to project sponsors) and provide funding (based on CDPSP proposals) for special programs or activities that the CDPSP may undertake over time (e.g., new training programs or the initial development of a Web site and associated communications programs).

Going forward, the role of donors in the CDPSP will be to:

- Continue funding and assistance on current sector and sector-related programs that affect the CDPSP's mission and operations

- Upon the scheduled conclusion of such programs, provide follow-on assistance, as needed or warranted, under new GOE/donor arrangements

- Provide funding and assistance, as may be negotiated, for new programs or initiatives that the CDPSP may propose to them

- Provide direct funding of utility-specific, private-sector project development efforts, as may be negotiated with sponsoring utilities, separate from any funding and technical assistance provided through the PDF

SECTION II

CDPSP Role in the Project Life Cycle

From inception to termination, each project passes through four phases: project identification, project planning, project implementation, and project termination. This process is called the project life cycle. In each phase the project sponsor and the CDPSP play separate but interdependent roles.

For each phase, this section describes the roles of the project sponsor and CDPSP, including when each plays its respective role. Project sponsors, CDPSP staff, and prospective bidders on projects — involving the private sector — are encouraged to review the following so that each knows its role and the role of other concerned parties in this process.

A. Phase 1: Project Identification

A1. Project Screening

Role of the Project Sponsor

1. Determines the needs for service expansion, development, and management in a defined geographical area such determination is to be based on public strategic plans and priorities of the GOE or MHUUC

2. Prepares preliminary description of a proposed project to address the needs

- With the assistance of the CDPSP, completes a Candidate Profile Form that shows the scope and scale of the proposed project a verifiable cost estimate an estimate of potential effects on, e.g., labor and tariffs and a recommendation for the legal structure of the proposed project

- Collects financial information for the CDPSP's use in its detailed screening of the proposed project.

3. Indicates its agreement with the data collected during the screening process by signing the Candidate Profile Form

4. Submits the Candidate Profile Form to the CDPSP for detailed screening

5. Reviews the CDPSP's report of its detailed screening, which shall summarize the proposed project contain the CDPSP's analysis and evaluation of the proposed project's potential and recommend appropriate next steps, if any (e.g., that a feasibility study be conducted or that the bid be amended or supplemented or that a particular form of private-sector participation be used)

Role of the CDPSP

1. Assigns Candidate Profile Form to its technical advisory staff, which conducts a detailed screening of the Candidate Profile Form and writes a report that shall

summarize the proposed project contains the CDPSP's analysis and evaluation of the proposed project's potential and recommends appropriate next steps, if any (e.g., that a feasibility study be conducted, or that the bid be amended or supplemented or that a particular form of private-sector participation be used)

2. Adds approved projects to its pipeline for tracking and technical assistance in design, packaging, procurement, and contracting

3. Recommends approved projects for project development funding

A2. Feasibility Study

Role of the Project Sponsor

1. Hires professional technical advisor to prepare a feasibility study pursuant to the standards established in the CDPSP Guidelines. (The guidelines contain the names of qualified professionals who have demonstrated competence in performing feasibility studies for similar projects, but the project sponsor may hire person(s) not listed therein if it can convince the CDPSP that such person(s) are qualified.)

2. Establishes a formal work plan and implementation schedule for the feasibility study and submits copies thereof to the CDPSP to facilitate project development, monitoring, and tracking

3. Submits feasibility study to the CDPSP and the EWRA for review

Role of the CDPSP

1. Reviews work plan and implementation schedule for the feasibility study to advise the project sponsor of significant design issues, scope constraints, or other potential problems that might limit the quality or timely production of the study, which would unduly delay further project development and implementation

2. Tracks implementation of the study

3. Reviews the study's recommendations on design, financing, and procurement. Advises the project sponsor of ways to improve the project design and establish appropriate monitoring and management procedures

4. Helps the project sponsor prepare a comprehensive implementation plan and an interagency coordination strategy to facilitate successful project development

B. Phase 2: Project Planning

B1. Project Design

Role of the Project Sponsor

1. Specifies a project design

   - Allocates project risks between project sponsor and prospective contractor

- Defines the form of participation of GOE and project sponsor, including the applicability of sovereign guarantees or other forms of credit enhancement and the GOE's role in the implementation and management of the project, whether through a service contract, management contract, concession agreement, BOOT/BOT structure or lease

- Prepares a project model based on the project conditions and requirements for inclusion in the bid documents and to guide project-implementation planning

2. Prepares a preliminary work plan and implementation schedule to guide bid preparation and establish draft performance benchmarks

3. Establishes a contract-management and -monitoring framework

   - Determines if contract monitoring will be performed by current or new staff or by outside contractors. Prepares tender and (if outside contractor is to be hired) detailed specifications for contract monitoring

   - Drafts standard specifications for monitoring technical performance, financial conditions, contract compliance, and legal requirements

   - Prepares budget for contract monitoring and determines if these costs are to be passed on to the prospective contractor or assumed by the project sponsor

   - Prepares guidelines for employee utilization and training

   - Determines staff training requirements to provide sustainable improvements in productivity and performance

   - Develops preliminary framework for workforce retrenchment, reassignment to other units and transfer to the private contractor. Works with labor unions and other stakeholders to structure a viable approach to the impending staffing changes

4. Defines local contracting and overall subcontracting standards

5. Defines requirements for integrating the project with existing facilities and related services

6. Confers with the EWRA and other relevant regulatory agencies to ensure that the project design meets prescribed standards for performance, service quality, and affordability

Role of the CDPSP

1. Reviews the draft project model to approve its risk allocation, definition of GOE credit support and affordability, and to ensure the project's design offers the greatest opportunity to achieve the benefits of private-sector participation, such as efficiency gains, innovative financial structuring, and management expertise

2. Provides technical assistance in the preparation of work plans, production/delivery schedules and performance benchmarks

3. Helps establish viable standards and specifications for monitoring technical performance, financial conditions, contract compliance, and legal requirements, based on international best practices and in accordance with the guidelines

4. Helps prepare workforce analysis to understand the impact of the project on existing staff, training requirements, and options for introducing efficiency through reallocation of resources. Provides advice and guidance on consultation with employees and organized labor organizations

5. Helps coordinate regulatory inputs to ensure adequate treatment of performance, service quality, and affordability standards in the project model

B2. Procurement

Role of the Project Sponsor

1. Drafts a prequalification strategy and implementation plan for identifying a short list of bidders to participate in the tender

   - Outlines a preliminary schedule for advertising (locally and internationally, as applicable) the prequalification opportunity and requirements, receiving and reviewing firms' qualifications and selecting a short list of firms to receive the bid documents. Reviews prequalification strategy and scheduling with the CDPSP to ensure the validity and reasonableness of all specified requirements

   - Defines criteria to evaluate bids

   - Prepares and advertises an Invitation to prequalify

   - Evaluates firm qualifications according to evaluation criteria and prepares evaluation report, ranking firms and listing those that are eligible to participate in the tender (placed on the short list)

   - Submits copy of evaluation report and short-listed firms to the CDPSP

2. Forms an internal working committee (comprising technical, financial, and legal expertise based on the project's scope and needs) or engages professional advisors to prepare bid documents and other key project information to help bidders prepare bids

   - Prepares implementation schedule showing the date and time that the bid documents will be available to short-listed bidders details of the bidders conference bid deadline submission of bids bid opening determination of the bids' responsiveness to the bid documents and evaluation of detailed bids pursuant to the evaluation criteria. Reviews implementation schedule with the CDPSP technical advisor to assure that the planned activities can be accomplished within the prescribed time period

- Develops detailed scope of work/project specifications, bid submission and packaging requirements, and evaluation criteria and ranking scale

- Works with the CDPSP to prepare applicable contracting terms and conditions, as well as the draft contract for inclusion in bid documents, based on standards defined in Guidelines and specific project requirements

- Submits bid documents to the CDPSP for review and approval to issue them to short-listed bidders. Updates or revises bid documents as necessary, in accordance with feedback from the CDPSP, to ensure that the final bid documents are well designed and complete

- Distributes bid documents to the short-listed bidders

3. Conducts bidders conference and site-inspection visits, as applicable, to clarify the bidding procedures and project parameters and to address bidders' inquiries about project background and specifications

4. Conducts formal bid opening and determination of the bids' responsiveness to the bid documents

   - Invites all bidders to attend bid opening

   - Records bids, specifying firm names and country of registration

   - Completes bid-opening examination report, indicating for each bid its responsiveness to the bid documents and which bids will be evaluated

   - Rejects bids that are non-responsive to the bid documents, providing details of the non-responsiveness

   - Returns rejected bids (including unopened financial envelopes) to bidders with letter explaining the reasons for rejection. Plans and implements debriefing with rejected bidders who request it, explaining the factors that resulted in the rejection

5. Conducts bid Evaluation through formal Evaluation Committee

   - Defines scope and configuration of project-specific Evaluation Committee. Establishes Evaluation Committee comprising technical, financial and legal expertise, as well as representatives from the Ministry of Finance and State Council (depending on contract value threshold) and other key departments, as applicable

   - Prepares bid-Evaluation Forms based on a two-envelope review process in which financial-envelope openings are confined to the technically accepted offers defined in accordance with specified criteria defined in the bid documents

   - Supervises evaluation of bids (although not directly involved) where the technical evaluation considers key issues, such as: the suitability of proposed design for local needs and reliability of proposed technology credibility of subcontracting

plan scope and extent of training programs for relevant staff plan for utilization, redeployment or redundancy of the existing labor force management plan and arrangements made for transfer or reversion of project facilities and staff at the end of the contract period, in accordance with evaluation criteria, and the financial evaluation is performed only for bids that satisfactorily meet technical evaluation standards

- Obtains evaluation report from Evaluation Committee, which details the bid-evaluation process and ranking of the responsive bids, in addition to: the bid proceedings bid evaluation criteria list of all short-listed bidders list of all bids that were rejected and the reasons for rejection list of all bids that were subject to evaluation and ranking of those bids recommended successful bidder and the proposed schedule for contract negotiations

- Submits copy of evaluation report to the CDPSP, which maintains complete record of bid proceedings, evaluation results, and bidder-selection recommendations

- Awards the contract to the bidder whose bid offers best value-for-money and satisfies the specified design and performance standards and submits the winning bid to the High Tender Committee with a request for authorization to begin negotiations. Copies of the winning bid and the request to begin negotiations are submitted to the CDPSP to facilitate its comprehensive tracking of the procurement activity.

6. Begins negotiations with the winning bidder, using legal advisors with extensive experience in working with bidders to refine the conditions to support the project, and finalize contracting arrangements, while avoiding any reopening of previously settled issues, particularly prices, cost and other fundamental aspects of the bid

7. Finalizes contract based on negotiations. Submits final contract to the CDPSP for review and to confirm its conformance with standards and required provisions. Based on the CDPSP's concurrence with contracting structure and terms, submits final contract, with the CDPSP's recommendation for the award, to the High Tender Committee for review and approval

8. Sends written notice of the results of the Tender to all bidders and publishes a formal announcement of the results in widely disseminated newspapers, procurement circulars and on the Internet

9. Implements appeals process, as necessary, to consider protests from losing bidders

10. Executes contract award to the winning bidder, based on CDPSP's recommendation to High Tender Committee and the project sponsor's receipt of the High Tender Committee's formal approval to negotiate a contract with the winning bidder.

Role of the CDPSP

1. Helps the project sponsor prepare the procurement-implementation schedule to ensure an effective tender

2. Helps the project sponsor prepare the bid documents in accordance with CDPSP Guidelines. Reviews the final bid documents prior to issuance and recommends additions that will provide greater assurance of high interest from short-listed firms

3. Helps the project sponsor prepare the final contracting terms, conditions, and agreement for inclusion in the bid documents to ensure full compliance with standards and guidelines and to inform bidders of the project sponsor's proposed contract

4. Reviews copies of the bid-opening examination report and the bid evaluation report to ensure the integrity and reliability of the tender and the compliance with evaluation criteria. Identifies and advises project sponsor of any anomalies and inconsistencies that might lead to a bidder's protest, which could delay the award of the contract

5. Reviews and maintains copies of the winning bid, the request to begin negotiations and the High Tender Committee's approval to begin negotiations, as part of its comprehensive procurement tracking activity (Note: As lead advisor to the MHUUC and liaison to the project sponsor, the CDPSP is responsible for reliable information on the status of each project's development and implementation throughout the project's life-cycle) and

6. Reviews the finalized the contract with the winning bidder to confirm its compliance with the bid documents. Makes formal recommendation for contract award to the High Tender Committee.

C. Phase 3: Project Implementation

C1. Contract Management

Role of the Project Sponsor

1. Implements mechanisms and procedures for monitoring the implementation of the contract

   - Formalizes institutional arrangements for contract management and monitoring. Assigns and trains a contract-management team from internal resources or hires private consultants with demonstrated skills in monitoring the technical, financial and contractual components of the contract

   - Works with the contractor to convert the work plan included in the winning bid into the final implementation plan in order to guide project development and establish performance standards

   - Establishes key indicators and requirements for technical performance, financial performance, contractual compliance and legal compliance with relevant laws and regulations, based on the contract. Defines how performance will be measured and

   - Defines reporting objectives, intervals and scope (level of detail) for technical, financial and contractual monitoring. Reviews reporting requirements with the contractor to ensure consensus on specifications for technical and operational reports, annual financial statements and other key tracking information.

2. Establishes strategy for liaison with contractor during contract implementation, with a focus on key milestones to avoid micro-management. Assigns lead counterpart (primary contact or project manager) to be responsible for communications and coordination with the contractor

3. Formalizes systems and procedures for resolving disputes and differences with the contractor

4. Coordinates contractor's implementation and performance with the EWRA, Ministry of Finance, Ministry of Environment, and Ministry of Health, as applicable

5. Establishes stakeholder- and user-consultation system to routinely apprise them of project development progress and to learn of key issues to be addressed during project implementation

6. Defines strategy for performance audits, as applicable, using impartial outside specialists

Role of the CDPSP

1. Helps the project sponsor implement the contract-management and -monitoring procedures, in accordance with standards defined during the project-design stage (and in conformance with the guidelines)

   - Provides technical assistance in refining mechanisms and procedures to conform to the negotiation of the contract and the contract itself

   - Provides comprehensive contract-management and -monitoring to project sponsor staff, based on project requirements and in accordance with final institutional arrangements

   - Assists in the review of the implementation plan to ensure project development is achieved on schedule and within budget

   - Provides advice on standard mechanisms for measuring technical and financial performance, considering international best practices

   - Advises on reporting strategy and formats to ensure useful information and exclude details that do not address substantive performance, progress, or impediments to implementation

   - Assists with coordination of the regulatory requirements of the EWRA and concerned ministries.

2. Advises on internal audit requirements and the use of professional resources to undertake impartial appraisal of financial management and compliance

C2. Compliance and Enforcement

Role of the Project Sponsor

1. In negotiating the contract with the winning bidder, the project sponsor will pay special attention to the following issues:

   - Defining the events that constitute default under the contract, while avoiding having trivial non-compliance adversely project implementation

   - Specifying a schedule of remedies (including penalties or specified liquidated damages) to compensate the project sponsor for imputed costs or damages suffered as a result of unsatisfactory performance that are consistent with the nature of importance of the event of default and its impact on the project sponsor and/or the public (NOTE: The contract should also specify the defaults that constitute the grounds for contract termination)

   - Providing clear and simple procedures for one party to notify the other of the alleged existence of a default. Procedures should allow the party to respond to the circumstances that led to the default within a specified and short period of time

   - Establishing methods of dispute resolution aimed at minimizing court litigation (i.e., conciliation, mediation, arbitration), which also include safeguards to ensure the continuity of important services during a dispute, stipulating that both parties are to perform their respective obligations pending resolution of the dispute

Role of the CDPSP

1. Assists the project sponsor in achieving the contract objectives mentioned above

C3. Coordination with the EWRA

Role of the Project Sponsor

1. Submits copies of monitoring reports and evaluations to the EWRA, providing baseline data and information on project operations and management

2. Receives direction from the EWRA on timing and procedures for price adjustment mechanisms and for extraordinary events that would allow for price adjustments notwithstanding scheduled adjustment times

3. Receives the EWRA's determination of commodity price adjustments according to the timeframe specified in the contract, based on project sponsor's rate application

Role of the CDPSP

1. Informs and advises the EWRA of major anomalies that affect performance and the public interest

2. Coordinates audit requirements with the EWRA, as applicable

C4. Performance Evaluation

Role of the Project Sponsor

1. Conducts periodic reviews of contractor performance to determine areas requiring improvement, and with the contractor, establishes a plan to bring the project back on schedule or into technical compliance, as applicable

   - Determines if services are achieving specified objectives and needs, as well as the impact of incomplete tasks

   - Assesses work effort in relation to schedules, work plans, and budget guidelines

   - Reviews customer-satisfaction records and complaints to understand overall impact of service delivery, as applicable

   - Ascertains the effectiveness of communications and coordination systems

2. Requests and reviews the EWRA's evaluation of regulatory issues and concerns

3. Refines project-management and quality-control systems and procedures to strengthen the performance and achievement of the contract's objectives

Role of the CDPSP

1. Helps project sponsor structure an effective performance-evaluation strategy and methodology that will provide reliable information on technical, financial, and contractual performance and compliance

2. Reviews revised work plans, as applicable, to ensure modifications are consistent with contract provisions and the guidelines.

D. Phase 4: Project Termination

D1. Post-contract Completion Evaluation

Role of the Project Sponsor

1. Evaluates the project against the MHUUC's strategic goals

   - Assesses project performance and implementation, management, and customer-related issues. Determines if the project achieved its goals, whether mistakes might have been made, and how to improve similar future projects

   - Examines customer and stakeholder impact

   - Reports lessons learned regarding strengths and weakness associated with the project effort to improve ongoing operations of new systems/services and guide the design and implementation of future projects

2. Integrates evaluation findings into subsequent design, project-management and quality-control systems

Role of the CDPSP

1. Reviews evaluations, findings, results, and recommendations to prepare practical examples to guide private-sector participation in the water/wastewater sector

2. Refines guidelines and toolkit to incorporate improved strategies, mechanisms, and procedures

D2. Close-Out and Transfer

Role of the Project Sponsor

1. Works with contractor to develop a closeout plan for the orderly termination of contracted services

   - Schedules debriefings and internal management reviews

   - Identifies remaining products and confirms final deliverable and payment schedules

   - Determines external requirements for audit trail

   - Schedules closedown or transfer of facilities and project-related equipment, personnel, and other resources

   - Organizes project sponsor's final training requirements to provide full institutional capacity and ensure sustainability

2. Implements transfer and project hand-over plan in coordination with counterpart departments or agencies

   - Confirms receipt and provides formal, written acceptance of final deliverables, including operations and maintenance manuals, repair and maintenance schedules, systems guidelines and procedures and users manuals, budget reports, and all other documentation on the development, management, and performance of contracted services

   - Confirms receipt and provides formal, written acceptance of equipment inventory denoting product descriptions, serial numbers, warranty details, date of purchase and useful-life rating, as applicable

   - Inspects project site and equipment to confirm satisfactory conditions, in accordance with contract specifications

   - Performs acceptance testing of operations and maintenance systems. Conducts final walk-through

- Organizes project files and retains records for duration defined by institutional standards

- Assigns internal staff to perform all operational and management functions, even during interim period before new contractor is engaged, as applicable. Provides operational and management training, through the contractor, to internal staff responsible for ongoing implementation of services

- Organizes equipment transfer and/or disposition based on inventory and assessment of condition (based on useful life standards)

- Invites contractor to mandatory debriefing of senior managers and project managers on experiences and lessons from procedures used, processes, methodologies, and coordination with project sponsor

- Briefs stakeholders on new implementation and operational plans

3. Disburses final payment, as applicable and in accordance with progress payment schedules or incremental distribution requirements (for instance, that necessitate that a portion of the payments be held back until several months after project work is completed)

4. Prepares project closeout report

Role of the CDPSP

1. Helps project sponsor execute closeout requirements

2. Participates in debriefing meetings in fulfillment of its role of lead advisor to the MHUUC on project status and impact

SECTION III

CDPSP Tools and Guidelines for Project Screening

The CDPSP is the GOE's focal point for the development of water and wastewater projects (such as BOTs, concessions, and other long-term contracts that involve private-sector participation. It is an advisory and review agency that works with sponsoring utilities and other contracting authorities to plan, evaluate, tender, and implement projects throughout the country. The role of the CDPSP is to: 1)identify projects that have private-sector participation potential; 2) provide planning and development assistance to project sponsors that are implementing private-sector participation projects; 3) review projects for compliance with GOE standards and requirements; and 4) help sponsoring utilities obtain the GOE approvals, authorizations, and permits necessary to implement a project.

CDPSP undertakes project screening as a first step in the project development cycle.

A. CDPSP Project Screening

As they consider implementing new projects or improving existing systems and facilities, many utilities will want to know whether such projects are likely candidates for private-sector participation. Project screening is the first step in determining that potential. Through screening, the CDPSP and the sponsoring utility determine if a project has sufficient technical and financial potential to warrant the investment of further CDPSP and utility resources and efforts in intensive project planning and development.

Screening does not result in definitive findings of private sector participation feasibility, and it does not indicate the social or economic need for or value of a particular project. It only identifies projects that have enough potential to justify the conduct of a prefeasibility study and, subsequently, a project tender.

Screening enables the CDPSP and sponsoring utilities to sift out projects with little or no private sector participation potential. Through screening, shortcomings in projects as proposed can be identified, giving utilities information and ideas to restructure their proposed projects. Screening can also help utilities develop private sector participation strategies for their overall jurisdictions, strategies that would have long-term horizons and encompass more than the one or two projects that may be of immediate interest or priority.

A1. CDPSP Role

Project screening is conducted by CDPSP staff, based on information provided by sponsoring utilities. Screening is a required step for any utility that wants to access further CDPSP technical assistance or that desires development funding support, and for all projects that require central government approval for implementation.

The CDPSP screens projects case by case, as and when requested by a utility or agency (including other Ministry departments such as NUCA or CAD). It does not unilaterally identify candidate projects or initiate project screening

The principal tools for project screening are the PSP Candidate Profile Form (which provides basic project information and data), and associated project screening tables.

A2. Utility Role

Utilities, with CDPSP technical assistance, define their projects, develop scope and scale parameters, identify project and facility sites and other logistical needs, develop reasonable (and documentable) estimates on costs, and provide information on utility financial conditions. The CDPSP and its consultants assist in areas such as defining projects and identifying information requirements and sources.

Once information is provided by the sponsoring utility, the CDPSP performs the screening analysis.

A3. Information Requirements

The following project-specific information is used to complete the PSP Candidate Profile Form includes:

- Discussion of project need
- Current (from most recent census or studies) and projected population
- Description of existing facilities and systems (technology, scale, etc.)
- Description of proposed facilities and systems (technology, scale, etc.)
- Type of project proposed (BOT, concession, management contract)
- Schedule and project start-up date(s)
- Capital and operating cost estimates
- Discussion of key technical and/or financial risks

In addition to the above, a sponsoring utility is required to provide the following general utility financial and performance information based on the Accrual Accounting System:

- Current assets
- Current liabilities
- Total annual tariff revenues
- Total annual direct operating costs
- Total annual depreciation expense
- Total annual debt service (interest & principal)
- Total annual non-operating costs (rent, commercial interest, *et cetera*)
- Total receivables (regardless of time outstanding or age)
- Number of employees/1000 connections
- Percent of unaccounted-for water
- Current tariff schedule stating the possibility of increase and ceiling
- Material contracts and agreements within the project area and/or could affect the transaction (i.e., existing Operation and Maintenance bulk sale agreements)

B. Screening Process Sequence

The following is the general sequence of the five-step project screening process.

B1. Step 1

A utility formally requests that CDPSP screen a candidate project the utility has identified:

- Prior to requesting the screening, the utility formally discusses the proposed project with the CDPSP. During the discussion, the CDPSP explains the requirements and process of screening and the level of effort the utility will be expected to commit to

- Based on that brief orientation, the utility formally requests that the CDPSP undertake the screening exercise

- The CDPSP formally acknowledges its receipt and approval of the request, indicates the start date of the process, and identifies the key CDPSP staff (and/or consultants) that will be involved

B2. Step 2

CDPSP staff meets with utility staff (and consultants, if any) to review the information requirements (including the PSP Candidate Profile Form, and Project Screening Tables). It will also provide guidance on information sources available to the utility as its defines its project, completes the PSP Candidate Profile Form, and develops the required utility financial and performance information.

B3. Step 3

The utility undertakes the information development process:

- CDPSP staff stays in regular contact with the utility to check on the progress being made and/or problems that are being encountered by the utility

- As necessary, CDPSP staff meets with the utility to review data-gathering progress, solve problems, and/or review (prior to evaluation) the full package of information that has been assembled by the utility

- If needed, CDPSP staff helps the utility assemble its information

The utility is required to certify that the information provided is as complete and accurate as is practicable.

B4. Step 4

The CDPSP's responsibility will be to:

- Review all project-specific and general utility information provided

- Complete the analyses required by the project screening tables, and select projects achieving the minimum allowed scores

- Prepare further analyses using the financial model for selected projects

- Produce a project screening report, which presents findings of screening exercises (screening tables) and discusses the status of the screened projects and their private sector participation potential and obstacles

The report provides the following information

- Summarizes the project
- Comments on the practicality of the preferred approach (BOT, concession, management contract, etc.), and/or recommends an alternative, if appropriate
- Evaluates key technical and financial risks that may be involved in the project
- Presents the department's analysis and evaluation of the project's private sector participation merit and potential
- Includes a "go/no go" recommendation regarding future activities (e.g., approval for the initiation of a prefeasibility study; a finding that no project is possible; a finding that the proposal needs to be modified or refined)

The report includes the PSP Candidate Profile Form, the project screening tables and any financial model[1] used.

Because the screening process is meant to be as objective and transparent as possible, the findings of any screening exercise rest heavily on results from screening tables.

- The tables provide for maximum possible project-specific score of 14 points and a general utility score of 18 points.
  - Any *project-specific score* below 75 percent of the maximum, or 11 points, indicates serious questions about the private sector participation potential of the project as structured, and indicates that additional planning needs to be performed to strengthen the project for consideration
  - Any *general-utility score* below 67percent of the maximum, or 12 points, indicates serious concerns regarding whether the utility's financial condition is adequate to support a private sector participation transaction

The financial model helps determine financial feasibility and may be used to refine assessments for projects "passing " the screening table test. Potential financial feasibility, however, is not a measure of affordability; it measures feasibility only from the investor's and lender's perspectives. Once the tariff required to make the project financially feasible is determined, it is then necessary to consider issues of affordability and the needs, if any, for governmental financial support for the project.

[1] The financial model presented in the Guidelines for Financial Analysis and Modeling Toolkit, with key assumptions required, is suitable for use in the screening process.

B5. Step 5

The CDPSP meets with the utility when the project screening report has been completed to present its results and conclusions (meetings to present preliminary findings can be held, if necessary or appropriate).

If screening results in scores below the allowed minimums (see Step 4) or other findings of the need for modifications to a proposed project, the CDPSP will work with the utility to refine the project and improve its viability, and then perform further screening.

The utility is required to accept and agree in writing with the analyses performed by the CDPSP and the results of the screening process.

B6. Project Screening Process Summary

The timing of the project screening process is summarized below:

Step	Activities	Participants	Schedule*
Step 1	Project screening request	Utility	- -
Step 2	Initial ("kick off") meeting	CDPSP/Utility	Week 1
Step 3	Data gathering, collection, submission	Utility	Weeks 1-3
Step 4	Project screening, analysis and evaluation	CDPSP	Weeks 4-7
Step 5	Report presentation	CDPSP/Utility	Week 8

*Maximum time anticipated

B7. Follow-on Activities

Assuming positive findings and utility acceptance, the CDPSP initiates the required steps to:

- Enable it to provide ongoing technical assistance to the utility
- Obtain development cost funding, if available
- Begin the prefeasibility study, as the next step in the project development cycle

C. Private Sector Participation Screening Forms and Tables

C1. PSP Candidate Profile Form

Central Department for Private Sector Projects
Private-Sector Participation Project Screening

PSP Candidate Profile Form

[The PSP Candidate Profile Form, to be completed for each project proposed, provides basic project-specific information (description, size/scale, capital cost, schedule, etc.)]

Submission Date: _____
Form completed by (Title): _____
CDPSP Form Completion Assistance By: _____

A. Utility Background

1. Project Identification

Utility Sponsor Name: _____
Project Name: _____

2. Population

Year	Current (as accurate as possible/state source)	1	2	.....	10
Population					

3. Customer Breakdown (Classes as % of Total Customer Base)

	Residential	Industrial	Commercial	Institutional and Governmental
Water-current				
Water-projected				
Wastewater-current				
Wastewater-projected				

4. Existing Facilities Description

Age: _____ Capacity: _____ Operated by: _____
Existing water facilities: _____
Existing wastewater facilities: _____
Other facilities (administrative, maintenance, et cetera): _____

5. Relevant Contracts (for example O&M, Bulk-Water Sale/Purchase, *et cetera*)

_____

6. Material Encumbrances

_____

7. Descriptions and Plans of All Facilities under the Utility's Jurisdiction

_____

B. Proposed Project

1. Scope of Services

Project need statement: _____
Scope of services (for example, BOT, concession, *et cetera*): _____
Anticipated/needed start of construction: _____
Start date for operations/service provision: _____

2. Technical Description

Proposed water system facilities: _____
Proposed wastewater system facilities: _____
Proposed other facilities: _____

3. Estimated Project Value/Cost

Proposed water facilities:

- Supply/Source Facilities: _____
- Treatment Facilities: _____
- Pumping Facilities: _____
- Transmission and Storage Facilities: _____
- Distribution Network: _____
- Total Capital Costs: _____
- Projected Annual O&M Costs: _____

Proposed wastewater system:

- Treatment Facilities: _____
- Pumping Facilities: _____
- Interceptors: _____
- Collection Network: _____
- Sludge Management Facilities: _____
- Sludge/Effluent Reuse Facilities: _____
- Total Capital Costs: _____
- Projected Annual O&M Costs: _____

Proposed other facilities: _____
_____
_____
_____

C. Utility Management and Financial Information

The following specific information must be provided by the utility:

Current Assets: _____
Current Liabilities: _____
Total Annual Tariff Revenues: _____
Total Annual Direct Operating Costs: _____
Total Annual Depreciation Expense: _____
Total Annual Debt-Service (Interest & Principal): _____
Total Annual Non-Operating Costs (Rent, Commercial Interest, etc.): _____
Total Receivables (regardless of time outstanding or age): _____
Number of Employees/1000 Connections: _____
Percent of Unaccounted-for Water: _____
Material Contracts and Agreements: _____

Current Tariff Schedule (to be submitted separately).

Complete Financial Statements (Balance Sheets, Income Statements, *et cetera*) should also be provided.

The above information should be provided for two additional previous years if there has been a *material* change in the financial condition of the utility.

D. Risk Analysis

Technical Risks: _____
Financial Risks: _____

E. Other Factors

List other factors: _____
_____
_____

F. Information Sources/Documentation

Project plan and description developed by: _____
Documentation: _____

Cost estimates prepared by: _____
Documentation: _____
Utility financial information prepared by: _____
Documentation: _____

C2. Project Screening Tables

Central Department for Private Sector Projects
Private-Sector Participation Project Screening

Project Screening Form and Tables

1. Table 1. PSP Screening Score Sheet: Project Specific

Table 1 summarizes and scores the project specific information that is to be provided for each proposed project:

- The population to be served by the proposed project and/or the proposed project's scale; *generally*, large projects are more amenable to PSP than are small projects;
- Whether the project is intended to serve an existing population or to support expected population growth; *generally*, PSP projects are more feasible when they are intended to serve existing populations;
- The severity of the problem to be solved by the implementation of the project, as a measure of project need; *generally*, projects that address severe problems or needs are more amenable to PSP than are projects that address less pressing needs;
- The capital cost of the proposed project, and/or the operating or service provision costs (if known); *generally (with the exception of management contracts)*, projects with high capital needs or operating budgets are more amenable to PSP than are smaller projects; and
- The level of technological difficulty associated with the implementation of the proposed project; *generally*, PSP projects are more feasible when they do not present extremely difficult technical challenges.

2. Table 2. PSP Project Score Sheet: Utility Specific

Table 2 summarizes and scores the analysis of the financial information on the operations of the entire utility (including subdistricts, if any), not project-specific financial information or projections. The table uses information that is inputted into several subsidiary tables in the project-screening model. The analyses to be performed include:

- Cost Recovery Ratio: the extent to which the utility is able to cover its *operating costs* through tariff revenues, as a measure of its ability to undertake new projects without governmental support; a ratio of less than 1.0 indicates that the utility is not generating sufficient tariff revenues to cover its operating costs, today, and may have difficulty in undertaking new projects;
- Current Ratio: the relationship of the utility's current assets to its liabilities, as an indicator of its financial solvency and its ability to take on new projects and assets; the current ratio should always be no less than 1.0, and preferably 1.3 or greater;

- Debt Service Coverage Ratio: a measure of the utility's ability to cover its *debt-related outlays* (principal and interest), after coverage of its operating costs, through tariffs; in general, a ratio of less than 1.0 indicates that a utility is not repaying its debt in full and may have difficulty in structuring stand alone PSP transactions such as BOTs and concessions that involve capital investments;

- Receivables as a Percent of Sales: a measure of the volume of tariff receivables compared to tariff revenues billed (i.e., "water sold"); a low percentage indicates a high tariff revenue collection rate (a good "collection efficiency"); if available, the age of receivables should be incorporated into the analysis;

- Employees/1000 Connections: a measure of staffing efficiency and labor productivity; generally, a high number of employees/1000 connections (such as ten or more) may indicate overstaffing; and

- Unaccounted-for Water: indicates the amount of water that is produced by the utility but lost during distribution (for example, through system leakage) or is not billed for; a high percentage of unaccounted-for water (for example, over 30 percent) may indicate severe system maintenance and repair problems or billing and collection problems.

3. Table 3. PSP Project Screening Summary

Table 3 combines and summarizes the individual project and utility scoring that is presented in Tables 1 and 2.

VOLUME II

Strategic Framework, General Guidelines, Contracting Options, and Financial Tools

TABLE OF CONTENTS

Volume II: Strategic Framework, General Guidelines, Contracting Options, and Financial Tools

Selected Acronyms, Abbreviations, and Definitions i

SECTION I STRATEGIC FRAMEWORK FOR DELIVERING PUBLIC SERVICES THROUGH PRIVATE-SECTOR PARTICIPATION

A. Introduction I-1
B. The Current Enabling Environment for Private-Sector Participation I-2
C. The Strategic Framework for PSP Agreements I-6
D. Conclusion I-9

SECTION II GUIDELINES FOR PRIVATE-SECTOR PARTICIPATION

A. Purpose of the Guidelines II-1
B. The Basic "What" and "Why" of PSP Projects II-3
C. Starting Off: Identifying Projects and Selecting a Team II-7
D. Assessing the Feasibility of PSP Arrangements II-11
E. Procuring PSP Projects II-14
F. Contracting PSP Projects II-20
G. Contract Management II-24
H. Summary and Conclusion II-26

Annex A Tariff-Setting in Private-Sector Projects A-I

SECTION III CONTRACTING OPTIONS FOR PRIVATE-SECTOR PARTICIPATION

A. Service Contracts III-1
B. Management Contracts III-3
C. Lease Agreement III-5
D. Build-Operate-Transfer (BOT) Contracts and Variants III-6
E. Concessions III-8

SECTION IV GUIDELINES FOR FINANCIAL ANALYSIS AND MODELING

A. Timing and Purposes IV-1
B. Fundamental Financial and Economic Determinants IV-4
C. Basic Financial Analysis Concepts IV-5
D. Key Concepts and Terminology IV-6
E. CDPSP Pre-feasibility Model IV-11

Annex A Financial Analysis Tools and Credit Enhancements A-1

SECTION V PROCUREMENT GUIDELINES

A. Competitive Bidding: National/Local vs. International Competitive Bidding V-1
B. Prequalification V-3
C. Short-listing V-4
D. Single-stage Bidding V-4
E. Two-stage Bidding V-4

SELECTED ACRONYMS, ABBREVIATIONS, AND DEFINITIONS

ARE	Arab Republic of Egypt
BOD	Biochemical Oxygen Demand
BOO	Build-Own-Operate
BOOT	Build-Own-Operate-Transfer
BOP	Balance of Payments
BOT	Build-Operate-Transfer
BOOT	Build-Own-Operate-Transfer
CCPSP	Coordinating Council for Private-Sector Participation (Philippines)
CDPSP	Central Department for Private Sector Projects
CIDSC	Cabinet Information and Decision Support Center
DT2	Development Training 2
EBIT	Earning Before Interest and Taxes
EBITDA	Earning Before Interest, Taxes, Depreciation and Amortization
EWRA	Egyptian Water and Wastewater Regulatory Authority
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
GOE	Government of Egypt
ICB	International Competitive Bidding
IP3	Institute for Public-Private Partnerships
IRR	Internal Rate of Return
JWC	Johar Water Company
LE	Egyptian Pound
LIRR	Legal, Institutional and Regulatory Reform
LOI	Letter of Interest
MCIT	Ministry of Telecommunications and Information Technology
MEE	Ministry of Electricity and Energy
MHUUC	Ministry of Housing, Utilities, and Urban Communities
Minister	Minister of Housing, Utilities, and Urban Communities
MIRR	Modified International Rate of Return
MFT	Ministry of Foreign Trade
MOIT	Ministry of Industry and Technology
MOP	Ministry of Planning

MOT	Ministry of Transportation
MPE	Ministry of Public Enterprise
MSCI-EMF	Morgan Stanley Capital International – Emerging Market Free Index
MSIT	Ministry of Supply and Internal Trade
NCB	National Competitive Bidding
NIR	Net International Reserves
NOPWASD	National Organization for Potable Water and Sanitary Drainage
NPV	Net Present Value
O&M	Operations & Maintenance
OT	Operator Tariff
P&L	Profit & Loss
PDF	Project Development Fund
PEA	Public Economic Authority
PSC	Public-Sector Company
PSP	Private-Sector Participation
RFP	Request for Proposals (Bids)
RFQ	Request for Qualifications
ROR	Rate of Return
ROT	Rehabilitate-Operate-Transfer
RPI	Retail Price Index
UK	United Kingdom
USAID	United States Agency for International Development
US	United States
WACC	Weighted Average Cost of Capital

45

SECTION I

Strategic Framework for Delivering Public Services Through Private-Sector Participation (PSP)

A. Introduction

The Government of Egypt (GOE) promotes private-sector participation in the municipal water and wastewater sector. Expanded and efficient utility services are central to the government's goals of improved health and environmental protection. Private-sector participation will enable rapid improvement in service, in a manner consistent with Egypt's strategy of pursuing economic development through policies of macroeconomic balance, privatization, and increased foreign investment.

Volume II describes the strategic framework for provision of water and wastewater services through private-sector participation in Egypt. The strategic framework is based on the recognition that to generate growth, government and the private sector must join their respective strengths: government providing the supportive policy and regulatory environment, while the private sector contributes capital and technology through entrepreneurial innovation and specialist skills.

In many areas of public-sector responsibility, the private sector can more effectively deliver services given the dynamics of competition and because it generally has advanced technical and risk-management capacity. By bringing private capital and expertise into state enterprises, we gain access to technology and skills transfer, as well as the capital needed for investment in expansion and organizational renewal.

In some other sectors — energy, telecommunications, and transportation — the GOE has already embarked on substantial partnership projects. The establishment of the Central Department for Private-Sector Projects (CDPSP), publication of this strategy, and the identification and competitive tendering of water and wastewater projects are further steps along this challenging journey.

B. The Current Enabling Environment for Private-Sector Participation

Historically, the GOE has been the monopoly provider of water/wastewater services in Egypt, although earlier in the city of Alexandria, there had been extensive experience in contracting out service delivery to private overseas companies. Also, there are a few small, privately operated systems built to supply tourism developments in some South Sinai and Red Sea locations.

During the past two decades, Egypt has made significant strides toward improving water and wastewater services in both urban and rural areas. However, more financial resources are still needed to improve and extend performance, rehabilitate existing networks and treatment plants, and establish new ones to cover un-served areas. Given population growth and growing urbanization, limitations of the GOE budget and overextended use of its borrowing capacity, the sector has faced serious problems with respect to its institutional framework — e.g., fragmented organization, financial imbalance (resulting from tariffs, which have been

fixed for many years), shortage of funds for operations and maintenance (O&M), inadequate managerial expertise; lack of modern management and information systems, and insufficient funds for training.

With an awareness of developing international trends, Egypt has undertaken a close examination of the sector. A report on the status of the sector was prepared by the National Organization for Potable Water and Sanitary Drainage (NOPWASD), a unit in the Ministry of Housing, Utilities, and Urban Communities (MHUUC), identifying constraints, needs, and technical and institutional issues facing the sector, along with the benefits and costs of adopting a more deliberate, expanded role for private-sector participation. It is clear that such an expanded private-sector role would need to be accompanied by the adoption and implementation of sound regulatory principles. It is also true that in the process of moving to new service-delivery options, Egypt would have the opportunity to benefit from 'lessons learned' from experiences around the world. A number of countries from both the developed and the developing regions have found it advantageous to withdraw from the role of operator of utility services, focusing instead on the role of facilitator and regulator of services being provided at arm's length from direct political influence.

B1. Water/Wastewater Sector Reform Program

The GOE has embarked on a nationwide, comprehensive, long-term program of restructuring of the municipal water and wastewater sectors with the objectives of:

- Enabling local utilities to achieve higher service and performance standards
- Enabling utilities to achieve operating cost recovery
- Enabling utilities to finance future investment

The principal elements of the reform framework are:

- Legal reforms and capacity-building to attract private-sector participation in infrastructure finance, management, and operations

- Establishment of a water/wastewater regulatory agency to enable service providers to recover prudent costs of operation, maintenance, and expansion

- Corporatization of local utilities to provide incentives for efficient and customer-responsive management

B1a. Encouraging Private-Sector Participation

A revised concessions law has been drafted. The law would allow competitively tendered water/wastewater concessions for periods up to 30 years and requires the GOE to abide by the terms of concession agreements. The CDPSP has been created in the MHUUC to help local and national-level water authorities develop and tender private-sector projects. The CDPSP has managed its first project-identification and -screening cycle, which elicited more than 70 project proposals, and is managing prefeasibility studies for priority projects.

B1b. Regulation of Service Providers

The draft law also calls for establishment of an independent water/wastewater sector regulatory agency, the Egyptian Water and Wastewater Regulatory Agency (EWRA). The agency will be responsible for monitoring and enforcing compliance with performance standards and for setting tariffs that promote increased operating and capital efficiencies. Higher performance and efficiency standards, coupled with increasing needs for investment, are expected to encourage local utilities to seek private-sector participation.

B1c. Corporatization of Local Utilities

Water/wastewater service provision in Egypt's governorates and new urban communities is being restructured to strengthen utility governance, management, accounting, and customer service. Water/wastewater services in nearly half of Egypt's governorates are now managed by corporatized Public Economic Authorities (PEAs) operating under a cost-recovery mandate.

B1d. General Investment Incentives

Complementary to the reform of the sector, Law 8/1997 (Investment Guarantees and Incentives) offers investors:

- Unrestricted ownership of investment capital by local and foreign investors
- Right of profit repatriation and invested capital re-exportation
- Five- to ten-year tax exemption on distributed profits, plus two additional years under certain conditions
- Right to acquire and own land and real estate
- Right to operate on behalf of third parties
- No price controls or profit ceilings
- Guarantees for project assets and funds
- Entitlement to import and export independently
- Approved projects cannot be nationalized, expropriated, or confiscated
- Local and foreign investors can maintain local foreign currency accounts
- Right to freely transfer funds in and out of the country at the investor's discretion

B2. Central Department for Private-Sector Projects (CDPSP)

The CDPSP was created in the MHUUC to be the GOE's focal point for the development of private-sector participation in water and wastewater, as well as to provide technical capacity and financial resources to tendering agencies.

B3. What is Private-Sector Participation?

A private-sector participation (PSP) project is a contractual arrangement whereby a private party performs part of a department's service-delivery or administrative functions and assumes the associated risks. In return, the private party receives a fee according to predefined performance criteria, which may be entirely from service tariffs or user charges, entirely from a departmental or other budget, or a combination of the above.

The simplest form of PSP is a service contract. In such contracts, a department typically awards a private party the right and obligation to perform a particular service within well-defined specifications for a period, e.g., one to three years. The government retains ownership and control of all facilities and capital assets and properties. A key feature of the more complex PSP arrangements, such as build-operate-transfer (BOT) schemes or concessions, is the mobilization of private finance on a limited-recourse basis. In a concession, the concessionaire's responsibilities often include maintenance, rehabilitation, upgrading, and enhancement of the entire utility system, which may involve substantial investment. In a BOT, the private party undertakes the financing and construction of a single infrastructure facility, as well as its operation and maintenance for a specified period of time. Given the substantial capital investment undertaken by the private party under such arrangements and the requirement to recover the costs of the investment made, such contracts tend to be of extended duration, e.g., from 25 to 30 years or longer.

While service delivery through a PSP project changes the means of delivering services, it does not change a department's accountability for ensuring that the services are delivered properly at affordable cost. The Government's responsibility shifts from managing the inputs, to managing the results or outcomes. The model implementing arrangement of a PSP, therefore, becomes a performance-based contract.

B4. Why Use Private-Sector Participation?

The simplest forms of PSP projects have been used in Egypt for some time. But more complex arrangements, in particular long-duration contracts that entail substantial contributions of private finance, represent new ground. Egypt's limited experience with more complex PSP projects has produced mixed results. However, if properly structured, such projects are an extremely useful service-delivery option from both the operational and public-policy strategic objectives.

Operationally, the benefits of PSP projects include efficiency gains; focus on output performance; savings resulting from integrating under a private manager; the design, building, financing, and operation of the assets; managerial expertise; and better project identification. These benefits can result in better and/or expanded services for the same cost, thus generating savings, which can be used for other services or for investment elsewhere.

Strategically, PSP contracts enhance accountability by clarifying responsibilities and focusing on the key performance indicators of the service delivery. Government utilities' managerial efficiency benefits, such as existing engineers, financial, human, and management resources, can be refocused on strategic functions.

There are numerous stakeholders concerned about the outcome of PSP projects:

- *For utilities*: PSP projects must become a readily available, suitable, financially viable, and beneficial service-delivery option.

- *For the users of services*: PSP projects must result in accessible, affordable, safe, and reliable services that meet the highest quality standards.

- *For society*: PSP projects must promote the goals of fairness and social equity, economic growth, more efficient use of scarce natural resources, and protection of the environment

- *For the private sector*: PSP projects must be sufficiently rewarding by providing a rate-of-return appropriate to the investment amounts required and the risks undertaken.

B5. Risk-Transfer Policies and Programs

The amount of risk encountered and the potential rewards of PSP projects tend to increase as one moves from the simpler service and management contracts through to the longer and more complex concessions and BOTs. As the more complex partnership arrangements become more widespread, the creation and sustainability of a suitable enabling environment becomes increasingly important. This enabling environment, properly conceived, then becomes the *strategic framework* within which public-private transactions can be promoted, negotiated and then monitored to ensure that the expected benefits to the affected parties — the stakeholders —do indeed occur.

This *strategic framework* is made up of a package of integrated reforms and development actions that strengthen Egypt's support of PSP projects by:

- Establishing a clear policy framework offering PSP projects as an option for utilities

- Refining existing legislation and decrees to remove existing obstacles to cost-effective PSP arrangements

- Enhancing the capacity of utilities to use PSP projects in sound and cost-effective projects

- Providing the institutional framework to ensure that PSP projects achieve value-for-money and facilitate capacity-building to enable GOE support and performance monitoring in an orderly, predictable, fair, and effective manner

B6. Facilitation of PSP Projects by the CDPSP

The CDPSP initiated a nationwide water/wastewater private-sector-participation program in the latter part of 2000. This program was launched through a series of workshops for water and wastewater utilities in Egypt to discuss the manner in which PSP could expand and improve service, the conditions under which the private sector would be interested in participating and the process of project-development. Principles of project identification and criteria for screening were explained. The CDPSP distributed project profile forms to all utilities, and subsequently helped them complete the forms. Project requests were received from many utilities. The proposed project ideas are available from the CDPSP.

While there are no known general impediments to the use of PSP, uncertainties, inconsistencies, and ambiguities create unnecessary risks for both the GOE and the private sector that restrain the speedy adoption and prompt closing for many potential PSP projects.

Delivery of public services through PSP is a fairly recent concept in Egypt. Making this a viable option for water and wastewater requires coherent and consistent GOE policy. Substantial and significant progress toward this objective has already been made.

C. The Strategic Framework for PSP Agreements

C1. Legal Framework

Private-sector participation is governed by many laws, which can be divided into several legal categories. These categories include: 1) concessions; 2) investment; 3) public business sector; 4) laws specific to water utilities; 5) laws related to passing new legislation; 6) laws concerning the environment; and 7) laws concerning private-sector participation in other infrastructure sectors.

Within each of these categories, there are many laws governing private-sector participation. A summary of these laws follows.

C1a. Concessions

1. *Law on Grant of Concessions for Water/Wastewater Utilities and on Establishment of an Agency for Water/Wastewater Sector Regulation and Customer Protection*: Under the sector-reform project mentioned in B, above, one of the achievements of Phase I of the project was to propose this new law. Should this proposed law be approved, it will be the main law governing PSP in the water/wastewater sector. This law supercedes all previous concessions laws governing public-utility concessions and allows that concessions may be granted to both Egyptian and non-Egyptian investors alike. The main points of this new law include:

   - Selection of the eligible concessionaire shall be through a public tender
   - Concession term shall not exceed 30 years
   - Means of supervision, and technical and financial monitoring shall be defined to ensure smooth performance of the utility in a systematic and continuous manner
   - The concessionaire shall be obliged to maintain the facilities and keep them in good condition throughout the concession term
   - No amendment shall be made to the concession agreement without the consent of parties thereto
   - All facilities shall be returned to the State free of charge and in good condition at the end of the concession term

Until such time as the above law is approved and published through a Presidential Decree, the following laws continue to govern:

2. *Law 129/1947 (Public Utilities Concessions)*: This law lays out the time limit for concessions (30 years maximum) and the rights of the grantor and concessionaire

3. *Law 288/1956*: Amends Law 129/1947; provides for unilateral amendment of terms of concession by Ministry of Rural (Urban) Affairs/municipal councils, with passage of a law authorizing amendment

4. *Presidential Decree 61/1958 (Concessions Connected with Investment of National Wealth Resources and Public Utilities)*: Establishes the requirements for granting of a concession

5. *Civil Code (Article 670)*: Stipulates that a public-utility concessionaire must observe equality between customers respecting rates and services, but can lower rates for certain classes, providing that these lower rates are applied uniformly

C1b. Investment

1. *Law 8/1997 (Investment Guarantees and Incentives)*: Regulates fiscal privileges and exemptions

2. *Prime Minister's Decree 1186/1997 (Executive Statement Law 8/1997)*: Establishes licensing requirements and free zone authorities

3. *Law 159/1981 (Companies)*: Formation of stock companies

C1c. Public Business Sector

1. *Prime Minister's Decree 1900/1991 (Holding Companies)*: Forms of articles of agreement and articles of association for public-business-sector companies and the legalities regarding establishing a holding company

2. *Law 48/1978 (Public-Sector Workers)*: Establishes a schedule of wages and job classifications, as well as a process for transferring employees

3. *Law 203/1991 (Public-Sector Companies)*

C1d. Laws Specifically Addressing Water Utilities

1. *Law 27/1978 (Organization of Public Sources of Potable Water and Water for Human Use)*: Defines public- and private-water sources and makes it unlawful to establish any public-water source (as defined) or connection without obtaining a permit

2. *Presidential Decree 281/1995 (Public Economic Authorities (PEAs) for Potable Water; Setting up a Public Economic Authority for Potable and Wastewater in Some Governorates)*: Defines PEAs and their responsibilities and mandate

C1e.Laws Related to Passing New Legislation

1. *Constitutional provisions dated September 1971 and May 22, 1980*: Establish regulations for passing new legislation and the roles of various parties

2. *Law 9/1989 (Local Administration)*: Amends certain provisions of the Local Administration Law, Promulgated by Ministerial Decree 43/1979; is a special regulation for certain towns having special significance

3. *Law 50/1981 (Local Government)*: Provides for when the structure of local government may be an important consideration in establishing an objective regulatory board

C1f. Laws Concerning the Environment

1. *Law 48/1982 (Protection of the Nile River and Waterways from Pollution)*: Designates Ministry of Health as responsible for testing wastewater entering the Nile

2. *Ministerial Decree 8/1983 (Executive Statutes of Law 48/1982)*

3. *Ministerial Decree 9/1988*: Amends certain provisions of Ministerial Decree 8/1983

4. *Law 4/1994 (Environmental Impact Assessments)*: Promulgating the Law concerning the Environment; environmental impact assessments would be required before building any new facilities and before the issuance of any licenses to build

C1g. Laws Concerning Private Participation in Other Infrastructure Sectors

1. *Law 100/1996*: Amends Law 12/1976; concerns the Establishment of the Egyptian Electricity Authority

2. *Law 3/1997 (Awarding the Public Utility Concession for the Establishment and Exploitation of Airports and Landing Grounds*)

3. *Ministerial Decree 30/1996 (Port Activity)*: Permitting the private sector to exercise the activity of mechanical, shipping and unloading at Alexandria Harbor

C2. Institutional Framework

Under present arrangements, PEAs or other local utilities throughout the country identify their investment needs and may propose projects believed suitable for private-sector participation. Some of the larger utilities have resident institutional contractors that can assist in the demand assessment, prefeasibility analysis, and project identification.

The next step is the submission of the project proposal to the CDPSP for review and screening. Such submissions must be accompanied by basic technical and financial information, including performance indicators and measurements of efficiency, such as estimates of unaccounted-for water, ratio of employees to numbers of connections, financial statements for the past number of years, and billing and collection data.

CDPSP screening will identify and prioritize the projects most likely to move forward. For projects deemed particularly promising, the CDPSP may provide technical assistance to prepare for the next steps in the project life-cycle, including selection of the most appropriate procurement procedure and preparation of bid and tender documents.

Based on available resources and the relative importance of the project, the CDPSP will be able to provide specific transaction support for some projects throughout the project life cycle, prequalification, bid issuance and evaluation, negotiation and post-award monitoring. This phase will focus on contract compliance and adherence to regulatory requirements.

C3. Capacity Building and Enhancement

To ensure cost-effective and affordable service delivery through PSP arrangements requires additional functional capacity in financial, technical and managerial areas that are not normally associated with government agencies or departments. This is especially true for the most complex and longer-duration concession agreements, which are more challenging to monitor than service and management contracts. The requisite skills for managing long-duration contracts that include significant risk-transfer are currently in short supply in the public sector, but are in the process of being developed, which will require a concerted effort over a considerable period of time. To prepare the GOE to assume its new regulatory role and to support the PEAs and other utilities in promoting and conducting PSP, training has been delivered in the following areas:

- Rationale for and feasibility of PSP in the water and wastewater sector
- Competitive water and wastewater utility management
- Financing water and wastewater projects
- Regulating water and wastewater utilities
- Structuring and negotiating legal agreements for private-sector participation
- Contract monitoring and compliance
- The PSP project life cycle

D. Conclusion

This section reflects the policy of the GOE of continuing to perform the activities needed to address and resolve constraints in the enabling environment and to facilitate successful implementation of affordable PSPs that represent value-for-money to all stakeholders.

The key institutional instrument in the program is the CDPSP. Its activities will entail technical assistance and support, maintaining close coordination with the EWRA regarding performance monitoring, compliance and enforcement, and continuing policy and legislative reviews.

List of Related Web sites

State Information Service	www.sis.gov.eg
Central Bank of Egypt	www.cbe.org.eg
Cairo and Alexandria Stock Exchange	www.egyptse.com
Capital Markets Authority	www.cma.gov.eg
USAID Egypt	www.info.usaid.gov/eg/
US Embassy – Investing in Egypt	www.usis.egnet.net/invest.htm
Carana Privatization	www.carana.com/pscu
World Bank Privatization Link	www.privatizationlink.ipanet.net/
	www.worldbank.org/data/country/data.aag/egv_aag.pdf
Overseas Private Investment Corporation	www.opic.gov/
	www.opic.gov/subdocs/public/publications/hi-egypt.htm
Library of Congress – Egypt Country Study	www.lcweb2.loc.gov/frd/cs/egtoc.html
Emerging Markets	www.emdirectory.com/contents.htm
Africa News Online – Egypt	www.africanews.org/north/egypt/
Al Ahram Weekly (English)	www.ahram.org.eg/weekly/
Al Alam Al Youm	www.elshaab.com/
Al Gomhuria	www.tahrir.net/AL-Gomhuria/index.html

Business Today Magazine – English	www.businesstoday-eg.com/
Cairo Press Review English	www.sis.gov.eg/pressrev/html/frame.htm
Cairo Times	www.cairotimes.com
Egypt Daily	www.egypttoday.com/
Middle East Times	www.metimes.com

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Guidelines for Private-Sector Participation (PSP)

A. Purpose of the Guidelines

The GOE promotes private-sector participation in the municipal water and wastewater sector. To generate economic growth, provide infrastructure, and deliver services, the GOE and the private sector must combine their strengths, providing a supportive policy and regulatory environment, entrepreneurial innovation, specialist skills, and all other qualities that make a modern economy competitive. Private-sector participation will enable faster improvement in service, in a manner consistent with Egypt's strategy of pursuing economic development through policies of macroeconomic balance, privatization, and increased foreign investment.

The MHUUC has established the CDPSP to promote private-sector participation in the water and wastewater sector by helping utilities identify suitable projects, screen bids, and then prioritize them. The CDPSP has developed and systematized processes and procedures for utilities and helps conduct prefeasibility studies to initiate private-sector participation.

The CDPSP also supports utilities in prequalifying firms to comprise short-lists of companies invited to submit bids and in helping to prepare bid documents, including model contract forms. The CDPSP, thus, is the central point for investors and financial institutions to learn of and acquire details about investment opportunities and to get familiar with relevant laws, regulations, and other information needed to organize and finance investments in the sector.

The CDPSP provides technical assistance and conducts capacity-building training for officials in all phases of the project life cycle, from planning, tendering, and negotiation through hands-on implementation of projects executed with the private sector.

These *Guidelines* have been prepared to help utilities, municipalities, and prospective private-sector partners implement and manage PSP projects. PSP projects are neither ordinary public administration, nor are they commonplace business transactions. The sequence of identifying projects suitable for PSP; determining their feasibility; selecting the most suitable mode of private-sector participation; preparing the bid and tender documents by which they will be offered to the market in a fully transparent and competitive fashion; and all the other aspects of the PSP project life cycle, poses daunting new challenges to GOE officials and their private-sector partners.

It is critical to avoid favoritism or any other improper practices. Establishing safeguards to allow openness and fair competition requires exceptional management and complex negotiations. However, only complete transparency will ensure that the public good is served through agreement on the right mix of risk-transfer to provide the best value-for-money at a price that consumers and the GOE can afford.

The CDPSP will build on these *Guidelines,* and through the use of this Toolkit of international best practices, will help the PEAs and other utilities apply sound principles of governance when they consider, negotiate, or monitor PSP contracts.

Achievement of the GOE's goals of reform, development, and sustainable service-delivery will depend on many factors, not the least of which will be the widespread adoption and utilization of PSP. We expect to see best practices adopted throughout Egypt and anticipate that through adoption of sound policies and by conscientious and energetic application of effort, dynamic and sustainable service provision will become the rule.

A1. Aims and Objectives of the *Guidelines*

The objectives of the water and wastewater sector reform program are to enable utilities to achieve higher service and performance standards, eventually providing service delivery to all citizens in the country; to enable and encourage utilities to achieve operating-cost recovery/cost-effective operation; to encourage the private sector to finance, manage, and operate projects in the sector; and to create conditions conducive to self-financing of governorate water/wastewater projects in the future.

A transition period will transpire, during which local utilities will attain greater managerial and financial autonomy marked by gradual elimination of subsidies and increasing managerial autonomy, so that the utilities can realistically meet new performance targets and increase asset productivity, helping make conditions suitable for mobilizing investment by various market-based forms of financing.

A key component of the strategic framework is the establishment of the EWRA, whose functions will include review of tariff-adjustment applications. This will ensure that rates charged are adequate to recover justifiable costs. The EWRA will assess project bids to ascertain their impact on prices ensure that investment levels do not exceed demand, determine the circumstances under which tariffs can be adjusted, and ensure that channels of communications with customers are functioning so that service delivery meets prescribed standards. The GOE recognizes that an independent regulatory agency function is essential to reduce commercial risk involved in private investment in public utilities, thereby reducing cost of capital of investors.

Descriptions of the major components of Egypt's sector-reform program are to be found in two key documents on PSP: "*Investment Opportunities: A Strategic Framework for* Delivering Public Services Through Private-Sector Participation," and these "Guidelines for Private-Sector Participation."

The strategic framework addresses key constraints to the successful implementation of PSP projects and identifies the package of legislative, regulatory, and institutional reforms to strengthen the enabling environment and facilitate transactions.

The guidelines contain a set of procedures to advise utility officials and project managers on sound practices when preparing, procuring and implementing PSP arrangements.

The guidelines are intended to:

1. Provide an overview of PSP arrangements: the benefits, reasons, types of PSP and outsourcing arrangements
2. Outline the key issues in understanding and implementing PSP projects

A2. The Role of the CDPSP

The MHUUC has set up the CDPSP to support the implementation of the strategic framework. A lack of technical capabilities and financial resources have hampered the development of water and wastewater PSP projects in Egypt. The CDPSP was created to address these needs and serve as the Egypt's focal point for the development of private-sector participation in projects. The CDPSP will provide technical and financial advice throughout the PSP project life cycle, thereby complementing the information contained in these guidelines.

The mission of the CDPSP is to ensure quality, consistency, and uniformity of water and wastewater PSP projects in Egypt and promote private-sector investment in the sector. The CDPSP's project-management, economic, legal, and financial skills will enable its staff to assist utilities in project identification, preparation, management, economic and financial analysis, negotiation, and legal processes pertaining to PSP projects.

A3. Outline of Guidance Chapters

The PSP project life cycle proceeds through the sequence of steps outlined in the box below. Section B describes the "what" and "why" of PSP projects — how they benefit public-service delivery. Sections C to G detail the requirements and procedures for PSP projects, including the legal and regulatory setting; how the feasibility of PSP projects are assessed and processes to ensure qualifications of bidders; conduct of competitive and transparent procurement; negotiation of concession agreement contracts; and the roles and responsibilities of the parties after award for performance monitoring and contract compliance. Section H concludes with a short summary.

Phases and Outcomes in the PSP Process

Phase I Identifying Projects and Project Screening
- Pre-feasibility studied.
- Pre-feasibility analysis confirmed, business case prepared.

Phase II Document Preparation and Prequalification
- Bidder shortlist prepared.

Phase III Procurement/Tendering of PSP Projects
- Bids evaluated, PSP service provider selected.

Phase IV Contracting
- PSP Contract signed, transition to PSP provision.

Phase V Contract Management
- Performance monitored and contract enforced.

B. The Basic "What" and "Why" of PSP Projects

While several PSP arrangements have been implemented in Egypt, they remain a relatively new phenomenon. There is still some uncertainty as to what a PSP project is, how and under what circumstances they should be implemented, and how responsibility and accountability for PSP arrangements should be determined. PSP arrangements will not yield satisfactory outcomes for either the GOE or the public unless there is careful project structuring, which requires standard and accepted definitions of key concepts and a set of rules to govern the preparation, procurement, and implementation of these arrangements.

B1. Major "Do's" and "Don'ts" of PSP Projects

The CDPSP's role is to support utilities in identifying, procuring, and implementing PSP projects. Future plans envisage creation of a PDF that would allow the prudent use of state resources in recruiting consultants to help conduct prefeasibility studies, and possibly, to

contribute credit enhancement to attractive projects. Criteria for project approval would require the that pre-feasibility studies and the business case would:

- Demonstrate *value-for-money*; for example, by enabling utilities to achieve more with the same resources or as much with fewer resources
- Be *affordable* — i.e., would result in tariffs that most customers could paid
- Be procured using *transparent and competitive processes*
- Show evidence of substantial *risk-transfer* from the utility to the private party
- Be implemented within a sound and appropriate *project-management* and *performance-monitoring* legal, regulatory and administrative structure

B2. What is a PSP Project?

PSP projects have many possible variations. Therefore, the CDPSP has adopted a simple definition of PSP projects, based on three essential elements:

1. A contractual arrangement, whereby a private party performs a utility function or provides services for a specified time.
2. Substantial risk-transfer to the private party. Unless the private party assumes the risks and responsibilities of the arrangement, the transaction is not a true PSP project.
3. A schedule of outcome-based financial revenues, derived either from service tariffs or user charges, or from a combination of these sources.

Simple contracts for the one-time supply of goods or services are not PSP projects.

B3. What Are "Utility Functions"?

The CDPSP defines a utility function as:

- A service, task, assignment or other function that a utility performs or provides to users in the public interest or on behalf of the public service
- Any part or component of, or in support of, such a service, task, assignment, or other function

B4. Types of PSP

The simplest form of PSP is a service contract, where a utility typically awards a private party the right and obligation to perform a service, within well-defined specifications, for between one and three years. The government retains ownership and control of all facilities, capital assets and property. More complex PSP arrangements, such as concessions and BOT schemes, are characterized by the mobilization of private finance on a limited-recourse basis. Given the often-substantial capital investment by the private party under such arrangements,

the contracts tend to be much longer, frequently 25 to 30 years. Table II-1 below lists the various types of PSP. This list excludes full divestiture, or selling off of the government's assets, which goes beyond the scope of a PSP.

Table II-1. Types of PSP Contracts

Type of Contract	Duration	What the Contractor Usually Receives	Nature of Contractor Performance	Examples
Service Contract Short-term	1-3 years	A fee from the utility for performing the service	A definitive, often technical type of service	Facility repairs and maintenance; laundry
Management Contract Medium-term	3-8 years	A fee from the utility for the service and a performance-based incentive	Manage the operation of a government service	Providing specific water supply management services
Lease Long-term	8-15 years	Firm collected all revenues, fees, or charges from consumers for provision of the service; service provider pays the government rent for facility	Manage, operate, and repair and maintain (and maybe invest in) a municipal service to specified standards and outputs	Existing water/wastewater treatment facilities
Build-Operate-Transfer Long-term	15-25 years	The utility contracts to pay the service provider on a unit basis (off-take contract)	Firm to construct and operate, to specified standards and outputs, the facilities necessary to provide the service	Building, construction, and maintenance of pipelines, treatment plants
Concession Long-term	15-30 years	All revenues from consumers for the provision of the service; the service provider pays a concession fee to the government and may assume existing debt	Manage, operate, and repair, maintain, and invest in public service infrastructure to specified standards and outputs	New pipeline or treatment plant, distribution system, supply pipes and drains

While service-delivery through PSP changes the means of delivering services, it does not change the government's accountability for ensuring that the services are delivered. The utility's focus shifts from providing the service to managing the service provider — i.e., becoming a contract manager rather than a resource manager.

B5. Why Use PSP?

PSP contracts of long duration involving private finance are relatively new in Egypt, and thus far, there has been limited experience in their use. Globally, however, when correctly structured according to acceptable "best practices," they have offered in many countries a highly beneficial service-delivery option from both an operational and a strategic perspective.

Operationally, the benefits of PSP projects include efficiency gains; output focus; economies generated from integrating the design, building, financing and operation of assets; inventive use of assets; innovative financial structuring; managerial expertise; and better project identification. These benefits can result in better, or more services for the same price, or in avoided cost to government that frees up funds for other services or more investment elsewhere.

Strategically, partnership contracts enhance accountability by clarifying responsibilities and focusing on the key deliverables of a service. A utility's managerial efficiency can benefit significantly from such a contract, as existing financial, human and management resources can be refocused on strategic functions.

Using private rather than public finance does not mean that more expenditure can be afforded as, in the long run, the interest rates applied — thus the cost of borrowing — in private finance transactions will typically be higher than conventional government borrowing. PSP projects are, therefore, not simply about gaining access to private capital. Since the government can normally borrow more cheaply, the gains from the private operator's efficiency must exceed this difference in borrowing cost. The real benefit of PSP projects is the value-for-money derived from the operational and strategic benefits mentioned above.

These benefits are not, however, automatic, but are dependent on at least three conditions:

- An operational need for private-sector skills to deliver a service
- An identifiable market of private-sector bidders prepared to compete for the opportunity to finance and deliver a project
- The appropriate allocation of risk

B6. What is "Value-for-Money" in PSP Projects?

A PSP project provides value-for-money if the net cost of private-service provision is lower, taking all factors into consideration, than the net cost of government provision of the same standard of service. In other words, value-for-money is achieved when a private firm provides a level of service at less cost than the public sector. The concept of "value-for-money" is discussed in more detail in Section D.

B7. What is "Affordability" and Who Determines it?

Affordability relates to whether the payments required over the whole PSP project's life can be realistically accommodated within the budget of the consumers. An extravagantly designed PSP contract may offer such a high level of service that it is unaffordable, even though it appears to provide value-for-money. Affordability and value-for-money are equally important. If a project is unaffordable, it undermines the public ability to pay for the services and should not be pursued, because it is not sustainable. For this reason, the CDPSP plays a leading role in screening bids and helping utilities to assess the affordability of proposed PSP projects.

B8. What is "Risk Transfer" and Why Is it Important?

Both the private-sector partner and the government are concerned about risk transfer and risk management. Utilities should seek contracts that limit unanticipated liabilities and that clearly define the application of public-sector guarantees or performance undertakings to enhance the viability of a project. Private parties, in turn, put time, technological expertise and money at risk and seek conditions that enable them to mitigate these risks effectively. When risk resides with the party best able to manage it, the resulting efficiency gains can be considerable. Where private finance is obtained without risk transfer, there are no efficiency gains to offset the higher cost of capital. Such deals are not true PSP projects; they simply involve for the government use of a middleman and borrowing at a higher rate of interest. Therefore, a deal that does not involve adequate risk transfer should not be pursued. Section G of the guidelines focuses on risk issues and risk transfer

B9. Conclusion

Projects proposed for PSP need to meet the tests of affordability, value-for-money, and best practice. This section provided short definitions of these concepts; they are explored in more detail in the following sections.

C. Starting Off: Identifying Projects and Selecting a Team

This section focuses on the issues utilities should consider at the start of the PSP project life cycle, including:

- Identifying candidate PSP projects and their outcomes
- Determining how a PSP project may improve the cost-effectiveness of the department's operations
- Sound management of the PSP process is critical and utilities should establish an effective management structure at the start of the process, as suggested in the box at right

Project Identification and Preliminary Business Case: Getting the Project into the System

Processes
- Strategic planning;
- Preliminary business analysis;
- Team selection;
- Submission to CDPSP for Screening; and
- Contracting external consultant expertise.

Objectives
- Identify a PSP project and ensure that capacity is in place for its implementation

Key Questions
- Does it fit strategically?
- Is it affordable?
- What capacity exists and where?
- Is market demand sufficient?

C1. What This Means in Practice

PSP projects allow utilities to restructure and improve the cost-effectiveness of their operations, and can be both strategic and operational tools. A utility should, therefore, first consider the potential benefits it may expect from a PSP project. The box at right lists several possible overall objectives that can guide the subsequent development and implementation of the project.

Typical PSP Objectives
- Achieving cost savings
- Focusing on strategic business functions
- Improving quality
- Gaining access to new skills
- Accessing new technology
- Achieving greater operational flexibility
- Improving operational accountability

PSP projects are not a solution for all the challenges that confront a utility. They do not absolve chairmen, directors, and managers from their responsibility for ensuring satisfactory service-delivery. After examining the PSP option, a utility may well decide not to proceed with a PSP project for a particular function. However, even such an initial examination and the comparison process can be of benefit and result in substantial savings, such as the following:

- Chairmen may better understand service-delivery requirements of their utilities
- Focusing on the delivery of services, rather than on the more traditional governmental considerations

- Processes of procuring and managing staff and physical assets may enhance cost awareness

- Planning for PSP projects should be an integral part of the budget planning processes

Planning reviews provide a good opportunity for dealing with PSP projects. Because the PSP option is relatively new, utilities may need to revisit existing strategic plans. Where the PSP option is being considered, appropriate strategic-planning processes should be initiated both within the utility and in consultation with other departments and stakeholders. However, the *policy, planning, and contract management* functions of a utility are usually not contracted out to a private firm in a PSP arrangement.

When identifying candidate PSP projects, utilities should document and verify the *strategic and operational benefits* of a PSP project, compared to continuing performance of the function by the utility. Typical strategic questions include the following:

- What are the utility's priority services and functions?

- Is there a general public demand for the service?

- Are these needs being met currently and are there plans to meet these needs in future?

- What are expectations of stakeholders — utility, user groups, and investors? (see box at right)

  - How many current employees will be affected by the proposed PSP project?
  - Are public controversies likely to discourage private investors and force up costs?
  - Is there a pressing need to change the method of service delivery?
  - Which services and functions can be improved?
  - Will there be genuine risk transfer to the private sector?
  - Do existing facilities meet the required standards and who would be best suited to undertake expansions, upgrading and maintenance?
  - Which core functions or services should the government perform? Which others may appropriately be earmarked for some form of PSP?
  - Are PSP projects a viable option relative to others?
  - Do private parties have the appropriate skills and investor interest to perform the functions and services considered for PSP projects?
  - Are there strong indications that the project can deliver value-for-money?
  - Is there an identifiable revenue stream that this project can capture?

Stakeholder Consultation

Relevant stakeholders must be identified and engaged from the outset. These typically include potential users of the service, staff likely to be affected, residents of an area where construction is to take place and relevant Governorate and other government departments.

In dealing with a stakeholder, discussions should remain focused on issues pertinent to that specific stakeholder. For example, tariffs are more relevant to the users of the service than to labor representatives, who are more concerned about job security.

Discussions with affected staff are often complex and should focus on specific issues. Negotiations should ideally be structured around a clear agenda that addresses:

- Potential job losses
- Conditions of service
- Parity with public employment
- Grading
- Benefits
- Transfer and deployment

- Is political will sufficient for the project to move forward?
- Is there sufficient organizational capacity to carry out the project?
- What external assistance might be required?

- Determine and quantify, as far as possible, the *expected outcomes* for the performance of the utility function

- Identify the *actions required* to steer the PSP project through to expected start-up. This should include an indicative timeframe. Getting started usually entails the following steps:

  - Plan the timing and scope of consultative processes with labor, users, and other stakeholders
  - Determine contractual matters: what type of PSP contracting arrangement is expected — e.g., a BOT, concession or management contract
  - Indicate how the PSP project is to be procured
  - Indicate the major risks and how these are to be allocated between the department and the private party

- Identify *candidate functions or services* and prepare a services profile and initial scope of proposed projects. The box below provides an example.

An Illustrative Example of a Project Profile and Scope

Project Name: Water and Wastewater Project for El Gouna

Project Agency: South Sinai PEA

Contact:

Telephone: +

Fax: +

Project Value (Egyptian Pounds): 290 million

Objectives and Scope

The objectives of the project are to reduce unaccounted for water and extend water and wastewater service to 250,000 additional commercial, industrial and residential customers.

A private operator will take over, rehabilitate and operate the existing facilities and construct additional water treatment plants, lay new water mains, provide lateral connections from the mains to customers and provide sewer connections to current and new customers.

The project will be awarded as a 30-year concession. The concessionaire will: develop and expand the entire system, including raw water intake; rehab and construct treatment plants, including main lines, filter beds and storage capacity; and provide all personnel, supplies and equipment. At the end of the concession period, the incumbent can re-bid for the project and will be given a margin of preference of ten percent if he has performed satisfactorily. A pre-feasibility study will be commissioned in January 2001 to refine the initial business case and confirm the strategic value of the project. A full environmental impact study will be required as part of the feasibility study.

Procurement

The project will be procured by an international competitive bidding process from a shortlist of water and wastewater operators and developers identified through a pre-qualification process.

Project-Development Stage

The strategic assessment and preliminary business case will be developed by June 2000 and the final feasibility study by December 2001. CDPSP approval to proceed with pre-qualification is expected by March 2002.

Contact Officer

Mohamed Ali
Chairman
El Gouna Public Economic Authority

C2. The Project Team

C2a. Starting Early

Projects do not move forward without project champions; therefore, the core project team should be identified as soon as possible. The composition and membership of the team usually changes somewhat over time as additional requirements emerge.

C2b. Developing the Project Strategy

Prospective project team members may initially work with the chairman to form an internal strategic planning task force or informal project identification committee. They will initially focus on helping the chairman analyze and refine the elements of the strategic plan, which will directly influence project identification and implementation. For the duration of the project, the project team will be responsible for day-to-day management.

Team members will be dealing with bidders, advisors, project-team members, consultants, the press, users, community organizations and trade unions, while managing logistics and resources. In preparing for this, the newly constituted team should develop a practical strategy for project development. This strategy should consider the suitability and viability of various PSP-implementation options, and identify and analyze likely obstacles during different phases of the process and develop measures to manage such obstacles. Utilities will have ongoing access and support from the CDPDP for technical advice in this regard.

C2c. Team and Skill Selection

The standard principles of project management apply when selecting staff and creating an effective team. Important aspects are to:

- Clearly assign specific responsibilities to each member
- Delineate lines of accountability in the team and in relation to the utility and other agencies
- Define the results expected and indicate the rewards linked to the project

Careful planning is required when selecting the mix of competencies and specifying the capacity-building objectives for the team. Negotiation with bidders is fundamental to a PSP project, and the skills of the team should correspond to the probable composition of potential bidding consortia. For most team members, this is their first PSP experience. They will most likely be dealing with private-sector executives who have done numerous PSP projects. The team composition will, therefore, vary from partnership to partnership. However, some skills are likely to be required in most PSP projects, as listed in the box at right. Utilization of CDPSP and, as needed, appropriate external advisors should be involved to supplement the skills of the internal utility team.

Skills Requirements

Skills generally required in PSP arrangements include the following:

- *Financial expertise* is typically required around the commercial structure of special purpose companies, the viability and quality of bidders' funding bids, the financial aspects of bidder evaluation and negotiation to financial close.
- *Legal expertise* is needed on procurement issues, legal structure, risk assessment and allocation, as well as contingent liabilities, commercial matters and service contract documentation.
- *Procurement advice* will be specific to PSP projects, as these are often more complex and longer term than most other procurements in the public sector.
- *Expertise* may also be brought in to assist with output specifications, definition of performance standards and design of reporting techniques.
- *Technical know-how* is needed to assess project design bids, provide cost evaluation and develop user briefs and specifications of services.

C2d. Training and Skills Development

Team composition raises the question of training and capacity building. While PEAs and utilities will probably always require advice and support from external experts, some in-house skills should clearly be developed.

C3. Conclusion

PSP projects require systematic prioritization and strategic planning from the early stages of the project's life cycle. In the public interest, service requirements should be clearly articulated and a strategic analysis and preliminary business case conducted to stipulate the department's expectations of and future actions on a proposed PSP project. A core project team should be selected as soon as possible to direct PSP activities.

D. Assessing the Feasibility of PSP Arrangements

Once a utility is satisfied that a candidate PSP project has a sound strategic and preliminary business case, it needs to conduct a prefeasibility study in order to:

- Establish whether the project is in the public interest
- Strengthen the strategic and business case for the project
- Determine whether it is likely to be financially viable
- Confirm that it complies with all relevant laws and regulations
- Determine the factors that will make it attractive to private investors
- Prepare a comprehensive assessment of its value-for-money

The prefeasibility study should:

- Explain the strategic and operational benefits for the utility of a private-party involvement and any advantages or disadvantages to the public

- Determine whether the expected results are compatible with the overall strategic objectives and plans of the utility and the GOE's sector-reform policy

Prefeasibility Assessments To Determine If Project Can Go Ahead

Processes
- Expert analyses

Objective
- Determine the pre-feasibility of a proposed PSP project

Key Questions
- Is it technically sound?
- Is it financially viable?
- Does it offer value-for-money?
- Is it affordable?

- Assess whether such an arrangement will provide value-for-money and be affordable for the customers

- Include any relevant data and the economic criteria used to justify these assessments

- Explain the approach and methodology the utility plans to follow to procure the services of a private partner

- Explain the capacity of the utility to enforce the arrangement and to monitor and regulate implementation and performance in terms of the arrangement

D1. What the CDPSP Toolkit Says

This Toolkit is designed for use by agencies tendering PSP projects in the Egyptian water/wastewater sector and for bidders on such projects. Is in three volumes:

- *Volume one* provides the national legal and administrative context, including: all relevant laws and decrees; proposed laws and decrees; and a detailed description of the CDPSP and its functions.

- *Volume two* describes the strategic framework, general guidelines, contracting options and financial tools. Also provided in this section are procurement guidelines for transparent and competitive tendering.

- *Volume three* contains model contracts, guidance on contract monitoring and compliance and model terms of reference for hiring professional advisors.

D2. When To Do Prefeasibility Studies

Subject to satisfactory strategic analyses, the prefeasibility analysis should begin as soon as possible. Utilities should conduct the analysis in stages, determining the overall viability of the project before undertaking more detailed studies. For example, it is crucial to ascertain early on that the project is affordable for prospective customers. This will save considerable effort later on and reduce the risk to prospective private-sector partners. The utility must be strongly committed to the proposed project to avoid wasting the time of private investors who invest significant resources in preparing bids. If a utility is ill-prepared and has to call off a project when new information comes to light, the bidders' extensive work becomes futile and much time and money will have been wasted. For this reason, no bid document should be issued before the CDPSP has screened the bid and has conducted or sponsored a prefeasibility analysis.

D3. Obtaining and Using the Right Skills

The technical, legal, and financial aspects of PSP projects require expertise that is seldom available in the public sector. Internationally, PSP projects have usually required outside skills to assist government agencies and utilities. Good specialist advisors are worth their expense, especially on large-scale projects. They enable the utility to master the process from the outset, resulting in savings in project implementation. The government team should make certain that it has access to able consultants, legal advisors, financial advisors and other specific technical assistance.

Specialist advisors are typically designated on a project-specific, as-needed basis and only after the decision to proceed with the project has been made. Financial advisors are likely to be most effective when the project scope and output requirements are being defined, as services levels depend on affordability and budget allocations. Legal advisors may be required to assess risks, determine contingent liabilities and define the legal framework for the project.

D4. What To Assess

A feasibility assessment has nine essential components:

- Identification of all stakeholders
- Assessment of current infrastructure and current practices and procedures
- Evaluation of utility's organizational structure with regard to service to be assessed
- Determination of total demand and estimated costs of providing service needed
- Assessment of current revenues generated, if any, for providing the service
- Determination of source(s) of revenues used by the utility to provide the service
- Determination of the short- to medium-term capital needs for providing the service and the ability of the utility to obtain the necessary resources
- Analysis of relevant PSP projects that might be used to provide the same service
- A recommendation on the type of PSP arrangements to be employed, supported by a financial and institutional analysis

Prefeasibility studies for PSP projects address technical aspects, value-for-money, and affordability.

D4a. Technical Issues

Technical issues include design, legal requirements, service levels, expected outcome, technology requirements, and institutional arrangements. Analysis of such issues is necessary for specifying outputs and setting the standards for value-for-money and affordability assessments. The utility, with support from the CDPSP, is responsible for this work and relevant internal and external expertise can be mobilized as required.

D4b. Value-for-Money

This fundamental element of the feasibility study must be done in consultation with the host governorate. Analysts must be familiar with the concept of "value-for-money" and understand how it is determined. The technical nature of the analysis generally necessitates expert input and advice.

One definition of whether a PSP project provides value-for-money is if the net cost of private provision of the utility function is lower, taking all factors into consideration, than the net cost of utility provision. Of course, the standard of service delivery must at least be equivalent to the standard achieved through utility provision.

Determining how much value-for-money can only be ascertained after the cost of public provision is compared with the bids received by private parties. However, it is essential to assess, during the prefeasibility analysis, what it would (or does) cost a utility to provide the function being considered for a PSP project. As this analysis is complex to construct, the utility will probably require external assistance to assess relative costs/benefits of the project.

Value-for-money analysis requires sound and extensive cost accounting data to ensure that all relevant costs are identified and measured, including all overhead costs, contingent costs and the net gain or loss in tax revenues.

D4c. Affordability

A PSP project is affordable when the expected financial commitments can be utilized to provide the required service while charging a tariff or user's fee that reflects a reasonable proportion of the consumer's budget. The expected bid price, thus, determines the cash flow,

revenue and earnings, or the savings (avoided cost) implications of the contractual obligations of the PSP project.

To develop sound PSP projects and achieve timely implementation, utilities should develop an affordability perspective as soon as possible. This process is performed in the context of gradually eliminating any existing subsidies and moving toward a fully cost-recovering tariff structure. A PSP project will often require some credit enhancement and incentives to ensure that every opportunity to improve the revenue stream has been fully understood and discussed with representatives of users. This will ensure that there will not be unpleasant surprises after tenders have been received. For this, utilities should consider:

- Adjustments to recurrent expenditure, such as staffing, equipment rental, leases, technology licensing arrangements, repairs and maintenance
- Adjustments to actual or historical capital expenditure associated with replacement, expansion and/or technology upgrades
- Any potential proceeds from the sale or transfer of state assets to the PSP project
- The timing, structure, and profile of receipts and payments under the PSP project.

D5. Conclusion

During this phase of the PSP project life cycle, the prefeasibility analysis allows the utility to develop an initial assessment of suitability for private-sector investment, based on the preliminary business case. The need for and objectives of the project should be clearly established. Value-for-money and affordability should be determined and implementation arrangements identified.

E. Procuring PSP Projects

After the CDPSP review process has been concluded, and the project has been approved for implementation, the transparent and competitive procurement process is initiated.

E1. What the CDPSP Toolkit Says

Transparent and competitive tendering requires a PSP project to be procured in accordance with international best practices, usually starting with a general procurement announcement that includes a project profile and a contact person at the utility who is involved in the tendering. The competitive bidding includes an Invitation for Prequalification. Transparent and competitive bidding with clear selection criteria is necessary to ensure that the preferred bid offers best value-for-money.

E2. Prequalification

The purpose of prequalification is to compile a short-list of suitable firms with the experience and capacity to implement the project. Prequalification ensures that a manageable number of firms are invited to submit final bids. This is necessary, as bid costs for PSP projects are often substantial and potential bidders are more likely to bid if they have a better prospect of winning. Prequalification also improves the quality of the bids, since bidders engage more intensively in the process.

Prequalification requires prospective bidders to demonstrate that they have:

- Specific experience in the sector (e.g., water and wastewater systems operation)
- Successful performance on similar projects, with references from former clients
- Relevant experience and performance in similar economic, demographic, geographical, topographical or climatic areas
- Appropriate personnel and equipment capabilities
- Financial capacity to implement the project
- Capacity and commitment to promote technology transfer and local staff

Procurement: PSP Project Service Provider Selected

Objectives

Evaluate bids from potential service providers in terms of procurement criteria spelled out in bid documents.

Processes

- Prequalification
- Develop evaluation criteria
- Issue bid documents
- Evaluate bids
- Select preferred service provider

Key Questions

- Which service provider is preferred?
- Will real requirements be met?
- Is the bid evaluation fair and reasonable?

The prequalification criteria generally favor organizations that are recognized providers of similar services, with a dedicated staff and management. They should have specific and extensive experience in various projects of comparable size and complexity.

Once a viable project has been identified and suitable prequalification criteria have been developed, the utility should seek expressions of interest through a Request for Qualifications (RFQ) or requesting a Letter of Interest (LOI). The wider the solicitation process is, the more likely to attract interest from high-quality and experienced entities. Invitations for prequalification should be advertised in widely circulated newspapers, trade publications and periodicals and on the governorate's and Ministry's Web sites.

The box on the next page shows a sample prequalification advertisement for a hypothetical energy/water/wastewater project.

Depending on the complexity of the project, the prequalification document should require some or all of the following disclosures:

- A signed prequalification submission form
- An executive summary of corporate qualifications
- The organizational structure and capability of the firm or consortium filing the submission
- The filer's technical capability
- The filer's financial capability and available resources; proposed funding of the project
- The specific personnel selected to work on the project, with examples of their relevant employment experience and their complete CVs
- The legal capability and registration of the filer
- The filer's experience with PSP projects

Illustrative Example: Advertisement Inviting Pre-qualification

Islamic Republic of Mauritania
Special Commission for the Privatization of SOMELEC
PRE-QUALIFICATION TENDER

The Government of the Islamic Republic of Mauritania is currently conducting a restructuring of the Water, Water Treatment and Energy sectors. To that extent, the Government has decided to establish a preliminary list of experienced and qualified operators that may be interested in assuming the abstraction and treatment of water, and the generation, transmission and distribution of electricity in Mauritania. These activities are currently carried out by Societe Mauritanienne d' Electricite (hereinafter "SOMELEC") a wholly state-owned company.

The Government of the Islamic Republic of Mauritania hereby invites interested parties (the "Applicants") to participate in the pre-qualification of Applicants process pertinent to the Water and Energy Sector Reform. The Mauritanian Government is seeking to divest of 51 percent of the share capital of SOMELEC, together with management and operating control, to a strategic partner, which will be responsible for the continuing activities of SOMELEC and will undertake the investments necessary to the development of the sector.

- The selection and the Applicants will be conducted through a two-stage competitive and open bid process. The Applicants as thus invited, in the first instance, to pre-qualify for the formal bid process, which will be solely reserved to pre-qualified Applicants.
- The expression "Applicants" is defined as follows:
  (a) any incorporated entity currently operating in the water and electricity sectors, and more particularly with proven experience as an operator or owner of electricity generation plants and water/wastewater treatment plants as well as distribution networks which will meet the pre-qualification criteria listed hereafter or
  (b) any consortium of grouping of entities complying with the aforementioned pre-qualification requirements and whose leader satisfies at least the first three pre-qualification criteria listed hereafter
- In order to meet the relevant pre-qualification requirements, the Applicant will need to demonstrate either directly or through a majority held subsidiary (51 percent or higher)
  (a) A minimum of five (years experience in generation, treatment, transmission and distribution of electricity and/or water
  (b) A total installed capacity of at least 1,000 MW and/or 15,000 cu. meters/day
  (c) A distribution network of at least 1,000,000 billed customers
  (d) Minimum shareholder's funds of two hundred million dollars ($200,000,000) as at the 31st of December 2000
  (e) A minimum global annual turnover of five hundred million dollars ($500,000,000) over the last three financial years
- The comprehensive list of pre-qualification criteria, compulsory declarations and documents is provided in the Terms of Reference for the Pre-qualification of Applicants to which this notice is subject
- Interested Applicants may obtain the Terms of Reference for Pre-qualification of Applicants by contacting at their earliest opportunity the following:

Mr. Mostapha Ould Cheikh Mohamedou, President
Commission Speciale Chargee de la Privatization de la SOMELEC
14. Ilot Z. BP 5733. Nouakchott, Mauritania
Tel + 222 525 34 86 / Fax + 222 525 89 51

Mr. Stephane de Vaucelles, Director
Corporate Finance and Advisory
HSBC Investment Bank plc
Vintners Place, 68 Upper Thames Street
London EC4V 3BJ, United Kingdom
Tel + 44 20 7336 9467 / Fax + 44 20 7336 9500

- This request shall be in writing by post or facsimile and shall stipulate that it is a request for Terms of Reference for Pre-qualification of Applicants in the Water and Electricity Sectors by clearly displaying the mention "Demande de Dossier de Pre-qualification – Privatization de la SOMELEC" The relevant documents will be forwarded by courier to the Applicant or handed to any person that he may have designated. The Special Commission shall not be held liable for any loss or delay that may occur in the delivering of the documents.
- All pre-qualification documents shall be submitted by Applicants to the Special Commission at the address stated in paragraph five by 12.00 noon (UT) on the 15th of October 2001 and shall bear the mention "Demande de pre-qualification – Privatization de la SOMELEC"
- The Government of the Islamic Republic of Mauritania will reserve the right to accept or reject any documents received after the expiration of the deadline stated in paragraph seven
- The Applicants will be informed of the outcome of their request for pre-qualification in the manner and conditions prescribed by the Terms of Reference for Pre-qualification of Applicants.

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MR. Mostapha Ould Cheikh Mohamedou, President
Commission Speciale Charges de la Privatization de la SOMELEC
14 Ilot Z BP 5733 Nouakchott, Mauritania
Phone: +222 525 34 86 / Fax: +222 525 89 51 / E-mail:

Other matters that may be included are the filer's concept or views on how the submissions are to be evaluated. All relevant documentation should be provided in the RFQ, including pre-feasibility studies or available in-house reports. An important part of transparency is to accurately describe the status and capacity of the utility's assets. A charge to defray the costs of preparing and conducting the prequalification is appropriate. A common means of ensuring that candidates provide appropriate information is to supply them with a questionnaire that guides their responses into a specific format. Questions must clearly reflect the criteria that the utility wishes to apply. The CDPSP has developed such a format to assist utilities.

Once clear and objective prequalification criteria have been developed, the prequalification process should be reasonably straightforward. Chairmen and the procurement team should be satisfied that all the entities that have been short-listed are capable of carrying out the project fully and operating the project facilities efficiently. Since unsuccessful candidates may require a debriefing, the department should ensure that it has a clear explanation and record explaining why these candidates were not selected.

E3. Developing Bid Documents — The Request for Proposals (Bids)

To support open and competitive bidding, participation and transparency in the bidding process, the bid documents or Request for Proposals (bids) (RFP) should clearly stipulate all of the key bid requirements.

The documents should establish the rules of bidding and follow the conventions of competitive public-sector procurement. A copy of the draft contract should be included to facilitate the early identification of key contract issues. In procuring a PSP project in particular, the points in box below, should be observed.

Some Useful Pointers for Bid Documents

The invitation to bid should generally follow the normal procurement conditions in the public service. However, several aspects require particular attention in a PSP process. Instructions and initial correspondence to bidders should at least include the following:

- A full description of the project, including a clear statement of the objectives, scope and expected outcomes; the population to be served; stakeholder identification; minimum design and performance standards; environmental standards; existing service levels, tariffs, collection rates and departmental administration (as it relates to this project), intended service levels (though generally, rather than methods for achieving them); and an implementation schedule.
- The structure of the bid process being used (e.g., one-envelope or two-envelope bid).
- The bid-submission schedule and procedures including, among others, date, time and location of bid submission, bid security and bid validity period and the mode of bid transmission.
- Bid opening procedures, procedures for announcing the preferred bidder, method and timing of protests and procedures for adjudicating protests.
- The proposed timing of the pre-bid conference.
- The principles for setting and adjustment of tariffs, tolls, fees, charges and rentals.
- The scope and extent of any public support or enhancement measures, financial and otherwise, to be provided by the utility.
- A table that indicates the risk allocation between the utility, service provider and users.
- The bid form and general and specific conditions that will apply to the contract.
- A copy of the draft contract describing the nature of the proposed transaction (e.g., BOT, build-and-transfer, build-own-operate, concession, *et cetera*), including the duration of the contract.
- A copy of the pre-feasibility study.
- Pro forma performance guarantees.
- Appendices, including any relevant economic, social, demographic and environmental data that may improve the quality of the bid documents and/or references that may be useful to bidders, including references to relevant legislation and regulations

An RFP that is incomplete is counter-productive and will lead to repeated requests for explanations and clarifications. As these bid documents form a part of the PSP contract, poorly written and ambiguous documents are likely to be a source of future disputes and claims against the utility. It is critical that project specifications address the outputs to be delivered, rather than the inputs, allowing scope for private-sector innovation in the PSP arrangement.

A bidder's conference can, and in most cases should, be held to clarify the bidding procedures and project parameters, inform bidders of the availability of documents and project-related information, and allow them to inspect the project site. Bidders' conferences are normally held between 21 and 45 days after issuing the bid documents. During the bidders' conference, any modification of provisions or terminology in the bid documents should be in writing and be made available to all prequalified bidders

E4. Submission and Opening of Bids

The authorized staff of the utility should open the bids at the time, date and location specified in the RFP or specified by any extension of the deadline for submission of bids. Bidder representatives should be allowed to attend. The name and address of each bidder should be announced and recorded. Each bid received by the deadline should be examined to determine its responsiveness — i.e., verifying that it complies with the terms and conditions of the bid documents.

Utilities should prepare a comprehensive spreadsheet, including a checklist to ensure that compliance with each requirement is verified. The results of the examination of bids should be comprehensively recorded in the bid proceedings. Where bids are not responsive to the RFP, the reasons for their nonresponsiveness should be recorded. In addition, bids deemed to be non-responsive, or that contain arithmetical errors, should be rejected and not be subject to any subsequent evaluation and comparative procedures.

E5. Evaluating Bids

The bid-evaluation procedure often comprises two steps. Step one, the technical examination, is to ensure that the bids address the full technical objectives and performance requirements. Step two, the financial evaluation, is carried out only on those bids that are responsive and have passed the technical examination. Where two-envelope bidding is used, the financial bids of non-responsive technical bids will be returned, unopened, to the bidders.

The net-present-value (NPV) method of financial discounting is most often used to compare and evaluate the financial bids. The discount rate to be applied in the evaluation will be advised by the CDPSP. These steps are described in the boxes on the following page.

E6. Selecting the Preferred Bidder

A recommendation to award the contract is based on the match or fit between the technical and financial criteria and the requirements of the specific type of PSP arrangement (e.g., management contract, concession or BOT). Generally, the contract should be awarded to the bidder whose bid is responsive, who has satisfied the technical evaluation and whose financial bid provides *best* value-for-money. In the case of a concession arrangement, for example, this means that the proposed schedule of payments to the contracting entity (i.e., the government) from the private party results in the *highest* discounted present value. In the case

Evaluation of Technical Bids

The technical examination of bids should pay attention to the following issues:

- The technical bid should be suitable for local needs – do not use a high-tech solution where a lower-tech one will do; avoid over-designed or "gold-plated" facilities; consider the capacity of the utility to take over operation at the end of the PSP contract, etcetera.
- The proposed technology should be reliable and easy to maintain, with logistical arrangements for maintenance and support.
- The subcontracting plan should contain the number, nature and quality of subcontractors and assurances by the prime contractor for ensuring subcontractor quality and performance.
- The scope and extent of training programs for relevant staff should be outlined.
- The plan for utilization, redeployment or redundancy of the existing labor force, including reorganization of work patterns (e.g., job descriptions), should be proposed.
- The management plan should detail staffing, parent company support and local management.
- Arrangements should be made for the transfer or reversion of project facilities and staff to the government at the end of the contract period.

of a BOT arrangement, the proposed schedule of payments to the private party from a department results in the *lowest* discounted net present value.

The CDPSP toolkit explains in detail how these criteria should be applied. However, if none of the bids satisfies the value-for-money test, all bids should be rejected. The second-ranked bidder should also be identified and asked to hold his bid open for a specified period of time, in case a satisfactory contract cannot be concluded with the first-ranked bidder.

E7. Concluding the Evaluation and Negotiating the Contract

At the conclusion of the bid evaluation, the utility should prepare a bid-evaluation report that details the bid-evaluation process and the ranking of the responsive and technically compliant bids. The report should also include:

- The bid proceedings
- The bid-evaluation criteria;
- A list of all prequalified bidders
- A list of all bids that were rejected and the reasons for rejection
- A list of all bids that were subjected to evaluation and the ranking of those bids
- The recommended successful bidder

Evaluation of Financial Bids

The financial evaluation should consider the following criteria:

- The financial flows used in the bid document should be consistent with the minimum technical design and performance standards and with specifications in the bid documents.
- The financial flows of all bids should be evaluated over the concession period specified in the bid documents. Bids that show cash flows for shorter or longer periods should be disqualified.
- The Egyptian pound should be used as the currency of bid comparison.
- Bids should be carefully examined to ensure that reasonable provisions have been made for:
  - Staffing positions and costs.
  - Operating and maintenance costs.
  - Adequate working capital.
  - Replacement and renewal of equipment during the evaluation period.
  - Licenses, permits and payments with respect to technology licenses.
  - Income and other taxes.
- The examination must ensure that the demand projections and growth rates underlying the analysis are reasonable and broadly consistent with the demand projections included in the pre-feasibility study and/or bid documents. If included as part of the bid documents, these versions should prevail over the demand projections shown in the pre-feasibility study.
- Tariff assumptions should be consistent with those in the bid documents.
- The implementation schedule of the project should be consistent with the cash flows.
- Financing arrangements, interest and amortization of debt should be properly indicated and accounted for.
- The project cost estimates should be complete and account for all construction and operation costs. Any gaps or uncertainties in the cost estimates are grounds for rejecting a bid.
- The financing plan should also be examined for completeness.
- The results of the bid and proposed contract award should be published in widely circulated newspapers and on the Internet.

- The proposed schedule for contract negotiations

As discussed in the next chapter, the utility may then invite the first-ranked bidder for contract negotiations. The invitation should indicate:

- The deadline for concluding the negotiations. An RFP would typically indicate that the bidder must maintain the validity of the bid for a definite period of time (e.g., 45 days), anticipating that contract negotiations will be concluded in that time.

- That the utility reserves the right to begin negotiation with the second-ranked bidder if negotiations have not reached a satisfactory conclusion by the deadline.

The results of the bidding and contract-award processes should be published by notifying all bidders, in writing, of the results of the bid and contract award.

E8. Conclusion

The outcome of the procurement process should be to award a contract to the bidder whose bid offers the best value-for-money and satisfies the specified safety, environmental and performance standards. That recommendation should then be acted upon and strong efforts made to negotiate, agree on all terms and conditions and then to execute a contract within a short period of time, as outlined in Section G.

F. Contracting PSP Projects

Once the preferred bidder has been selected, the contract can be finalized. This often entails complex negotiation about contract details. It is in the interest of all parties — the utility, the prospective service-provider, and the end users — that these processes are specific and goal-oriented. They should facilitate a smooth transition from governmental service delivery to service delivery through the PSP project.

F1. What the CDPSP Toolkit Says

This Toolkit is designed for use by agencies tendering PSP projects in the Egyptian water/wastewater sector and for bidders on such projects.

- This Toolkit, in addition to describing the strategic framework and general guidelines, is the place to learn about contracting options and financial tools. Also provided are procurement guidelines for transparent and competitive tendering.

- This Toolkit also contains model contracts and guidance on contract monitoring and compliance, which describes procedures for

Contract Negotiations

Objectives
- Formalize conditions for the smooth transition of service delivery to the private partner.

Processes
- Goal setting
- Avoiding micro-management
- Monitoring arrangements

Key Questions
- Is it realistic?
- Who is responsible for what?
- Is it affordable?
- Is risk being transferred?
- What if something goes wrong?

75

enforcement of the agreements. It also includes information about the importance of adherence to the procedures for monitoring and regulation of implementation and performance in terms of the contract.

F2. Confirming that the PSP Arrangement is Affordable and Offers Value-for-Money

Unless the proposed PSP arrangement offers value-for-money and is affordable, it cannot proceed. The final negotiated contract will be reviewed by the CDPSP and its advisors to ensure that these core conditions have been met. The *Guidelines* will not deal with this in detail, but utility officials should follow the suggestions in Section F and in the various boxes to confirm that the bidding process has achieved a value-for-money and affordable outcome.

F3. Setting Up Suitable Project-Implementation Arrangements

Before awarding the PSP contract, utilities should incorporate suitable arrangements to ensure its cost-effective implementation. However, the temptation to micro-manage the private party should be resisted, especially by utilities with limited experience of PSP arrangements. Instead, the focus should be on monitoring whether the private party is achieving the outcomes specified in the contract. Key aspects of performance monitoring and oversight are briefly discussed below.

F4. Developing a Realistic Project-Implementation Plan

Realistic and effective implementation depends on the department's setting achievable timeframes and cost limits, practical design principles and services requirements and effective management arrangements. Most of this should be addressed early on, but the finalization of the contract creates a new opportunity to discuss key aspects with the service-provider as new information might necessitate some changes. Nonetheless, by the time the team prepares to negotiate a contract, the major elements of their implementation strategy should be in place.

F5. Negotiations with the Private Party

During this stage, negotiations should not be reopened over previously settled issues, particularly prices, costs and other fundamental aspects of the bid. Most commercial terms should, therefore, be clarified by careful scrutiny of the financial bid before the preferred bidder is selected.

The preparation for transition to private-service delivery entails refining the conditions to support the project. A utility may take the following steps to limit re-negotiation of key conditions:

- *Check the realism of bids early* by considering timeframes, economic and financial returns, costs, technical quality, *etcetera*. There are no definite rules for weighing these factors — officials should have a clear sense of their priorities and the risks they are willing to take with preferred bidders. It may be tempting to interfere with the bidder's bid, but the utility should manage the tension between ensuring that a bid is practical and engaging in detailed negotiations;

- *Confirm bidders' commitment*: Bidders, including their respective debt providers, should provide sufficient evidence of their commitment to the terms of the bid.

Utilities should not demand unconditional commitment — the commitment of debt providers, for example, will mostly be subject to due-diligence assessments after the preferred bidder has been selected. Utilities should, as far as possible, enable bidders and their associates to commit themselves to the project; and

- *Bridge affordability gaps*: As the commercial details become clearer during negotiations, upward pressure on price may emerge. This will force the utility to reduce some costs to keep the project affordable — for instance, by questioning the bidder's pricing assumptions or by adjusting the risk-allocation. While not substantially altering the rewards for private operators, utilities should acknowledge that negotiations do require some flexibility, provided that quality, value-for-money and affordability are not compromised. Only effective negotiation will ensure the right product at the right price.

F6. Risk Assessment, Mitigation and Allocation

Risk assessment, mitigation and allocation are important during all phases of project development, implementation and execution. Risk assessment, mitigation and allocation are, therefore, not confined to the transition phase, but this phase is significant as arrangements are finalized to effect the risk transfers and risk-sharing underpinning the project. The box below outlines the typical risks in PSP arrangements.

Key Risks and Contractual Mitigation Options

The major risks that contract negotiators on a PSP project must consider and mitigate include the following:

- *Design risk*: The private party is responsible for designing the goods and/or services to meet a specified level of service. Contractually, this typically means that the private party accepts the design risk and must pay all redesign costs if the facility does not meet the required performance standards.
- Construction risk: The private party is required to construct a facility according to performance specifications and a time schedule. In the contract, this is often dealt with by letting the private party bear all costs of meeting specifications and schedule requirements.
- Operating risk: The private party is allowed full control over operating costs, including staffing numbers and levels. Contractually, the private party is often made responsible for all operating costs and is expected to absorb all increases. The service provider bears all costs of meeting specifications and schedule requirements.
- Demand risk: The private party's revenues depend on the willingness and ability of users to purchase its services. Contractually, the private party is often expected to identify and satisfy the demand for the service. In some cases, government may mitigate this risk by an off-take or take-or-pay arrangement.
- Tariff risk: The payments for the goods and/or tariffs for the services are set without an agreed formula or without regard to costs. This typically happens when a government agency or independent sector regulator sets the tariffs. Contractually, the private party often has to accept that tariffs may not be adjusted automatically and it assumes responsibility to balance its costs and revenues.
- Collection risk: The private party collects tariff revenues without any collection-rate guarantee from the government. Contractually, the private party tends to bear all the risks for collecting revenues from users of the goods and/or services. Government may agree to cut off service to non-payers.
- Credit risk: The private party is solely responsible for paying its debt and the government makes no debt investment. The private party is generally responsible for its debt and debt service. However, this poses a risk to the government if services are suspended when a private party becomes insolvent.
- Contractual mechanisms must ensure uninterrupted service, even during insolvency. It is advisable to set out key risks as early as possible. Including these and the draft contract in the bid documents will facilitate effective and informed negotiation.

Risk issues are critical to both the private-sector partner and the government. The private operator puts time, technological know-how and money at risk, while the government may be subject to unanticipated liabilities or be expected to offer limited guarantees, credit enhancements or performance undertakings to enhance the viability of a project. If risk resides with the party best able to manage it, efficiency gains could be substantial.

Utilities need a contract that identifies all risks and allocates these to the party best able to manage them, while still achieving value-for-money and affordability.

F7. Typical Contract Conditions

PSP projects do not use a standard contract, but typical contractual provisions include the following:

- *Outputs* are specified, such as the scope of the project, performance standards and duration.

- *Financial conditions* include an agreed methodology for tariff setting and periodic tariff review, provisions for adjustment and allocation of the responsibility for tariff-collection. If services are not paid for by consumer tariffs, or the provider is not responsible for collecting tariffs, the government must pay for the services. The amount, terms and conditions of the government's payment must be outlined, along with the performance conditions for such payment.

- *Responsibility* for contractual obligations, such as construction, operation, repair and replacement of equipment and facilities, is allocated.

- *Public-sector financial support* is outlined in terms of the amount, nature and conditions for the provision of any financial support, credit enhancement and/or limited guarantee or undertaking to be provided by the government. Such support should be the minimum required for project success and should generally only be forthcoming during the initial stages when high levels of financial gearing are required to reduce the weighted average cost of capital.

- *Insolvency of the service-provider* is a risk the government must provide for. The contract should stipulate how this will be dealt with and what the implications will be for rights and obligations.

- *Administrative conditions* typically include the allocation of responsibilities upon termination of the contract, including the return of facilities and equipment and the transfer of responsibility for service provision to a successor service-provider. Other conditions include the identification of project milestones and events of default under the contract, the remedies available to either party in case of default, conditions for amendment and/or renegotiation of a contract, methods for resolving disputes, and plans for unforeseen events or *force majeure*.

A Legal Checklist

- Clear outputs and service conditions
- Duration
- Incentives for timely commencement and delivery
- Financial conditions (payment and pricing mechanisms, price variations, *etcetera*)
- Responsibilities of signatories
- Subcontracting
- Change of control (e.g., dealing with equity changes on the part of the supplier)
- Public support
- Dealing with defaults, early termination, insolvencies, *etcetera*
- Administration
- Indemnities, insurance, confidentiality, intellectual property rights

F8. Conclusion

Finalizing the contract and effecting a smooth transition from utility operation to service delivery through the PSP arrangement is a very delicate phase of the partnership. It often entails complex negotiation about contract details. It is in the interest of all parties — the utility, the prospective service provider and the end users — that these processes are specific and goal-oriented and that they facilitate implementation according to conditions that both protect the various parties and serve the public.

G. Contract Management

PSP arrangements require day-to-day management to ensure that they meet the required service-delivery targets and operate as planned. The contract is the basis of a long-term operational and institutional relationship between the government department and the private service-provider and this relationship should start on a sound footing.

G1. What the CDPSP Toolkit Says

This Toolkit shows how to establish mechanisms and procedures for:

- Monitoring the implementation of and performance in terms of the agreement
- Regulating the implementation of and performance in terms of the agreement
- Liaising with the private party
- Resolving disputes and differences with the private party
- Overseeing the day-to-day management of the agreement
- The role of EWRA in contract compliance and tariff adjustments throughout the contract's life

G2. Institutional Arrangements for Contract Management

The scope and complexity of the institutional arrangements will vary according to the nature and requirements of the specific type of PSP transaction. Typically, the following issues require attention:

- *Defining institutional relationships*: The parties to a PSP contract are the contracting utility and a private party, often a project company created specifically for the project. The project company usually has legally-defined relationships with other parties, including the project lenders and the various construction and operating companies in the project consortium. These companies frequently negotiate further contracts with subcontractors. A utility generally does not become involved in these arrangements. Its main concern is the relationship with the project company, and where required, the primary partners in the company, such as lenders and contractors.

- *Utility's project team*: Section D. of these *Guidelines* focuses on the creation and operation of the project team. Team members have to ensure that their utilities can manage a PSP arrangement. For this purpose, a project team is formed, headed by utility managers and often supported by external advisors.

- *Stakeholder and user consultation*: A primary challenge is to deal effectively with users of the service. Stakeholder representatives should be consulted throughout, from conception to post-contract evaluation. Utilities should follow their normal procedures for informing the public and interacting effectively with interested parties. Specialist input, especially social and legal, may be required to ensure the best possible means for such consultation.

Contract Arrangement:
Contract Successfully Implemented and Enforced

Processes
- Define relationships
- Project management
- Consultation
- Monitoring
- Interventions in defaults
- Dispute resolution

Objectives
- Manage the PSP contract in terms of its goals and objectives

Key questions
- What type of PSP?
- Who is responsible for what?
- Who should be consulted?
- How is compliance ensured?
- How should defaults be dealt with?

G3. Monitoring Performance

The contract must include provisions for monitoring and enforcement. At a minimum, these provisions should describe:

- The mechanisms for monitoring the contractor's performance with respect to the specified outputs
- How performance will be measured
- Reports required from the contractor, the details in such reports and the intervals at which they must be submitted

Once the contract becomes legally binding on the parties, the utility must monitor the process, ensuring that the contract and the relevant laws, decrees and regulations are enforced throughout the project period. Documents such as annual financial statements and technical and operational reports must be checked regularly to ensure that the private-sector partners are in full compliance with the terms of the PSP project.

The utility should secure a sufficient budget for monitoring. If any training is required for effective execution of this monitoring function, this should be done before the project start date. Alternatively, impartial outside specialists would be engaged to assist with the performance audit, evaluation and monitoring. Funding for performance monitoring is often included as a set percentage of revenues collected

G4. Ensuring Compliance

A PSP project delegates to a private party the right to carry out a designated function and to manage risks associated with the performance of that function. However, a utility cannot delegate its fundamental responsibility and accountability for the function. Utilities should, therefore, use contract management to ensure that their responsibilities are satisfactorily discharged.

When one of the parties to the contract fails to comply with its obligations, a default occurs. Utilities must ensure that the PSP contract defines:

- The events that constitute a default — e.g., the failure of a PSP service-provider to attain the contractually prescribed service quality standards by the specified date

- The remedies that may be exercised in the event of a default – e.g., penalties or specified liquidated damages to compensate the government for imputed costs or damages suffered as a result of unsatisfactory service delivery

As the above implies, the definitions of defaults and remedies under a contract are closely linked to the specification of the performance standards. The contract must, therefore:

- Distinguish between trivial non-compliance and the material or repeated non-compliance that constitutes default.

- Provide for clear and simple procedures for one party to notify the other of the alleged existence of a default. This should allow the other party to respond to the circumstances that led to the default within a specified and short period of time. For example, the contract may specify that the aggrieved party should issue to the non-complying party a letter that describes the default, the proposed remedial action and the time-frame for carrying out the remedial action.

- Specify a schedule of remedies that are consistent with the nature and importance of the event of default and its impact on the procuring authority or the public. The contract should also specify the defaults that constitute grounds for termination of the contract.

G5. Resolving Disputes and Other Issues

Procedures for resolving disputes between the parties should be clear, low-cost, timely and effective. This will reduce the risk of unresolved disputes affecting the quality, cost and availability of public services. Contracts should provide for:

- Mechanisms to minimize the incidence of disputes (e.g., regular meetings can be instituted to examine disputes, propose solutions and monitor implementation)

- Methods of dispute resolution aimed at minimizing court litigation (e.g., conciliation, mediation or arbitration)

- Safeguards to ensure the continuity of important services during a dispute, stipulating that both parties are to perform their respective obligations pending the resolution of the dispute

H. Summary and Conclusion

H1. Summary

These guidelines have been prepared by the CDPSP to provide a brief overview of the main components and procedures involved in the project life cycle arrangements for private-sector delivery of public services in the water/wastewater sector in Egypt.

More detailed information can be obtained from the CDPSP.

These guidelines comprise seven sections covering the essential components of PSP arrangements in Egypt, including the following:

- *Section A*: Discussed are objectives of the national reform strategy in the water/wastewater sector in Egypt; the decision to seek PSP in managing, operating and owning water/wastewater treatment and distribution facilities throughout the country; and a synopsis of the legal and regulatory framework being put into place to encourage and promote PSP.

- *Section B*: Discussed are the "what" and "why" of PSP projects and the requirements that they provide value-for-money and are affordable to the people of Egypt. The criteria for acceptance of such arrangements is that they must entail significant *risk transfer* from the public to the private sector, in order for such arrangements to be viable and sustainable over the necessary long-term duration (20 to 30 years or more), during which the investors must recover full costs and earn a reasonable rate of return, while providing services.

- *Sections C and D*: Discussed is how PSP contracting begins, most often by the state-owned utility identifying future demand for which it has insufficient resources to meet. Described are the initial steps of conducting pre-feasibility studies to examine the social, economic, technical and financial aspects and determining if the circumstances support a decision to seek PSP. Then covered is the establishing of a business case and scrutinizing the financial aspects, which are necessary steps in ascertaining whether, after making an investment and projecting the revenue to be created and earned through payment of tariffs affordable to consumers, sufficient revenue can be generated to recover costs, to service debt and to earn a market rate of return compatible with such projects in comparable socioeconomic settings.

- *Section E*: Discussed are transparent and competitive procurement procedures and the best practices found globally that enable countries issuing RFPs to receive responsive bids reflecting actual market conditions, and which may offer cost-effective solutions to urgent needs. Utilization of such procedures as prequalification of bidders and conducting of pre-bid conferences are explained.

- *Section F*: Set forth are the procedures in contracting for various types of PSP projects. Covered are the issuance of the formal RFP; the importance of indicating outputs and results, rather than specifying inputs; procedures for evaluating bids from prequalified firms to determine compliance with bid requirements; and technical and financial factor assessments. Also, covered are the identifying of risks, assessing them and devising mitigation measures based on allocation of risks to those parties best able to bear them. Standard contract clauses are provided.

- *Section G*: Dealt with are performance monitoring and use of techniques for ensuring compliance with contract provisions – measures such as incentive bonuses or penalties for delay or substandard output and measures such as liquidated damages, all of which provide powerful financial and economic incentives to private-sector service-providers to make their performance accomplish the agreed objectives. Also covered is alternative dispute resolution,

which provides lower cost and a speedier resolution of problems than the cumbersome, lengthy and costly process of judicial remedies.

These guidelines indicate the path being taken in Egypt to reform the water and wastewater sector by forging new relationships between the GOE and the private sector that result in enormous benefits to both.

Criteria for Assessing a PSP Project Bid: A Checklist

1. Affordability
- Projected PSP project service payments are identified.
- The project is affordable over the whole life of the contract, considering all existing and projected revenues.
- A sensitivity analysis on costs and revenues identifies a range of possible outcomes.

2. Output Specification
- Requirements are specified in terms of service outputs, rather than particular assets or solutions.
- A range of ongoing services is included in the requirement of the contract.
- The specification is pitched at a justifiable level of service, given the client and consumer profiles.

3. Risk Allocation
- The risk analysis and allocation deal with all foreseeable risks.
- Risk-allocation transfers the principal design, building, financing and operational risks.
- The utility considers the allocation of risks associated with usage, residual values, technology, obsolescence, as well as with changes in legislation or regulation.

4. Bankability
- There is evidence of commercial interest.
- A certain income stream is available to meet contract payments.

5. Essential Terms and Conditions
- The bid follows guidelines and precedents for commercial and legal terms.
- It covers for major risks.

6. Project Team and Advisors
- The team has project-management experience and will undergo training where appropriate.
- It has an appropriate and affordable range of skills and experience.
- Advisors are willing to share lessons and approaches.
- Arrangements are in place for a periodic review of advisors' performance.

7. Timetable
- The timetable covers all phases and provides for stakeholder consultation.
- The stages of procurement are kept to a minimum, consistent with achieving value for money.

H2. Conclusion

The MHUUC has begun a reform strategy that envisages new relationships and worldwide contributions, including significant new foreign direct investment, intended to help improve the health and upgrade the quality of life for millions of Egyptians. Years from now, the success or failure of these efforts will be seen to have relied upon the care and thoughtfulness that went into the tendering and negotiation of the contractual arrangements for private-sector participation. These *Guidelines, as part of* the more detailed Toolkit, specifically, when properly used, will likely ensure success for both parties. They will ensure:

- *Clear objectives and output specifications*: If the original objectives and outputs are not clearly specified, it will be more difficult to achieve the project objectives.

- *Strategic context*: In addition to project-specific objectives and criteria, a PSP project must be evaluated against the utility's strategic goals – how it contributes, relative to other delivery mechanisms, to achieving these and the overall sector goals.

- *Ongoing monitoring and communication*: During project implementation, the need for regular monitoring and accurate records must be impressed on the private parties. This will enable the contractor to correct problems, build on strengths and adapt to changing circumstances. Later, performance of these contracts will need to be evaluated and assessed.

- *Well-defined benchmarks*: The evaluation should address the value-for-money considerations. Information from monitoring will enable accounting officers to compare the mode of delivery through a PSP project with other delivery options.

- *Working with the CDPSP*: The CDPSP has a technical-support role throughout the entire PSP project life cycle.

Considerations that guided project-design are important starting points for making such evaluations. The outcome and findings should provide lessons learned for future projects, and where required, assist in determining the future of the particular service or facility.

Post-Contract Evaluation: Project Assessed and Lessons Learned

Processes
- Goal-based assessment
- Ongoing mentoring
- Communication
- Work with CDPSP

Objectives
- Assess value for money and performance and learn lessons for future projects

Key Questions
- Did the project achieve its goals?
- What mistakes were made?
- How could similar future projects be improved?

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Tariff-Setting in Private-Sector Projects

A. Introduction

The purpose of this document is to summarize international best practices for tariff arrangements in the water and wastewater sector under PSP and provide guidelines on tariff formulae and policy, tariff regulation and financial bidding processes and evaluation. Linkages between these topics are demonstrated when possible and examples from existing contractual arrangements and bidding documents are provided as available.

The document provides an introduction to the key issues and linkages to be considered when developing tariff policy and PSP arrangements in the water and wastewater sector. The document is organized as follows:

- *Section B* discusses tariffs — what they are, what they should do and key components
- *Section C* discusses tariff regulation — what is it, why have it, different rate adjustment methodologies and institutional arrangements
- *Section D* discusses financial bidding for PSP arrangements, including information requirements and other linkages to tariff regimes established in PSP contracts

B. Tariffs

B1. What They Are

Tariffs, for the purposes of this memo, are defined as the rates or prices charged to consumers for water and/or wastewater services. "Tariff" can, therefore, be interchanged with "rate" or "price".[1] Tariff *structures*, on the other hand, refer more specifically to the shape of the tariff schedule. For example, an increasing block tariff structure — often used as a conservation measure — implies that consumers pay more per cubic meter consumed the greater the volume of water consumed. This document does not focus on tariff structures but instead on the average tariff, or price, charged for water and/or wastewater services.

B2. The Function of Tariffs

As with most other commodities, water prices *provide a signal to operators* about how much water to supply. They also provide a signal to consumers about how much water to consume. In order to provide these signals accurately, tariffs should embody the following key pricing tenets:

- *Allocative efficiency*, whereby consumer prices are kept as close as possible to the costs incurred of serving the consumers

[1] Note that a service provider may not *directly* receive the tariff revenue generated from consumers but instead a (possibly related) payment or fee for its services from the government, asset owner or other entity.

- *Productive efficiency*, whereby goods and services are produced as cheaply as possible while still meeting quality standards (e.g., drinking water or effluent discharge standards)

- *Price sensitivity*, whereby operators have the incentive to expand supply in order to meet increased demand

- *Financial sustainability*, whereby revenues are adequate to cover costs to ensure the continued financial viability of an efficient service provider

These key pricing tenets are the basis for setting tariffs, however, in determining tariff levels and tariff policy, they must be balanced by government objectives for the sector. Some common objectives for tariff reform in developing countries are to:

- Attract private capital to the sector to expand and rehabilitate existing systems and increase production or treatment capacity

- Expand services into poor and rural areas

- Make water affordable for vulnerable groups

- Provide incentives for the operator to improve service and quality

- Improve the efficiency of management and operations, resulting in lower costs that can be passed through to consumers

- Ensure that wastewater is adequately treated prior to being discharged into the environment

- Make tariff calculation and regulation simple and easy to understand

The key pricing tenets and government objectives for tariff reform are in many ways related, but in some cases are inherently in conflict. For example, allocative efficiency requires subsidies to be minimized, while affordability for vulnerable groups may require large subsidies. When setting tariffs, it is important to meet government objectives. However, these objectives must be balanced by the recognition that the farther a tariff regime moves from the *key pricing tenets*, the farther tariffs will be from economically efficient levels. Therefore, the costs and benefits of such tariff policy must be made on a case-by-case basis.

B3. Average Costs versus Marginal Costs

At the heart of the question regarding how to set tariffs in a regulated industry so that prices send appropriate signals to both consumers and suppliers is the debate over whether tariffs should be based on *average costs* or *marginal costs*. Average costs are calculated by dividing total accounting costs related to supply by total water produced.[2] Marginal costs are the costs incurred by a water supplier for the "last" unit of water supplied.

[2] In the case of wastewater, average costs are the total cost of collecting and treating wastewater divided by total wastewater treated. Similarly, marginal costs for wastewater treatment are the costs incurred by the operator for the "last" unit of wastewater treated.

Microeconomic theory suggests that pricing according to marginal costs is more efficient than pricing according to average costs. This is because prices in competitive industries will gravitate toward marginal costs since they reflect the opportunity cost of producing or not producing.[3] However, for network industries such as water, often the marginal cost of supply is lower than the average cost, and therefore, average cost pricing may be more preferable for total cost-recovery purposes. For example, if there is spare capacity in an existing pipeline, a marginal increase in water consumption in the short-run may only lead to an increase in pumping and treatment costs. But if price is set equal to the marginal cost of supply, the operator will only receive enough revenues to operate the system, and not enough to cover the costs of building the pipeline in the first place.

Much time has been expended on considering how best to cover the large fixed costs incurred by service providers in the water industry, without losing the efficiency gains (e.g., the *key pricing tenets*) of marginal cost pricing relative to average cost pricing. Long-run marginal cost (LRMC) pricing is a possible solution. LRMC takes into account the costs experienced by the firm as it follows its *optimal expansion path* — building new capacity, exploiting new resources, *et cetera.* — in order to meet expected future demand. In this manner, tariffs can be set so that they reflect the efficiency of marginal cost pricing but do not jeopardize the operator's ability to recover costs.

Although attempts are being made to move toward LRMC pricing since it may result in more efficient and forward-looking prices, most water and wastewater tariffs are now based on average costs, even in developed countries where LRMC research has been extensive. This is due to information requirements for LRMC pricing, complexity of the concepts and difficulty in precisely defining "LRMC" and a company's "*optimal expansion path.*"

B4. Key Components of Tariff Formulae

Regardless of what form of tariff regulation is in place, the starting point of establishing the appropriate tariff level for the water and wastewater sector is cost recovery. If investors are not assured that they will recover the costs of their efforts and investments, they will not invest in the sector.[4] Thus, the key components of tariff formulae are the different types of costs incurred by the provider. These costs are briefly described below.

Operating costs, often called O&M expenses or "opex," are the costs of operating the business and performing routine maintenance of the assets in order to produce and distribute water and/or collect and treat wastewater. This category usually includes salaries and wages, purchased power and water; chemicals; other materials and supplies; and small equipment that does not extend the useful life of major facilities.[5]

Capital costs, or "capex", include the costs of building assets used for water abstraction, production and distribution, wastewater collection and treatment, and in some cases, costs for buildings and grounds. For example, capital costs would include the cost of building a new treatment facility or pumping station, or the cost of mains that are installed for system expansion. Capital costs include labor and materials used for building the assets, and are often classified into several broad categories: routine replacement or rehabilitation of existing

[3] See Kahn, Alfred E., *The Economics of Regulation: Principles and Institutions*, MIT Press, 1995.
[4] Even "price cap regulation" starts from the premise of cost recovery – although adjustments are made for expected efficiency gains. This is discussed in Section C. below.
[5] *Principles of Water Rates, Fees and Charges*, American Water Works Association, 2000.

facilities, improvements to facilities (e.g., capex incurred to reduce leakage), extension of the system and expansion (e.g., new production facilities).

The capital costs in a tariff formula are comprised of the return on these capital expenditures – i.e., the rate of return earned on investments made and the depreciation of the assets over time. The rate of return should cover the cost of debt and equity financing or the Weighted Average Cost of Capital (WACC) of the project. Determination of the WACC is one of the most contentious issues in regulation.

Overhead and administrative costs do not directly relate to production and distribution of water or collection and treatment of wastewater. They include, for example, head office expenses, certain taxes and special levies imposed by the government (e.g., regulatory fees). Note that these definitions may vary and are interchangeable. For example, taxes may be considered part of operating costs. In fact, often, "overhead and administrative costs" may be subsumed within the category of O&M costs. It is important, therefore, to carefully define each cost category when developing a tariff regime.

In addition to the key components discussed above, tariff formulae will often include additional adjustment components. For example, all operating costs may be set at an initial cost-recovering level for the first year of a PSP contract, and may be adjusted for following years in line with an index. Therefore, the tariff formula would include an adjustment per an operating cost index. Rate adjustments are discussed in Section C.

B5. Examples

A few examples of tariff formulae are provided below to demonstrate how the overall revenue requirement for providing services is calculated in different regions or contracts.

B5a. United States: Concession-type Arrangement

In the US, the "utility basis" is the method used for calculating the revenue requirement on which water and wastewater tariffs are based for investor-owned utilities.[6] An example is provided in the table at right.

Utility Basis	
O&M Expenses	$3,000,000
Taxes/Transfers	$50,000
Depreciation Expense	$900,000
Return on Rate Base	$600,000
Total Revenue Requirement	$4,550,000

Source: *Financial Management: Cost of Service Rate-Making Seminar*, May 2000, AWWA

In this example, capital costs are embodied in depreciation expenses and the rate of return on rate base. Taxes and transfers are an example of overhead and administrative expenses. Thus, the simple average cost tariff can be calculated by dividing the total revenue requirement by total volume of water sold or wastewater collected. Actual consumer tariffs depend on consumer category, metering, subsidies and whether marginal cost pricing is used.

[6] "Investor-owned" is the term used to describe private utilities in the US. These utilities are subject to different tariff-setting arrangements than publicly owned utilities.

B5b. BOOT/BOT Arrangements

The approach for tariff setting is slightly different for build-own-operate-transfer (BOOT) and/or BOT type projects. These projects are generally of a "greenfield" nature and involve the building and/or operating of a new facility, such as a treatment plant. The cost components of a tariff formula for such an arrangement are often broken down into fixed and variable elements. Fixed costs are the capital costs related to building the plant or other rehabilitation/improvement expenditures. Variable costs are related to operating and maintaining the facility and are, therefore, dependent on volumes of water produced or wastewater collected.

The U.S. City of Petaluma, California, has entered into a wastewater BOT agreement with a private company, whereby the company will construct new treatment facilities, refurbish or expand old treatment facilities and operate the facilities for the city for a monthly service fee as defined below.[7]

> Service Fee = Fixed Costs + Variable Pumping Charge + Variable BOD Charge + Variable Suspended Solids Charge

Here, "Fixed Costs" are capex and include working capital, debt service and repayment and expected returns. O&M costs are embodied in the variable pumping charge, variable Biochemical Oxygen Demand (BOD) charge and variable suspended solids charge. So, while the terminology used in BOT tariff formulae is different than that typically found in concessions, leases and other arrangements, the cost principles are essentially the same.

B5c. Tanzania: Lease-type Arrangement

The basis for tariff setting for the Dar Es Salaam Water and Sewerage Authority Divestiture (which is essentially a lease) is as follows:

- The operator (or lessee) tariff is to cover operating and maintenance costs, a rental (lease) fee and depreciation of the operator's own assets and yield a rate of return on equity of about 25percent; and

- The asset holding agency (or lessor) tariff should cover its own operating costs, service its debt and contribute a minimum of ten percent toward the agreed capital expenditure program. The lessor's initial tariff will be based on a break-even situation, and thereafter, a gradual increase toward long run marginal costs.[8]

The operator tariff plus the lessor tariff (and possibly other components) will make up the final consumer tariff. For the purposes of this document, the operator tariff is most interesting – this will be the tariff charged by the private operator and bid through the PSP transaction process (see Section D below). The operator tariff is mainly comprised of, as in the US' utility basis, O&M costs and a return on and of capital.

[7] Wastewater O&M Service Agreement, City of Petaluma, CA, 1994, DRAFT.
[8] Dar Es Salaam Divestiture Draft Contracts, 1999.

B5d. Ghana: Lease-type Arrangement

In Ghana, the government has converted the state-owned water utility into an asset holding company and has divided the country's urban water systems into two business units (A and B). Private-sector participation will be introduced in business units A and B via leases. The following formula is likely to be the compensation to the private operator (Lessee) for year "t"

$$\text{Lessee Fee}_t = (\text{taxes}_t / \text{volume}_t) + (\text{opex}_t / \text{volume}_t) + (\text{depreciation}_t / \text{volume}_t) + (R^*\text{capex}_t / \text{volume}_t),$$ where R is the rate of return earned on capital expenditures.

Again, this formula reflects operating costs (opex), capital costs (depreciation and the rate of return on capital) and administrative costs (taxes). The Lessee Fee provides the basis for the operator's revenue requirement. As in the example from Tanzania, this fee, plus the Lessor (Government) tariff, will be added together to determine the consumer tariff. Adjustments will be made annually for changes in exogenous costs and for expected efficiency gains.

B5e. Guyana: Management Contract-type Arrangement

Management contracts are different in nature than other forms of PSP, as they do not require that the private operator provide any funds for O&M or capital expenditure. Rather, the management contractor is paid a fee that covers the direct and indirect costs of providing professional staff, plus a reasonable return. In this manner, management contracts are similar to consulting contracts.

In Guyana, the Government is procuring a performance-based management contract for the country's water and wastewater system. In this contract, the management contractor's fee is calculated as follows:[9]

Management Contractor Fee = Fixed Fee + Incentive Compensation

The Fixed Fee is determined by the management contractor's financial bid[10] and is based on the cost to the management contractor of providing a core set of expatriate staff to achieve the objectives of the contract, and includes salaries, overheads and reimbursable expenditures, such as travel. The Incentive Compensation is an additional variable payment that is dependent upon the management contractor's achievement of certain performance targets that are predefined in the contract. The amount of incentive compensation is also determined by the financial bid, therefore, the management contractor has incentives to ensure that the incentive compensation is not unreasonably high and that it has a realistic chance of receiving this compensation by meeting the performance targets. In this manner, the structure of remuneration in a management contract embodies the principle of productive efficiency (see above, in Section B).

Typically, in a management contracting arrangement, the management contractor's fee is considered part of the utility's costs (opex) and is factored in to the calculation of the consumer tariff.

[9] S&W Consultants, Inc., *Consultancy to Identify an Appropriate Management Contract Option, Prepare Bidding Documents, and Assist with the Selection of a Private Operator: Interim Report,* December 2000.

[10] While the fixed fee is determined on the basis of the bid, the management contractor is required to substantiate, in the financial bid forms, its salary, overhead and other charges that were used to calculate the fixed fee.

C. Tariff Regulation

C1. What Is Regulation? Why Have It?

Regulation is the tool, which is used to monitor and enforce arrangements made between the public and private sector in the provision of certain services, the framework under which the relationship of the parties evolves, given changing circumstances and the avenue through which conflicts are resolved. Regulation can also apply between the public sector and parastatals, but this document focuses on the relationship between the public sector regulator and private sector regulated entity. The discussion below focuses specifically on tariff regulation in the water and wastewater sector.

Because the water and wastewater sector is characterized by long-term sunk investments with relatively low short-run marginal costs (see Section B), the sector is often considered a natural monopoly. This implies that a one large, monopoly supplier may be better able to provide services more cheaply than several smaller, competing suppliers (also known as economies of scale). Therefore, governments do not often seek competition within the sector (although they may seek competition *for* the sector via a competitively bid PSP arrangement).

In the absence of competitive pressures, monopolies can abuse their dominant position in the market. Consequently, regulation is required to ensure that the monopoly service provider does not abuse its power by charging too high prices or providing low quality of service – otherwise the gains from the economies of scale could be lost. This is especially important because demand for water is inelastic: water is a necessity and consumers will be willing to pay high prices in order not to be cut off.

On the other hand, private investors face high risks by investing in the water and wastewater sector. The nature of the assets, which are long-term investments, means that investors are exposed to potential government intervention – for example, expropriation of assets – and may have little recourse to do anything about it, as water pipes cannot easily be moved to a more business-friendly jurisdiction. Sound regulation can provide some assurance to private companies against such tactics or at least can define clear compensation and arbitration mechanisms, thereby reducing risk.

C2. Institutional and Legislative Framework Requirements

Tariff regulation can be administered through a well-developed framework – replete with laws and institutions to buttress the system, or regulation can be administered through a contract, monitored by an independent regulator and/or arbitrator.

In most developed countries and increasingly in developing countries, governments have attempted to establish a sound legal and institutional framework for the regulation of network industries, such as water and wastewater. In a well-developed regulatory framework, regulators must follow rules and establish guidelines detailing how they will handle adjustments to, and very importantly, disputes arising from tariff arrangements. For example, the US and UK have passed laws that describe the role and responsibilities of the regulator, as well as the obligations of service providers to both consumers and the regulator. Regulatory institutions have also been established in many developing countries, including Argentina, Brazil, Chile, Ghana, Jamaica, the Philippines, Sri Lanka and Trinidad and Tobago. Currently, the GOE is in the process of creating and operationalizing the EWRA.

Where there is limited regulatory capacity, regulation by contract may be sufficient. In this case, it is best when a well-qualified and independent third party — defined in the contract itself — is responsible for monitoring tariff adjustments, and is the first line of recourse for tariff disputes. Unfortunately, in many developing countries, the contractor itself is the sole regulator/monitor of the contract.

Because contracts cannot account for all eventual circumstances, establishing a broader regulatory framework within which the contract operates is preferable. In this way, unanticipated events can be handled in a consistent, transparent and predictable manner. The regulator, service provider and consumers will be held accountable for their actions through law. Sanctions and penalties will be easier to enforce — although it is important to ensure that arbitration and mediation are as expedient as possible. One needs to be realistic about the extent to which a strong legal and institutional framework can be developed in countries with limited regulatory capacity. But given that contract enforcement in most emerging markets is still maturing, some reform of the legal and institutional framework in any case would probably be necessary in order to ensure effective regulation and enforcement of PSP contracts.

Finally, different forms of PSP arrangements have tended to rely on different regulatory arrangements. Where governments have fully divested or established concessions and leases, they typically establish more comprehensive regulatory frameworks that involve the establishment of a regulatory agency. With BOT projects and management contracts, on the other hand, governments often rely on contract monitoring with little if any "regulatory" intervention.

The reason for these differences is the level of complexity of the PSP arrangements (where private involvement is greater, there is a need for more extensive regulation) and the rate adjustment mechanism, discussed below (some rate adjustment mechanisms require greater amounts of data and highly sophisticated calculations, which lend themselves to the establishment of a regulatory authority with the capacity to manage and absorb the data). There is some merit in this view, particularly in the case of simple management and service contracts. However, for long-term BOT projects, it may be more prudent to establish a sound framework under which a regulator can consistently and transparently deal with unforeseen events. This is important, as the output and tariffs resulting from BOT arrangements have a direct bearing on utility costs, and therefore, on final consumer tariffs.

C3. Rate Adjustment Mechanisms

The form of tariff regulation[11] adopted for a sector or project will be partly dependent upon the regulatory capacity of the sector. A regulatory system with sufficient capacity will be able to handle a more comprehensive rate-adjustment process.[12] There seem to be three main types/tiers of adjustments, depending on the form of PSP arrangement (i.e., concessions, BOTs/BOOTs, leases, *et cetera*):

- Periodic rate reviews
- Indexation formulae
- Extraordinary rate adjustments

[11] "Tariff regulation" refers to the methodology according to which tariffs are adjusted.
[12] Comprehensive does not mean complex: the development of complex adjustment processes is not a goal but more often an unfortunate (and not inevitable) by-product of more sophisticated regulatory regimes.

Where capacity is limited, a regulator's role may simply be to ensure that indexation formulae are calculated and administered properly. Regardless of the form of tariff regulation, or the method of rate adjustment, it is essential that the operator be required to provide financial and operating data in a manner and format that will allow the regulator to make informed decisions about the tariff.[13]

Several forms of rate adjustment methodologies are briefly described below.

C3a. Rate of Return (ROR) Regulation[14]

Sometimes known as "Cost-of-Service" or "Cost Plus" regulation, ROR has been the dominant form of tariff regulation in the US. Under this methodology, a regulated company is allowed to charge tariffs that cover its O&M costs and provide a fair rate of return on, and of, its capital.[15] If the company experiences material changes in its costs, it can request that the regulator re-set, or adjust, tariffs. Rate adjustments can be made frequently, even annually in some cases. Pass-through to consumers of exogenous (currency, change in law, *et cetera*.) and endogenous (salaries, chemicals, energy, *et cetera*.) cost changes is normal.

ROR regulation has many advantages. It is allocatively efficient because prices are typically close to costs. Because ROR regulation provides the assurance of total cost recovery, private operators have the incentive to expand supply and improve quality and the financial sustainability of the operator is likely to be high. As such, the risks borne by the service provider under ROR regulation are generally low.

The disadvantages of ROR regulation include possible over-investment in capacity and quality of service, often called "gold-plating," — in order to boost the rate base resulting in a larger total return and the lack of strong incentives for improving operational and investment efficiency.

C3b. Price Cap Regulation

Under pure price cap regulation, a regulator defines a maximum (average) price (or "price cap") that can be charged by the operator based on an optimal level of service provision and efficiency expectations. This optimal level is defined without taking into account the exact operational capabilities of the operator. As a result, price cap regulation normally does not require regulatory scrutiny of accounts to the extent of ROR regulation.

The operator charges the allowed price, on a weighted average basis, on water sold or wastewater collected. If the cost of providing service exceeds the allowed price, the operator must absorb the loss. If the cost is lower, the operator keeps the return — thus, the lower the operator's costs, the higher the return it will earn. Therefore, not all costs incurred by the operator will be passed through to consumers in the future, but only "prudently incurred costs," or those costs not in the operator's control (e.g., costs of new environmental standards). Price cap regulation, therefore, promotes productive efficiency.

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[13] In the case of PSP arrangements, this means that the financial information required by the regulator should be provided as part of the financial bid and then updated when rate adjustments are requested.

[14] This document provides only a brief summary and comparison of the oft-analyzed ROR and price cap methods. For additional information, see for example *Privatization: An Economic Analysis*, by Vickers and Yarrow, 1993, or *Resetting Price Controls for Privatized Utilities*, by Green and Rodriguez, 1999.

[15] See USA's Utility Basis example in B5a. above.

Price caps are used in the UK's water sector and are prevalent throughout Latin America. After the initial price cap is set (e.g., through bidding or based on previous prices), prices are escalated according to an RPI-X formula, increasing by inflation (the Retail Price Index, or "RPI") less an efficiency factor (X).[16] Rate adjustments are made periodically, for example, every five or ten years, according to how an ideally efficient company would be expected to operate.

In reality, price cap and ROR regulation are not too different. Because price caps should ensure the financial viability of an efficient company, regulators do often *de facto* require an understanding of the operator's costs, including the opportunity cost of debt and equity. Furthermore, to ensure that the incentive to lower costs does not result in poor quality service, some regulation of service quality is required. And to pass on the benefits of increased efficiency to consumers, regulators will want to know *ex post* how profitable the operator was in the last period, so that the price cap may be lowered in the future. The more the regulator depends on actual company data, the more frequent the periodic price reviews, and the greater the allowance of cost pass-throughs, the more similar price cap regulation becomes to ROR regulation.

C3c. Indexation Formulae and "Trigger Events"

Most tariff schemes in PSP arrangements define to some extent the criteria for price adjustments. In its simplest form, initial allowed tariff levels will be adjusted in line with inflation. In other cases, prices may be disaggregated into various cost elements (see Section B.) and each cost element will be adjusted with indices that reflect changes in those costs. For example, operating costs may be divided into staff, electricity, chemicals, *et cetera*, and these costs may be adjusted (separately or by a weighted average index) in line with wages, average national electricity prices, chemical costs, *et cetera*.

The regulator and/or transaction advisor determines which costs to index based on the desired risk allocation of the PSP transaction. In pure ROR regulation, all costs are indexed and passed through to the consumer, and the risk for the operator is low. Pure price cap regulation is at the other extreme, allowing little to no cost pass-throughs.

Usually, tariff adjustment mechanisms in PSP schemes fall somewhere in between. For example, it may be expected that the private (often foreign) operator should take on some foreign exchange risk since these risks may be hedged in the currency markets. But should the private operator incur the risk that electricity prices (possibly controlled by the government) increase several-fold. Another important question is how often the cost components should be adjusted. These are policy decisions that need to be made by the government and discussed with the regulator/transaction advisor.

In addition to indexation formulae, tariff schemes should outline the "trigger events" that will result in an automatic tariff adjustment. Trigger events are usually events that are not within the private operator's control and which would have a serious impact on the operator's revenue or cost stream. Depending on the type of PSP arrangement, trigger events in water and wastewater transactions often include unanticipated swings in inflation or the exchange rate. Trigger events may also include changes in law and/or regulations, such as changes in environmental, labor or accounting standards.

[16] The actual formulae used in the UK and some Latin American countries today is more complicated. In some cases, RPI – X + K is used, where K is the additional cost that must be borne by the utility in meeting new, stricter environmental laws.

C4. Examples from Recent PSP Arrangements

Below are a few examples of rate adjustment mechanisms from recent PSP transactions in the water and wastewater sector.

C4a. Dar Es Salaam, Tanzania[17]

The initial operator tariff (OT) to be bid by the lessee will be adjusted annually through the indexation formula below:

$$\text{Annual Adjustment} = FE + a*I + b_1*F_1 + b_2*F_2 + b_3*F_3 + c*K$$

where: "FE" is the proportion of the OT associated with fixed costs; "a" is the proportion associated with local salaries and locally-sourced goods and services; "I" is the movement of an Index of Retail Prices for goods consumed by minimum wage earners as published by the government; "b_1, b_2, b_3" are the proportion of the OT associated with foreign-sourced items; "F_1, F_2, F_3" are the movement in currency rates of three foreign currencies; "c" is the proportion of the OT associated with electrical power; and "K" is the movement in the price of electrical power.

It appears from the formula that it is intended for the operator to take on risks associated with increases in fixed costs, but not, for example, risks related to increases in electricity prices. Furthermore, the operator has the incentive to improve efficiency in order to beat the given indices. Additionally, the regulator will conduct a major tariff review every five years.

C4b. Buenos Aires, Argentina[18]

The 30-year concession contract is regulated by the Argentina regulatory agency and a regulatory framework law was passed in 1992.

- The rate setting methodology is broadly a price cap: the concessionaire can increase its returns by holding actual costs below the agreed index for price increases

- Ordinary price reviews take place every five years, where additional modifications beyond adjustments in line with agreed indices will be considered. Modifications are not to penalize the operator for efficiency gains nor allow for general changes in market conditions: "the concession is based on the principle of entrepreneurial risk"

- Extraordinary reviews can be initiated when the cost elements of the tariff increase by seven percent or when the government imposes new standards or taxes

C4c. Manila, Philippines[19]

The 25-year concession contract sets out the circumstances under which the price initially bid by the concessionaires can be changed.

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[17] *Dar Es Salaam Divestiture Draft Contracts, 1999.*
[18] Aguas Argentinas Concession Contract, 1993.
[19] Manila Concession Agreement, 1997.

- Average prices can be adjusted each year by the percentage change in CPI less one;

- Rate-rebasing takes place every five years, when the rate of return on cash flows earned by the operator is checked to ensure the concessionaire can cover its investments over the 25 years, earning the rate of return originally bid (with some adjustments); and

- Extraordinary price adjustments are allowed for unforeseen events in order to provide for changes in service targets or to impose penalties when service targets are not met.

The Manila rate-rebasing procedure is well defined in the contract, whereas the Buenos Aires contract does not provide for any specific approach to be taken at price reviews. Although it is always important that rate review procedures be carefully defined, it is especially important in a case like Manila where the sector regulator is not very independent nor established through primary law.

C4d. BOT/BOOT Arrangements

Rate adjustments for BOT/BOOT arrangements are usually simpler than for concessions: there often is no "regulator" and no ordinary periodic reviews.

- The fixed element of the service fee (see Section B.) may be adjusted through a simple inflation index or may be adjusted for changes in the exchange rate;

- The variable element of the service fee can be adjusted with inflation or broken down into smaller components (e.g., wages, chemicals) and be adjusted accordingly. Adjustments for changes in raw water charges or major deterioration in raw water quality are also common; and

- Extraordinary adjustments may be allowed, for example, for changes in project scope or government regulations (e.g., environmental).

C4e. Guyana[20]

As discussed earlier, under management contracts, the management contractor's fee is a cost element of the utility, and therefore, is factored in when calculating the consumer tariff. The performance-based management contract allows the management contractor's fee to be adjusted according to the following formula:

$$Rf = Rfo \times lf/lfo$$

where: Rf is the adjusted remuneration; Rfo is the remuneration payable on the basis of the portion of the management contractor's salaries and overhead in foreign currency; lf is the official index for salaries in the country of the foreign currency for the first month for which the adjustment is supposed to have effect; and lfo is the official index for salaries in the country of foreign currency for the month of the date of the contract.

[20] Performance-Based Management Contract for Water Supply and Wastewater Services in Guyana, 2001.

This formula clearly recognizes the currency risk that the management contractor is being asked to assume and mitigates that risk via indexation.

D. The Financial Bidding Process

For most PSP transactions, there is a technical-bid stage and a financial-bid stage. The two stages can take place concurrently or the technical stage can occur first, with all qualified bidders then moving on to present financial bids. Financial bidding as it relates to overall tariff regulation of PSP arrangements is discussed below.

D1. What Is in the Price Bid? Common Examples from PSP Arrangements

Qualified bidders may be asked to present the price they require for the provision of required services. For example, each potential operator may bid what price it plans to charge consumers for each cubic meter of water delivered so that it can earn its desired rate of return. Such a price may be a direct charge to consumers (e.g., in the case of concessions) or a fee paid by the government/asset owner to the operator (e.g., in the case of a lease).

Similarly, bidders may be asked to present the price adjustment they would require: how much would each bidder increase or decrease the existing consumer tariff in order to provide the required services and earn their respective desired returns.

In some other cases, particularly for BOT/BOOT arrangements, bidders may be asked to present cost components – for example, the breakdown of their costs into a fixed element and a variable element. Unlike with concessions where capital commitments can change dramatically through time, under BOT/BOOT arrangements, capex requirements can be determined at the onset, and therefore, may constitute the main aspect of the bid.

D2. Contract Negotiations and Modifications

Regardless of the format of a financial bid, it is important to note that for the bid process to be transparent, equitable and easily and fairly evaluated, the government must provide bidders with a draft contract as part of the RFP. This should be the contract that the government wants to enter into and will provide all bidders with an equal footing on which to base their bids. Bidders should be allowed to mark-up the contract and submit these mark-ups for consideration. All contractual changes or deviations must be resolved and communicated to all bidders prior to submission of bids.

Once the contract is modified and sent to bidders and a preferred bidder is selected, the government should not negotiate the contract further, unless the modifications are immaterial and do not require changes to the financial bid. If this is not the case, and the government entertains material changes to the contract as part of its negotiations with the preferred bidder, it may face protests from other bidders that feel they have been treated unfairly and the negotiation process may be seriously delayed. In either case, the government risks creating "deadlock" in negotiations and may jeopardize its ability to close negotiations.

D3. Information Requirements

Often bidders will be required to present back-up information that supports their bids. They will be required to present the information in a financial model, demonstrating all linkages to the resulting bid. Information to be provided should at least include:

- Opex and capex assumptions, including expected efficiency gains through time
- Assumptions for return on and of investments (cost of debt and equity, depreciation, *et cetera*)
- Demographic assumptions (number of connections, population growth, *et cetera*)
- Statement of accounts (profit and loss, balance sheet, cash flow statement)

Information requested during bidding is critical as it can provide comparative information from various bidders that will enable a regulator to make more informed decisions for future rate adjustments. Because bidders will want to win, they will be relatively ambitious in their targets. Later, when tariff increases are requested at price reviews, the regulator can use this information for additional guidance. Therefore, it is important that the financial bid requirements be driven by the information requirements for future tariff reviews. In particular, a regulator will be interested in possible future efficiency gains and the operator's own calculations and expectations regarding WACC.

D4. Bid Evaluation and Award

Bidders will normally be asked to determine their bids through net present value calculations of future cash flows based on their required return. Evaluators will confirm the results of the winning bidder by scrutinizing assumptions and financial model linkages.

During the bid evaluation and award process, adjustments to bid prices should not be encouraged and can lead to accusations of misbehavior and lack of transparency. The possibility of price negotiations *ex post* should also be discouraged: if bidders are sure that negotiations are expected *ex post*, all bidders may present bids that are fairly higher than necessary, expecting that in negotiations prices might be lowered.[21]

Although it is difficult to eliminate such "gaming" altogether, measures can be taken to minimize it. For example, if the tariff adjustment methodology in the PSP arrangement allows for certain cost pass-throughs, bidders have the incentive to use low assumptions for these items. Therefore, it is important to either remove cost pass-through items from the bid process or to provide set values so that all bidders will be on equal footing.[22]

If bidders are told that values bid for capex, for example, are subject to regulatory scrutiny and approval soon after the bid, bidders may have some incentive to bid too low, knowing there might be an imminent upward revaluation by the regulator if it turns out during the concession that otherwise critical service requirements will not be met. Thus, tariff review procedures should be made carefully and clearly *ex ante*.

[21] Adjustments to the tariff may be made after the operator has commenced work and discovered that the assumptions provided by the government *ex ante* were clearly wrong. However, this should not greatly affect relative bids since all bidders would have been provided with the same information.

[22] Such a process was used in the bidding process for the Suez concession, in which bidders were told to assume inflation of four percent and electricity prices of LE0.25 per kilowatt hour.

D5. Examples

D5a. Dar Es Salaam, Tanzania

For the on-going lease transaction for water and wastewater services in Dar Es Salaam, bidders will bid the operator tariff (see Section B.) and are expected to submit a financial model and detailed financial bid forms. The examiners will conduct "a detailed financial examination of the lowest offer received and any other financial offer considered appropriate."[23]

Interestingly, in this case bidders not only bid the OT but are also expected to provide bids for b_1, b_2 and b_3 of the tariff adjustment formula (see Section C.), where "b_1, b_2 b_3" are the proportion of the OT associated with foreign-sourced items. It seems careful thought has been given to linkages between the financial bidding and future tariff adjustment processes.

D5b. Manila, Philippines

The tender process for the Manila concessions was considered comprehensive and relatively speedy. Financial bids were the maximum average tariffs required by each bidder, expressed as a percentage adjustment to the then existing rates being charged.[24] Bids were calculated through a net present value of cash flows based on a clearly demarcated desired rate of return.

The information required during bidding was clearly linked to the future rate review process: rate-rebasing takes place every five years, when the NPV on cash flows earned by the operator is checked to ensure the operator can cover its investments, earning the rate of return originally bid with some adjustments made to the WACC based on current financial markets data. Unfortunately, the concessions have seen many problems, mostly related to the issue of extraordinary adjustments (see Section C.).

D5c. Suez, Egypt

The financial bids for the Suez concession in Egypt were on the basis of the maximum average tariff per cubic meter of water produced and prices were presented for all 33 years of the concession. Bids were calculated through a net present value of the prices on a pre-defined discount rate.

The financial bid information originally required by the RFP was only the prices, presented in a price form. Bidders' exceptions to the draft contract were to be included in the financial bid envelope, as were the bid bonds and performance security. During technical evaluation and prior to the opening of financial bids, bidders were also asked to provide copies of the financial models used in calculating their bid prices. The models included breakdowns of all cost elements (opex, capex, *et cetera*.), as well as debt and equity assumptions.

D5d. BOT/BOOT Arrangements

The financial bid requirements for BOT/BOOT/O&M-type arrangements vary widely. In some cases, only lump sum capex requirements to build the designated asset are required. In other cases, cost components and the resulting service fee are required. A model may or may not be used, although the use of a model will make bid evaluation easier and more transparent

[23] Bidding Information, Dar Es Salaam Divestiture, June, 1999, DRAFT.
[24] Bidding Procedures Memorandum, September 1996.

even for relatively simple PSP arrangements. Detailed financial information, a model and sensitivity analyses are required from bidders for the Bulucan Bulk Water Project.[25]

Because rate reviews are not anticipated, links to tariff adjustments are not often considered. Nevertheless, assumptions, such as efficiency expectations and required rates of return, provided at bidding can always be helpful when future tariff issues arise.

[25] Bulucan Central Bulk Water Supply Project, Information Memorandum, 1997.

SECTION III

Contracting Options for Private-Sector Participation (PSP)

In recent years, governments in emerging markets have been turning with increasing frequency to the private sector for help in developing and delivering water and wastewater services. For governments facing growing demand for service, chronic operational and institutional deficiencies and limited fiscal resources, the private sector is increasingly being recognized as a valuable source of new technology, management expertise, and investment capital. International experience demonstrates that, if properly designed, private-sector participation arrangements can bring dramatic improvements in the quality, availability, and cost-effectiveness of water and wastewater services.

Most literature on private-sector participation identifies five options for implementing PSP projects. They are:

- Service contracts
- Management contracts
- Leases
- Build-Operate-Transfer contracts and variants
- Concessions

These options can be arrayed along a spectrum according to the level of private-sector involvement, as shown in Figure 1 on the next page. At one end are those contracting vehicles in which the government retains full responsibility for operations, maintenance, capital investment, financing, and commercial risk; at the other are those models in which the private sector assumes a greater share of the responsibilities and risks.

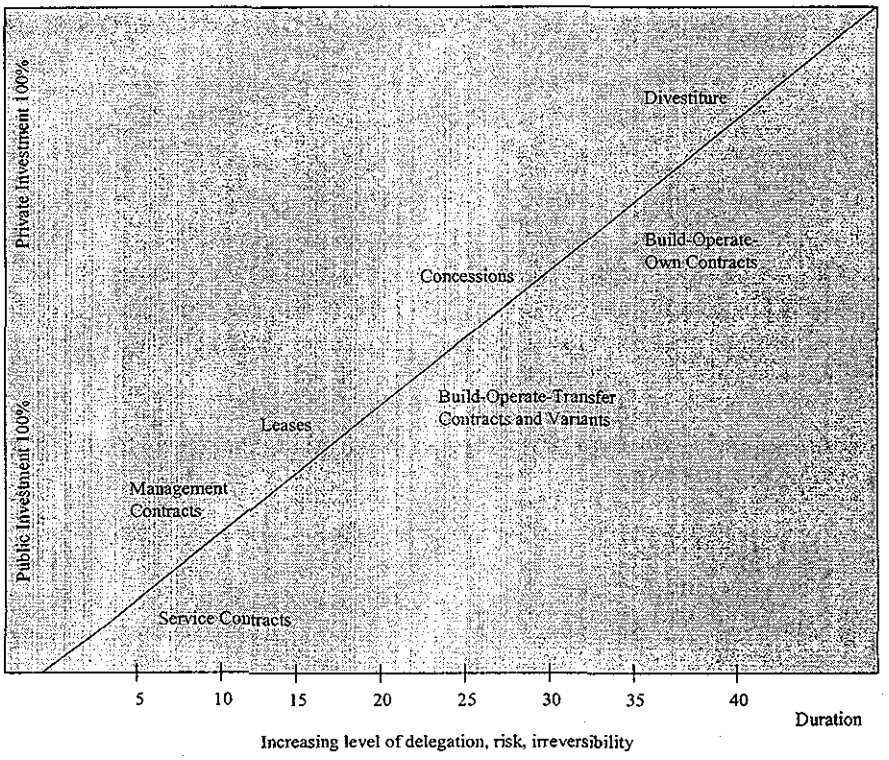
While these are considered to be the main options, it is important to note that, in practice, PSP arrangements are often hybrids of these models. For example, management contracts sometimes include revenue-sharing provisions common to lease agreements and leases sometimes transfer responsibility for small-scale investment, rehabilitation or renewal to the private sector, as is characteristic of concessions. The following sections present a brief overview of the models for PSP, cite examples of where these models are in use and offer some lessons drawn from international experience in the use of each option.

A. Service Contracts

Service contracts are legally binding arrangements between a properly empowered government authority and a private-sector provider to perform specific, usually non-core tasks of the utility, such as meter reading and installation, operations and maintenance, information technology service design and delivery, billing and tariff collection, janitorial services or security services, in exchange for a fee. These contracts are typically competitively bid, and are for short periods of six months to two years, after which they are rebid. The responsibility for general control and supervision of the utility, as well as any capital investment in the system, remains with the public authority.

Figure 1

The Range of PSP Options



Service contracts are used widely throughout the world. In Malaysia, the Johor Water Company (JWC) has implemented a service contract to help reduce leaks in the Johor Bahru network (see box below). In India, Madras Metro Water has contracted services ranging from the provision of staff cars to the operation and maintenance of sewage pumping stations. The water utility in Santiago has contracted out services accounting for about half its operating budget, including computer services, engineering consulting services and repair, maintenance and rehabilitation of the network. To enhance competition, the Santiago utility has at least two service contracts for each kind of task.

An Example of a Service Contract

Like many water utilities in developing countries, the publicly owned Johor Water Company (JWC) has relatively high non-revenue water. The JWC owns and operates the water supply network throughout the state of Johor in Malaysia. Johor Bahru is the capital of Johor state. Joror Bahru's bulk water is supplied under contract by a privately built, owned and operated water production and treatment plant. The JWC, under this contract, must pay for all water supplied to the utility, including unaccounted-for water lost through the utility's leaking pipes. The need to reduce leaks is clear. In response to this need, the JWC awarded a service contract for leakage reduction to a third party. Payment under this contract is linked to performance tied to certain key performance indicators.

In 1995, the level of non-revenue and unaccounted-for water in Johor Bahru was 21 percent compared with 29 percent in the remainder of the state (Asian Development Bank, 1996).

While service contracts require only a limited degree of private-sector participation, they provide opportunities for the introduction of competition and private-sector expertise and free up the utility to focus on its core business. Because the contract period is short, contractors are subjected to frequent competition, which encourages efficient performance and reduces the cost of the contracts. In large urban areas, different firms can be contracted in separate

geographical areas to deliver the same services. Multiple contracts ensure adequate competition and enable the water authority to compare costs and performance on an ongoing basis. Service contracting can be an attractive form of PSP where there is strong political or community opposition to wider involvement of the private sector, opposition to water tariff increases or where the utility is seeking to shed responsibility for non-core functions.

Public authorities that plan to utilize service contracts may need to undergo some changes to fulfill their new role, which shifts from execution to supervision. For example, institutional reforms may be required to decentralize control, provide technical assistance at the local level, enforce standards for quality and control, and manage staffing changes.

Despite the potential long-term benefits to the population as a whole, the introduction of service contracting sometimes has a short-term negative impact on those employees working in the operations who may be made redundant. Governments have addressed this dilemma by providing support to those employees in forming and financing private companies to compete for the service contract or by providing retraining and severance to support employees in finding work in other professions.

B. Management Contracts

Management contracts transfer responsibility for the operation and maintenance of government-owned utilities to the private sector. Under such contracts, ownership of the water utility and responsibility for service provision remain with the government. Likewise, the bulk of the commercial risk and all the capital and investment risks remain with the public authority. Management control and authority, however, are transferred to a private operator, which applies its expertise to improve management systems and practices. Management contracts are generally three to five years in duration. Compensation may be in the form of a fixed fee (a fixed-fee management contract) or it may be linked to performance indicators (a performance-based management contract).

Under a standard *fixed-fee management contract*, remuneration to the private sector contractor is based solely on the payment of a fixed fee in exchange for the provision of specialized personnel who oversee the management of the system.

The more sophisticated *performance-based management contracts* provide for the introduction of greater incentives for efficiency by defining performance targets or contract milestones and basing remuneration, at least in part, on their fulfillment. One variant of this model provides for a profit-sharing incentive, in which the operator's remuneration is a combination of a fixed fee plus a share in the profits of the utility. Both the performance-based management contract and the profit-sharing variant are effective tools for ensuring that operating and commercial risks are shared by the management contractor. However, under both models, the public authority still bears the financial risk associated with its responsibility for capital investment.

Performance-based management contracting provides the management contractor with incentives to improve operating efficiency and achieve timely compliance with the performance milestones in its contract. An advantage to these contractual models is the ability to create incentives for the contractor to tackle issues (such as staff development) that are not revenue generating in the short term, but that may establish a foundation for more efficient and sustainable performance over the long term.

The performance-based management contract is the most common management contract model in use around the world today. Some recent examples include:

- The Government of Venezuela awarded a performance-based contract to a Spanish firm in 1997 to improve cash flow, creditworthiness, and service in the water sector in Monagas State (see box below).

An Example of a Performance-Based Management Contract

The Government of Venezuela began a program of water-sector reform in Monagas state in 1994 in order to improve cash flow, creditworthiness and service delivery in the state. To accomplish these objectives, the Government awarded a performance-based management contract to a Spanish firm in early 1997 following an international competitive bidding procedure. The Government of Venezuela also instituted a number of reforms to establish a board of directors with regulatory authority and set the stage for private-sector participation.

The management contract in Monagas gives the private contractor direct responsibility for managing the entire utility with responsibility for water services to 12 municipalities and the state government, including commercial policies, human resources, service contracting and investment planning and execution. In addition, the operator has full control over resources for small capital works and the commercial system.

The contractor's remuneration is a combination of fixed and incentive payments and includes penalties that are activated if the operator fails to meet certain targets. The incentive payments are based primarily on the operator's performance with respect to reducing unaccounted-for water and improving collection efficiency.

To date, the introduction of private-sector participation through the performance-based management contract in Monagas state has achieved significant results in several areas. The operator oversaw the development of a reliable accounting and cost-control system. A detailed cadastre of users was developed, resulting in an increase in registered connections from 48,000 to 81,000. Tariff collection rates tripled. Both personnel costs and total costs were reduced by restructuring or terminating expensive third-party contracts, reorganizing and reducing utility staff and renegotiating labor contracts. Water is now available 22 hours a day rather than 12 (World Bank, 1998).

- In Gaza, Palestine, a performance-based management contract was awarded to a private consortium with the goals of increasing the quantity of available water by improving the i) efficiency of operations and distribution; ii) quality of the water supply and of wastewater effluent; and iii) management through better operations, revenue collections and customer service and by strengthening utility institutions through long-term planning and training.

- The Government of Jordan awarded a management contract with a profit-sharing incentive aimed at addressing chronic operational, management, and financial deficiencies characterized by high levels of unaccounted-for water, rapidly increasing incremental costs of water, poor financial performance, and inadequate cost-recovery mechanisms.

These and other experiences have shown that the incentive-based approach of performance-based management contracts is the most effective in producing positive results for both the public and the private sectors.

Management contracts are most beneficial where the main objective is to rapidly enhance a utility's technical capacity and its efficiency in performing specific tasks or to prepare for a deeper level of private-sector participation. They are also attractive when there is strong political or public resistance to water tariff increases or where there is concern about handing over control of investments to the private sector.

Management contracts provide little potential for expanded service coverage. Because they leave all responsibility for investment with the public authority — they are not recommended if a government has as one of its main objectives accessing private finance for new investments. Because they do not necessarily transfer financial risk to the management contractor, they provide few incentives for the private operator to reduce costs and improve quality of services.

C. Lease Agreement

Under a lease, a private firm (Lessee) leases the assets of a utility from a properly empowered government authority (Lessor) and assumes the responsibility for operations, maintenance and renewals for a period usually between 10 and 15 years. Typically under a lease, the tariff is used to pay the "Lessee Fee," which remunerates the Lessee for its costs, plus a reasonable return. The remainder of the tariff goes to the government and is used to fund capital investment in system expansion, rehabilitation and other improvements. As the Lessee's fee is dependent upon tariff revenues, the Lessee assumes much of the commercial risk of the operations.

The private operator's remuneration is directly linked to the charges it collects from customers under a well-structured lease. From these charges, the Lessee pays the public utility a rental fee intended to cover the public utility's capital costs for system expansion and rehabilitation. The Lessee's profitability will, therefore, depend to a large degree upon how much it can reduce costs, while still meeting the quality standards set forth in the lease. Best practice leases have built-in incentives that encourage the private operators to implement efficient billing and collection procedures to improve the collection ratio from customers (including government agencies). The Lessee also has an incentive to implement aggressive policies aimed at expanding service coverage to increase the revenue base (although it is important to note that the government retains responsibility for carrying out and financing expansion), to reduce operating costs in order to maximize profits and to carry out regular preventative maintenance to increase the reliability and longevity of plant and equipment.

Under a lease, the public utility retains title to the assets and bears the responsibility for financing and planning capital investments and rehabilitation. It is, therefore, incumbent upon the government to raise financing and coordinate its capital-investment program closely with the private contractor's operational and commercial program.

Leases have been used widely in the water sector in France and Spain and are currently in place in Guinea (see box on the next page), the Czech Republic and Senegal. They were also used in Cote d'Ivoire until replaced by a concession.

Leases are most appropriate where there is scope for large gains in operating efficiency, but only limited need or scope for new investments. Leases have also sometimes been advocated as stepping-stones toward a deeper level of private-sector involvement through concessions. Their administrative complexity and the demands they place on governments are nearly as great as those of concessions, so a lease is a much bigger first step than a management contract. Due to their complexity, leases generally require that an independent regulatory body be established to monitor and enforce the private operator's fulfillment of its obligations under the lease.

An Example of a Lease

When the Republic of Guinea's water supply sector was restructured in 1989, it was one of the least developed in West Africa. At that time, a new autonomous water authority, SONEG, took over ownership of the urban water supply infrastructure and assumed responsibility for sector planning and investment. SEEG (49 percent government-owned and 51 percent owned by a foreign consortium) was created to operate and maintain the system's facilities.

Under the ten-year lease signed with SONEG, SEEG operates and maintains the system at its own commercial risk. Its remuneration is based on user charges actually collected and fees for new connections. SEEG also benefits from improvements it achieves in the collection ratio, from reduced operating costs and from reductions in unaccounted-for water. Since SONEG has ultimate responsibility for capital investment, it has strong incentives to ensure adequate tariffs and to make prudent investments based on realistic demand forecasts.

To ensure that tariff increases would be affordable, the Guinean lease included an innovative cost-sharing arrangement. Under the agreement negotiated by the government, the two sector entities and the external financier (the World Bank), the consumer tariff was to be increased gradually from the first to the tenth year of the contract. During this period, the World Bank agreed to assume a declining share of the foreign exchange expenditures of operation and the central government covered a declining share of the debt service. By the tenth year, tariffs were expected to cover the full cost of providing water services. Tariff increases have exceeded the planned schedule, rising from $0.12 per cubic meter in 1989 to about $0.75 in 1993. Despite higher tariffs, the collection ratio for private customers has increased dramatically – from less than 20% to more than 75% in 1993 – and technical efficiency and service coverage have improved. *(World Bank 1994)*

D. Build-Operate-Transfer (BOT) Contracts and Variants

BOT, BOOT, Build-Own-Operate (BOO), Rehabilitate-Operate-Transfer (ROT), and similar arrangements are contracts specifically designed for greenfield water supply or wastewater projects or investments in water supply and/or wastewater infrastructure that require extensive rehabilitation. Under such arrangements, the private sector typically designs, constructs and operates facilities for a limited period of between 15 and 30 years, after which time the contractor relinquishes all rights or title to the assets to the public utility — however, under a BOO contract, the assets remain indefinitely with the private partner.

The government or the distribution utility will typically pay the private partner for water from the project at a price calculated over the life of the contract to cover its construction and operating costs and provide a reasonable return. The contract between the private partner and the utility is usually on a "take-or-pay" basis, obligating the utility to pay for a specified quantity of water whether or not that quantity is consumed. This places all demand risk on the distribution utility. Alternatively, the distribution utility might pay a capacity charge and a consumption charge, an arrangement that shares the demand risk between the utility and the private partner.

These types of arrangements have not been used extensively in the water and wastewater sector for a number of reasons. While they are attractive for new plants that require large amounts of financing, such as large water treatment plants or wastewater treatment plants, bulk water supply investments are not suitable in systems with major problems, such as high unaccounted-for water or poorly maintained water distribution systems, where the increase in supply and pressure can further exacerbate problems in the system.

Another problem with BOTs is that, because water production and distribution are the responsibility of separate entities, it can be very difficult to tie increases in production to increases in demand. BOTs and their variants have been used for water treatment in such countries as Malaysia (see box on next page) and Australia and for sewage treatment in Chile and New Zealand.

An Example of a Build-Operate-Transfer Contract

Johor Bahru is a southern city in the state of Johor, Malaysia. The city, like the remainder of the state, is supplied with water by the Johor Water Company (JWC). A study undertaken by the company in 1991 found that water shortages were imminent unless bulk water supplies could be expanded, particularly in the capital Johor Bahru. As funds were not available to resolve this problem, the state and federal governments decided to seek PSP in the supply of bulk treated water.

Tender documents for the Johor Bahru bulk supply project were issued in August 1991. The three bidders for the project were pre-qualified consortia made up of local and international companies. Competing bids were submitted by December 1991.

Since June 1992, Johor Bahru's bulk water has been supplied under a BOT/ROT contract. The contract requires a three-stage rehabilitation and construction program. Stages 1 and 2 have been successfully completed. Commencement of the third stage will be triggered when consumption reaches a prescribed level.

The successful completion of Stages one and two has resulted in a substantial increase in the quality and quantity of bulk water supplied to the city of Johor Bahru. The bulk water supply capacity had increased by 75 percent within 30 months of the contract signing. By 1996, capacity had more than doubled. The volume of bulk water supplied under the contract had increased from 30.4 MGD in 1992 to 65 MGD in 1996. Until the Asian economic downturn in the late 1990s, production continued to grow, with demand increasing by approximately 11 percent in 1997.

Contracts for private-sector investment in bulk water supply will generally lead to an increase in the retail water utility's costs. Allowances for cost increases must be recognized in the BOT contract to sustain the profitability of the utility. Such measures were not put into place in the case of the Johor project. The JWC's water tariffs have not changed since 1991. However, the bulk water costs associated with supplying retail water have increased in nominal terms because, under the BOT/ROT contract, the price of the bulk water purchased increases annually. In 1995, for example, Johor Bahru's average bulk water tariff was RM0.96 per cubic meter, whereas the average retail water tariff per cubic meter for domestic consumers was RM0.60 and RM1.60 for industrial users. It has been reported that the JWC has not been profitable in recent years. The failure to link retail water tariffs to the bulk water charge has contributed to this situation.

(Asian Development Bank, 1996)

Effective implementation of BOT-type contracts requires careful attention to the design of tender documents and can involve a relatively lengthy bidding process. Experience with some BOTs shows that they achieve some savings in capital construction costs and facilitate more rapid investment in infrastructure. However, they can be an expensive way of substituting private debt for public debt if there is a take-or-pay contract for the sale of bulk water to the retail utility. Additionally, many BOTs have failed to deliver optimal outcomes for government or consumers because the government's agency responsible for negotiating allowed too much of the risk to remain with government, especially where foreign exchange guarantees are provided or where take-or-pay contracts are signed.

Concern about the effectiveness of BOT-type contracts has led a number of governments to ban or at least place restrictions on their use. For example, the Government of Malaysia has decided that it will no longer use this form of PSP (see box on the following page). Similarly, in 1993 the Government of the Peoples' Republic of China imposed a freeze on rates of return for BOT contracts. This effectively halted foreign projects for over two years. These controls have now been eased and BOTs are to be considered on a case-by-case basis. The Government of the Philippines renamed its "BOT Center" as the "Coordinating Council for Private-Sector Participation" CCPSP in order to reflect its move away from the BOT model in favor of concessions. The World Bank is now encouraging its client countries to bundle investments in additional production of water with concessions for water distribution. This type of arrangement ensures that increases in production are closely linked to projected increases in demand.

E. Concessions

Under a concession, the private contractor, or concessionaire, bears overall responsibility for the services, including operation, maintenance and management, as well as capital investments for rehabilitation, renewal and the expansion of services. The fixed assets either remain the property of the public authority or revert to public ownership at the end of the concession period. concession contracts usually have a duration of 20 to 30 years, depending on the level of investments and the period required for the concessionaire to recover its investments plus a reasonable rate of return.

Concessions are typically awarded on price, with the award going to the bidder proposing to operate the utility and meet the investment targets for the lowest tariff. The concession is governed by a contract, which sets out such conditions as the main performance targets for coverage and quality, performance standards, arrangements for capital investment, mechanisms for adjusting tariffs and arrangements for dispute resolution. Penalties are imposed if the Concessionaire fails to comply with the performance targets specified in the contract.

The concessionaire is paid for its services directly by the consumer, based on the contractually set tariff, which is adjustable over the life of the contract. The concessionaire retains the balance of revenues after paying back any taxes and charges levied on consumers by the public authority. If expenses exceed revenues, the concessionaire must absorb these losses. Combining the responsibility for operations and investments under a concession agreement provides the concessionaire with an incentive to make efficient decisions regarding investment and technological innovations because the operator will benefit directly from any efficiency improvements.

Concessions have a long history of use in the developed world and are increasingly being used in developing countries such as Colombia (see box below), Argentina, Bulgaria, Romania, the Philippines, and Malaysia.

An Example of a Concession Agreement

With the support of the Inter-American Development Bank and the Government of Colombia, the city of Montería selected a concession as the contracting vehicle to be used in improving and expanding water and wastewater services delivery. In 1999, the municipal water authority served only three-fourths of the city's 263,000 people for an average of 21 hours a week. Only one household in four had a sewerage connection and 55 percent of the system's water was lost due to wastage, leaks or illegal diversions.

After a transparent and competitive bidding process, a 20-year concession agreement was awarded to the private Spanish firm FCC (Fomento de Construcciones y Contratas S.A.). FCC now operates the system and has launched an expansion program. By 2019, 90 percent of Montería's people – to number 460,000 by then – will have water, 80 percent will have sewerage and service quality will have improved dramatically.

Of course, consumers will pay more – about three times the current price over the first five years. Before going ahead with the deal, transaction advisors and the municipality assessed consumers' willingness to pay, then set a ceiling on the price using an internationally accepted standard (3-4 percent of monthly income). The winning bidder offered the lowest tariff, 30 percent below the prescribed ceiling, and the highest number of new sewerage connections.

The concessionaire will earn estimated returns of up to 20 percent on its $20-million investment and the concession is expected to lead to capital investments worth $70 million. If the municipality refuses to allow tariffs to rise, a government-guaranteed credit facility compensates the contractor for losses. If the concessionaire fails to meet service obligations, it faces a graduated series of fines and penalties.

The main advantage of a concession is that it passes full responsibility for operations, maintenance, rehabilitation, renewal, and system expansion to the private sector, and thus, creates incentives for efficiency in all the utility's activities. Therefore, concessions are an attractive option where large investments are required to expand coverage or to improve the quality of services.

Concessions are administratively complex undertakings for governments, because they confer a long-term monopoly on the concessionaire, and thus, require rigorous monitoring and enforcement. The quality of regulation is, therefore, important in determining the success of the concession, particularly the distribution of its benefits between the concessionaire (in profits) and consumers (in lower prices and improved service).

Table 1. Main Features of Private-Sector Participation Options for Water Supply and Wastewater

PSP Option	Service Contract	Management Contract	Lease Contract	Build-Operate-Transfer (BOT)	Concession Contract
Financing investments	Public sector	Public sector	Public sector	Private sector	Private sector
Financing working capital	Public sector	Public sector	Private sector	Private sector	Private sector
Contractual relations with retail customers	Public sector	Private sector (on behalf of public sector)	Private sector	Public sector	Private sector
Private-sector responsibility and autonomy	Low	Low	Low to medium	Medium to high	High
Need for private capital	Low	Low	Low	High	High
Financial risk for private sector	Low	Low	Low to medium	High	High
Duration of contract/license	6 months – 2 years	3 - 5 years	5 - 15 years	15 - 30 years	20 - 30 years
Ownership	Public sector	Public sector	Public sector	Private then public sector	Public sector
Management	Mainly public sector	Private sector	Private sector	Private sector	Private sector
Setting retail water tariffs	Public sector	Public sector	Contract and regulator	Public sector	Contract and regulator
Collecting retail water tariffs	Public sector	Private sector	Private sector	Public sector	Private sector
Main objective of PSP	Improve operating efficiency	Improve technical efficiency	Improve technical efficiency	Mobilize private capital and/or expertise	Mobilize private capital and/or expertise

Source: Idelovitch and Ringskog (1995) and Tasman Asia Pacific.

Table 2. Division of Public and Private Responsibilities Under Common PSP Models

	Responsibility for:				
	Operation	Maintenance	Renewals	Rehabilitation	System Expansion
Service Contract	Private	Public	Public	Public	Public
Management Contract	Private	Private	Public	Public	Public
Lease	Private	Private	Private	Public	Public
BOT and variants	Private	Private	Private	Private	Public
Concession	Private	Private	Private	Private	Private

Source: Institute for Public-Private Partnerships (IP3).

SECTION IV

Guidelines for Financial Analysis and Modeling

A. Timing and Purposes

A1. Overview

Timing. Financial analyses of projects involving PSP are performed at three stages in the project-development cycle:

- Project screening
- Prefeasibility study
- Bid evaluation

Results. Through financial analyses, the analyst can:

- Estimate impacts on users (tariff levels and tariff structure requirements)
- Identify structural problems that affect a project's financial performance, and craft solutions
- Estimate both the short- and long-term financial performance of a project
- Determine the potential attractiveness of a project to investors and lenders

Ultimate goal. Although each stage of analysis has its own objectives, as a part of a prefeasibility study that addresses a range of technical, financial, and institutional issues the overall goal of financial analyses is to determine if a project is:

- Economically viable; that is, if it will result in a tariff that the customers will be able to afford and if it will yield other social or economic benefits

- Financially viable; that is, if potential investors and contractors, working with the tariff structure, will be able to meet their risk-adjusted required rates of return

- Bankable; that is, if it can meet the requirements of potential lenders

Analyses of projects by the CDPSP and sponsoring utilities performed during the screening and prefeasibility stages will support the decision to proceed with a tender.

Generally, financial analyses are most useful for investment projects such as BOTs and BOOTs, which require a significant capital investment to fund new construction. In some cases, these analyses will be useful on projects such as concessions or management contracts that involve some capital investment over time (for example, for expansion or system upgrading).

Transactions such as management or service contracts that involve no capital investment generally do not warrant intensive financial analysis prior to the bidding stage, since it is assumed that such arrangements will result in operating costs that are lower than current costs under public operations, as well as in improved performance and service delivery. However,

even with these contracts, financial analyses can provide a benchmark as to what can be expected in bids by estimating the amount of savings possible. For example, they may indicate that the projected savings are not significant, and therefore proceeding with a contracting arrangement may not be warranted.

A2. Analytical Stages

Screening. Screening is the first step in the project development cycle. The purpose of the project-screening exercise is to determine whether there is enough PSP potential in a project to undertake a more detailed and resource-intensive technical and financial evaluation (the prefeasibility study), which would be the preliminary step to issuing a tender.

The screening exercise will help the sponsoring utility:

- Confirm the need for and define its project
- Identify structural alternatives (e.g., concession, BOT, etc.)
- Estimate the impact on tariffs and/or the need for a tariff
- Assess the likelihood that the project can be made sufficiently attractive to contractors, investors, and lenders

The aim of the financial analyses performed during project screening is to give the CDPSP and the project's sponsoring utility confidence that taking the next step, a detailed and comprehensive prefeasibility study, is warranted, or to highlight weaknesses in a project that need to be corrected before additional CDPSP consideration can be given to it.

Guidelines for financial analyses during project screening are provided in Volume I Section III, which discusses the entire project screening process.

Prefeasibility study. The prefeasibility study is a comprehensive, albeit preliminary, technical, institutional, and financial analysis of a project. The prefeasibility study looks at various options and combinations of project structure, technology, capital costs, operating costs, financing and investment scenarios, tariff impacts, and affordability. It is used to develop and evaluate alternatives and select a preferred approach, based upon technological adequacy, economic viability (affordability and value), and financeability and bankability (attractiveness to contractors, investors and lenders). The results of the study will determine whether, overall, the project is viable and, thus, should be considered for tendering.

The prefeasibility study is the closest approximation of the bids the project can expect to attract, without actually receiving bids.

- It answers the questions: If the project is put out for tender, will bidders respond with legitimate, reasonable bids? Is there enough confidence to proceed with the next steps in the issuance of a tender? (Bidders will only respond if they believe that the project will be financially viable).

- It also facilitates the identification of weaknesses and the testing of various solutions (which, for example, may involve government subsidies or guarantees) that will correct the weaknesses and make the project viable.

Prefeasibility financial and economic analyses guidelines and models are discussed below.

111

Bid evaluation. Bid evaluation is the third and final stage of financial analysis by the sponsoring utility. Here, actual bids received from bidders will be evaluated to select the contractor for negotiations and eventual contract award. In this step, the analysts will be working with "real" numbers — the capital, operations, financing, investment, and tariff proposals submitted by bidders.

- It identifies areas or information that need clarification or expansion and helps identify areas of a bidder's financial proposal that warrant negotiation.

- The analysis compares the individual cost, financing and revenue proposals and information submitted by the bidders, enabling the ranking of the bidders and the selection of the winning bidder for negotiations and potential contract award.

- The evaluation team may want to evaluate how bids are affected when certain conditions or variables are changed (e.g., if a facility is reduced in scale, resulting in lower capital costs).

- During negotiations, the sponsoring utility may want to determine what, if any, financial impacts will result if certain contract terms and conditions are changed.

The following sections focus on the use of financial analysis to determine project feasibility through prefeasibility studies, the results of which will be used to warrant the continuation (or cessation) of the project development process. Toolkit Volume III (1), Section III, provides guidelines for bid evaluation.

A3. Principal Tools

The principal tools in financial analyses are financial models. Using inputs and assumptions developed by the project team, models demonstrate whether or not a project is financially feasible. Those inputs and assumptions include: outflows of cash — various direct costs (capital investments and operations), financing costs (interest rates, returns on investors' equity), and debt principal repayment and inflows of cash — tariffs and other revenues.

Models demonstrate the relationships between the demand for water and wastewater service, the investment costs required to meet that demand, and the revenue required to meet the ongoing investment cost, operating costs, taxes, and debt-service requirements of the project. They enable the analyst to test alternative scenarios of technology (capital cost), financing approaches and tariff levels to determine the most feasible approach to the transaction (for example, they can demonstrate how reducing investment costs by allowing alternative technical approaches can reduce tariffs). They can help decide between alternative tariff levels and/or structures. They can also help improve tenders by making the criteria for financial evaluations in bids clearer.

- By taking the inputs and solving for the tariffs that would be necessary to make a project feasible, the analyst can determine whether the tariffs needed are affordable, or what level of governmental financial support may be needed.

- Conversely, by making assumptions on what tariffs are affordable or what level of governmental support may be available, models will show whether, based on the revenues that can be generated by the assumed tariffs, the project is feasible.

The model provided in this Toolkit is constructed to enable the analysis of projects from the perspectives of real Egyptian pounds/U.S. dollars.

Real pounds/dollars: Under a *real* analysis, the impact of inflationary pressures on aspects such as operating costs and commodity prices is not considered. The analysis is performed in terms of "constant pounds" or "constant dollars," precluding the need to make assumptions regarding the rate of inflation. The risk in making inflation assumptions is that any made regarding inflation over a long period, such as the 25- or 30-year life of a project, are bound to be inaccurate over time, and be *unpredictably* inaccurate.

The model does not account for inflation due to the uncertainty inherent in inflation assumptions. In a transaction, inflation may be taken into consideration by indexing the pricing formula to actual inflation for certain components.

The model provides for inputs in pounds. However, conclusions — cash flows and investment results — are expressed in both Egyptian pounds and U.S. dollars.

An overview of the basic prefeasibility model provided in this toolkit is provided below. Complete instructions for using the model are included in the model.

B. Fundamental Financial and Economic Determinants

Three fundamental determinants should guide project analysis and decision-making:

- *Economic viability.* Economic viability is the affordability and social value of a PSP project. Notwithstanding the need for a service, is it affordable? Can the customers (both residential and industrial) afford the tariffs necessary to support — to pay the capital and operations costs of — the project? Economic viability may also include an analysis of the value of the project, through a "project benefits and impacts" discussion. For example, if a government guarantee or subsidy is needed to make it affordable, the question may become: Is the project valuable enough — important enough to the municipality, governorate or country — to warrant such governmental support?

- *Financeability.* Financeability is the attractiveness of the project to potential investors and contractors. Are the annual cash flows and investment returns adequate to meet their investment return requirements? Based upon the projected returns, and given competing investment opportunities, will investors want to put their money into the project?

- *Bankability.* Bankability is similar to financeability, except that it is viewed from the lender's perspective. Most large projects are financed by combinations of equity (the investor's money) and debt (the lender's money). Typically, *debt-to-equity ratios* range from 70/30 (70 percent debt/30 percent equity) to 50/50 (50 percent debt/50 percent equity), depending upon a lender's evaluation of a specific project. To determine bankability, the lender will look at many of the same analyses as the investor will, as well as a few key ratios that relatedirectly to the debt portion of a transaction. The lender will also look outside the project to judge if external support — such as a sovereign guarantee or subsidy — will be available, if needed, to assure that there is enough cash flow to pay back its loan.

In the economic and financial analysis of a project, the financial analysis is undertaken first. It is based on the use of "hard data" such as construction costs, labor costs, commodity prices, interest rates, and tariff levels. The financial analysis indicates the profitability to an investor: Will the investor realize its required rate of return on the investment (the "hurdle rate") in the project? The financial analysis also indicates if the project will meet a lender's requirements. The analysis is objective: Can the minimum returns and debt service coverages required be met? Is the annual cash flow adequate? What tariff levels are needed for project feasibility?

The economic analysis builds on the financial model and, to a greater degree, involves qualitative factors and judgments, and can open up policy considerations. For example, the government may determine that strong guarantees or large subsidies are warranted for a specific project if that project has sufficient value (e.g., if it provides desperately needed service to an unserved area; or if it provides capacity that will enable industrial development and job creation). Then, if the government provides the guarantee or subsidy that may make the project financeable (by assuring the investor that it will earn a reasonable return) and bankable (by assuring the lender that its loan will be repaid).

- While the financial model is developed initially, the results of the economic analysis are the first determinants in the analysis of the overall viability of a project. If a project is not economically viable — that is, if the "inputs" required from a government (land, labor, capital, subsidy, foreign exchange support) — are not being used optimally, the project should not go ahead as structured, and should either be restructured or abandoned altogether in favor of other projects that will be more useful for the country.

- A project may be economically viable, but not financially viable. This may indicate a strong justification for making it financially viable through the use of governmental support. On the other hand, a project may (often as a result of certain policy measures, such as subsidies) be made financially viable, but remain economically unviable, if the extent of governmental support required is too great. Such a project should not go forward since, while it may meet an investor's objectives, it may represent a suboptimal use of the country's resources.

One of the most important steps in attaining financial and economic viability is to find ways to minimize the investment and the operating and government support costs. Foremost among these is the consideration of alternative technical approaches, which may lower investment costs while still providing the required levels and standards of service to consumers.

C. Basic Financial Analysis Concepts

C1. Project Financing

To fund a project's investment costs, the equity investors will invest their own funds (equity), and finance the remainder with debt (either bank loans or bonds sold by the project itself). The models are based on this debt/equity split.

- The debt will be paid back on a regular, periodic basis to the lender through the cash flows of the project.

- The investor's money will be paid back through the *net* annual cash flows of the project, after all cash costs and other outflows, including debt service to the lender, are paid.

In practice, the financing process is more complex than is presented in the models provided in this toolkit. Long-term debt financing may come from several lenders, each of which has its own interest rate and amortization requirements. Similarly, there can be several different equity investors, each with different types of risk exposures and return requirements. Project finance lenders also frequently require "retention accounts" in which funds required for the "next due" debt service payment are accumulated from revenues and retained by the lenders as a reserve. There can be initial debt financing for the construction phase, with other long-term lenders "taking out" (paying off) the construction lender upon project start-up. Long-term debt that may be amortized over ten or more years.

The model does not attempt to deal with these levels of complexity. The general treatment of the equity and debt financing is intended to address more basic questions of the project's overall viability and the concerns of both the equity investors and lenders. For prefeasibility study purposes, a greater level of detailed analysis would contribute only marginally to the overall evaluation of a project.

C2. Other Feasibility Considerations

Financial models consider only quantifiable financial aspects. They do not address other key risk factors, which are of fundamental importance in determining feasibility and will be of great concern to both potential investors and potential lenders. These include:

- The overall legal foundation for the project, including the country's judicial system
- Political and other country-specific institutional risks
- The reliability of the required revenue stream
- Construction risks
- Operating and project management risks
- A project's adaptability to changing economic and demographic demands
- The economic and environmental regulation of a project
- Other risks that are external to the management of the project, the sponsoring utility, and the governorate or national government

These types of risks are addressed through project structure, market analysis, contract terms and conditions, and external mechanisms such as guarantees and subsidies, bonding and insurance (see model documents provided in Volume III [I] Section I). They need to be considered during the overall feasibility analysis, but cannot be adequately addressed through modeling.

D. Key Concepts and Terminology

As the principal quantitative analytical tools, models incorporate several key analytical concepts, and include calculations that solve for these. They are aimed at determining financeability and bankability. The key concepts incorporated into the models provided in this toolkit are discussed below.

D1. Principal Analytical Concepts

Net Present Value (NPV). NPV is a way of expressing the value that an entire stream of cash flows over time has in today's pounds or dollars. In the models provided, NPV is applied to the stream of annual net cash flows (revenues plus other cash sources less all expenses and other cash uses) that a project will generate every year over its full term. The basis of the concept is that a pound received today is more valuable than a pound received a year from today, or several years from today. The NPV analysis "discounts" the accumulated value of the entire cash flow stream and expresses it in today's pounds or dollars.

- The discount rate — the rate at which the annual cash flows are discounted to arrive at today's value — is critical in the analysis. The higher the discount rate, the higher the cash flows will have to be to produce an acceptable NPV result. In most cases, the discount rate used is equal to the rate of return required by the investor (the *Equity Investor's Required Rate of Return*).

- The important consideration is the NPV of the cash flows that go the investor. Clearly, a negative NPV indicates that negative cash flows (costs and other cash uses) exceed positive cash flows (revenues and other cash sources). A NPV of zero indicates that the investor's minimum rate of return has been met; that is, the NPV of cash anticipated to be generated by operations — after deductions of costs and the repayment of debt, and discounted at the investor's required rate of return — is equal to the investor's investment in the project. This computation has the effect of making the investor's required rate of return a "cost" that the project must satisfy (*the Cost of Equity Capital*). Positive NPVs will indicate that the rate of return realized is higher than the required minimum (and may indicate that the tariffs that customers would pay are higher than needed to make the project financeable).

In the models, NPVs to the investor are calculated from *Cash Flows to Equity*, which is the cash available to the investor after all cash expenses, including debt service and taxes, are paid. See Worksheet 1 of the models.

- A similar related calculation is *Cash Flows to Project,* which is used to calculate the debt service coverage that a project will achieve (see below).

- A related calculation that is sometimes used is the NPV of the project itself, which demonstrates that the project, over its life, is expected to be able to generate sufficient cash to satisfy both the equity investors and debt providers. The NPV to the project is calculated from Cash Flows to Project, and uses the Weighted Average Cost of Capital as the discount rate. The *Weighted Average Cost of Capital* reflects the "all-in" cost of capital to the project based upon the relative proportion of debt to equity, and the differing cost of capital rates that each carries. Debt Service Coverage and IRR/MIRR (see below) can be used in the place of project NPV analyses.

Net profit. The net profit to the equity investor is the residual that remains after all other claims on revenues (including operating costs, depreciation, interest and taxes) have been met and accounting standards have been applied. Thus, all costs, including "non-cash costs" such as depreciation, are reflected. The calculation is:

Revenue from water and wastewater sales:

minus *O&M*
= *EBITDA (earnings before interest, taxes, depreciation and amortization)*
minus *Depreciation*
= *EBIT (earnings before interest and taxes)*
minus *Interest*
= *Earnings before Taxes*
minus *Taxes*
= *Net Profit*

Net Profit differs from other cash-flow and rate-of-return calculations in that it reflects how the investment will be accounted for on the investor's corporate books and records and, therefore, reflects accounting principals. Thus, the value of depreciation is accounted for as a cost, even though no cash is paid out, as net profit is being calculated. *Net Profit* is calculated as a part of the Profit & Loss ("P&L" Income Statement (Worksheet 6 of the models).

Internal Rate of Return (IRR or MIRR). IRR measures the investor's return on the equity it has invested in a project, and, along with *Net Profit,* is a method (using percentages rather than cash amounts) for calculating the profitability of a project. The investor will determine his required rate of return by considering the risk profile of the transaction. This is calculated by the investor through assumptions about: a) a risk-free rate of return in his home country; b) an equity premium for putting his equity at risk, also in his home country; c) a country-risk premium, based on his assessment of political and economic risks present in the country of the project; and d) a project-risk premium, based upon his assessment of the operating and performance risks of the specific project. The more risks that an investor sees that cannot be effectively mitigated, the higher his return requirement will be.

- This requirement may be viewed differently initially than it is over time. While the investor will analyze a project in much the same way that a prefeasibility study does in order to make his initial investment decision, it will of course work to improve its performance year-to-year and, thus, improve its returns over those which were the basic threshold for it to invest in the project. An aggressive investor may accept a lower initial rate of return if it is highly confident of its ability to improve its IRR over time, for example, through increased operating efficiency; and

- Through a "Yes" or "No" calculation, the models assess whether the projected IRR is adequate, by determining whether the available cash flows generate an IRR that is equal to or exceeds the assumed investor's rate of return requirements (the "hurdle rate").

As with NPVs, IRRs are calculated on the basis of Cash Flows to Equity. (See Worksheet 1 of the models.) Two IRR calculations are provided: IRR and MIRR (*Modified International Rate of Return*). The MIRR presents the rate of return as it is affected by interest that the project will earn on cash that it may have on deposit prior to paying out for project costs such as O&M or debt service. Both are presented since some individual investors may prefer one IRR approach and others may prefer the other. In any case, neither should be below the stipulated rate of return requirement.

Currency exchange. One of the most significant factors that will affect the viability of the project is the currency exchange rate. Although not critical for prefeasibility financial analyses, a basic understanding of the potential impacts of exchange-rate issues is important when structuring private sector participation projects. The risk to a project is that, while key aspects such as imported equipment and debt (and perhaps equity) may be denominated in a foreign currency (such as U.S. dollars), revenues from the tariffs paid to a project will be earned in the local currency (Egyptian pounds). Therefore, a devaluation of pounds compared to the foreign currency will affect the long-term viability of a project by reducing the value of the revenues generated by the project in comparison with the increased value of foreign currency-denominated equipment purchases, debt, and other obligations.

The risk of devaluation of the pound is best covered by minimizing foreign-currency equipment expenditures, debt, and other obligations. Ideally, foreign currency purchases will be financed from the project's equity and any foreign currency debt will be repaid by foreign currency revenues (if any).

Debt service: Since a substantial portion of the money for a project financing will come from debt, the project will have annual debt-service payment requirements — the payment of interest and/or principal back to the lender. For example, if a LE50 million project has a debt-to-equity ratio of 60/40, the project will carry LE30 million of debt.

- The debt-service schedule is based on assumptions about the loan interest rate, the maturity of the loan, and the assumed amortization rate. Annual debt service will be the annual principal payments stipulated in the loan agreement's repayment schedule, plus interest at the agreed rate on the outstanding principal balance.

- Bank debt is often serviced by equal period (usually quarterly or semi-annual) principal payments and declining interest payments as the outstanding principal is paid off, resulting in unequal annual debt service payments. Other lenders may allow level-debt service; that is, periodic payments of principal and interest that are the same.

- There are other ways to structure debt service, and an experienced analyst can use the model to experiment with these (such as: deferred principal; gradually increasing principal payments that result in a gradual increase of annual debt service; interest-only payments during the first few years). A common approach in prefeasibility studies is to assume either level principal or level-debt service payments.

In the models, the debt-service schedule is calculated on Worksheet 4 for up to three additional financings per project, based upon assumptions made about interest rate and loan term. Only those two assumptions need to be inputted.

The model calculates level debt-service, resulting in the repayment of a loan based on equal combined payments of principal and interest (assuming a fixed interest rate for computation purposes) over the term of the debt.

Coverage ratios: Lenders will consider two debt-related ratios: *Debt Service Coverage* and *Interest Coverage.* Both of these measure the ability of the project to service debt — to make the required payments to the lenders on time and in full. These coverage ratios are calculated on the basis of the cash available to service debt after operating costs and taxes are taken into

account (Cash Flows to Project). Generally, lenders require a "cushion" of more funds available to service debt than is actually needed to make the debt service payments. Typically, that cushion is between 30 percent and 50 percent, producing a *Debt Service Coverage* of between 1.3 and 1.5 (i.e., there is 30 percent to 50 percent more cash available to pay debt than is actually required). Because *Interest Coverage* excludes principal payments, the coverage ratio is higher than that for Debt Service Coverage. Minimum Interest Coverage will assure a lender that, even if a project experiences cash flow difficulties at times, there will be sufficient cash flow to at least cover interest payments.

Achieving minimum debt-service coverage is done principally for the benefit of the lenders. Generally, however, if debt-service coverage is met because of the net cash flows available, this is a good indication that the rate-of-return requirements of the investor will also be met.

In the models, debt-service coverage is calculated on Worksheet 4. As with IRR and NPV calculations, on worksheet 1 there is a "Yes/No" analysis that demonstrates whether the coverages attained meet the minimum coverage requirements.

Profit & Loss (P&L) Statement. The P&L Statement summarizes annual results, taking into account the consequences of accounting and tax requirements Some costs are "non cash", such as depreciation, which under accounting provisions need to be shown as a cost to the project, and are also shown under most tax schemes, even though no money is paid out (it reflects, in effect, the declining value of an asset over time). The net result shown is the *Net Profit* to the investor. The P&L Statement presents all of the individual major financial elements that go into the determination of profit (see *Net Profit*, above).

The P&L Statement is on worksheet 6 of the models. The information generated on the Statement is used in the calculations for NPVs, IRRs, and Coverage Ratios.

Pro-Forma Cash Flow Statement. The Pro-Forma Cash Flow Statement shows cash flow and does not deduct non-cash charges such as depreciation, and does not account for taxes. It is a relatively simple view of a project, which can be used as follows: If a project shows positive cash flows on the Pro-Forma but unacceptable P&L results, this may indicate that there is private sector participation potential in the project, but that restructuring needs to be done in order to improve P&L performance.

The Pro-Forma Cash Flow Statement is on Worksheet 6 of the models.

Terminal Value of the Project. In a typical BOT structure, the project is transferred to the government at the end of the contract period free of charge. Thus, the terminal value is zero to the equity investors. However, it is possible that the assets still have economic value for the government.

Because there is limited usefulness of the analysis for prefeasibility purposes, Terminal Value is not considered on the models. However, it is a factor to consider when structuring private sector participation projects.

D2. Modeling Conclusions

Financial analyses and modeling will help the analyst reach one of the four following conclusions:

- *Economic and financial attractiveness negative* — The project is clearly not viable and should be eliminated from further consideration.

- *Economic attractiveness negative, financial attractiveness positive* — The project would probably require a degree of governmental financial support (guarantees and/or subsidies) that could not be justified by the social or economic value that would result.

- *Economic and financial attractiveness positive* — The project is attractive to both the government and the private sector. Since investors and lenders at this time tend to look to government financial support for all investment projects, it is likely that even a financially attractive project would require a central government undertaking that contractual payments to the project company will be made. This requirement may change over time based on favorable project experience

- *Economic attractiveness positive, financial attractiveness negative* — The project can properly benefit from government support and creative project structuring. While it will benefit the country economically, current financial dynamics would not attract the private sector. For example, it may economically attractive, but its artificially low tariffs would discourage private sector participation. With the appropriate government support and structuring, it may become financially feasible.

E. CDPSP Prefeasibility Model

E1. Model Worksheets

The CDPSP prefeasibility model consists of a cover sheet (with instructions) and six worksheets. Only three of the worksheets provide for inputs by the analyst; the other three calculate results based upon the inputs in the three input worksheets:

Worksheet	Input Sheet?	Description
Cover Sheet	No	Includes a description of and complete instructions for the use of the model.
Sheet 1: Key Assumptions and Results	Yes	Provides for the inputting of all assumptions except for construction costs and presents key results (IRRs, NPVs, coverage ratios); calculates cash flows that are used in the IRR and NPV calculations; presents graphics depicting various service demand and financial results.
Sheet 2: Project Demand Projections	No	Uses the assumptions made regarding facility capacity and production to calculate annual demand (including demand growth) and annual installed capacity.
Sheet 3: Project Capital Cost Estimates	Yes	Provides for inputting capital cost assumptions and assumptions regarding "soft costs" such as design and engineering costs, financing fees and reserve funds, construction period financing costs. Also calculates working capital for the first year of operations.
Sheet 4: Financing Projections	No	Uses the assumptions made regarding capital costs, debt/equity ratio, interest rates and financing terms to calculate annual debt service.
Sheet 5: Operations & Maintenance Costs	No	Uses the assumptions made regarding both initial O&M costs and O&M costs associated with facility expansion, factored by inflation (if assumed), to calculate annual O&M costs. Replacement and renewal of capital equipment is included in the O&M in the model.
Sheet 6: Income & Cash Flow Statements	Yes	Estimate of the first year revenue requirement is input, and refined by trial and error to arrive at the target IRR

All inputs, costs, revenues, and financial results are in Egyptian pounds, except for financial results such as profit and Pro-Forma pre-tax cash flow, which are expressed in both Egyptian pounds and U.S. dollars.

E2. Model Construction

Several analytical concepts and assumptions are imbedded in the model provided in this Toolkit:

- *Results.* In the process of calculating individual elements such as capital costs, operating costs, annual debt service costs, etcetra., the models solve for the following key results:

  - financeability – NPV and IRR to investors
  - bankability – interest and debt service coverage ratios

- *Development/Expansion.* Projects will have a maximum of four development or construction stages. The models assume start-up in year two and up to three expansions. While such expansions and their associated construction costs are provided for, the models will work properly even when no expansions are assumed.

- *Financing.* The term of the financing for each development stage is 12 years, comprised of a two year construction period and a ten year repayment period, with level debt-service assumed. An adjustment to worksheet 4 will be required when no expansions, and, therefore, no additional financings, are assumed. The instructions explain the adjustment.

- *Construction Period Economics.* The models do not evaluate construction-period financial requirements in depth. Under some actual financing scenarios, construction financing would be provided, and would be "taken out" by permanent financing once the project was operational. In other scenarios, permanent financing would be arranged at the start, and would include a period covering the construction period during which no debt payments would be required. The construction period financing would involve "soft costs" such as banker's fees and would carry interest, which would be capitalized (borrowed from the lender). Rather than include a separate construction-period analysis, the model assumes an "instant plant" and provides for a construction period cost factor (on worksheet 3) that covers construction period financing costs.

- *O&M Costs.* The model assumes no inflationary affects (a real analysis). O&M cost increases can be estimated at the times of assumed plant expansion, if expansion is of the type which will incur an increase in O&M costs. On the Capital Cost worksheet 3, the model also includes a calculation for "working capital" which capitalizes and provides cash flow to the contractor to cover the first three months of operating costs and interest (on the assumption that there would be a lag in time between the start-up of operations and the time at which the contractor would begin receiving revenues, either from annual service fee payments from the utility or tariffs paid by customers);

  A margin or profit on O&M is incorporated into the calculation of total O&M costs. This has been provided in order to separate out O&M returns from investment returns.

Generally, a contractor will require a return for taking risks directly associated with operations (the O&M margin), as well as a return on its equity. In other instances, project development and ownership may be undertaken by an ownership group that then hires a contractor to operate the facilities. In this case, the investors will expect to earn a return on the equity they invest (IRR) and the operator will expect to earn a return (O&M Margin) on its operations and maintenance services (and the risks it takes and guarantees it provides regarding O&M to the investors). In this case, the operator's return becomes a cost to the project, which the investors must pay along with all other costs. The O&M margin (if any) is not reflected or factored in any of the equity return calculations.

- *Project Term.* The models assume that all projects will have operating terms of 30 years (including construction and start-up). Longer terms can be accommodated, if appropriate for a specific study, by extending the formulas, as provided for in the instructions;

- *Fixed Inputs*: Many inputs and assumptions in the model are fixed, and should not be changed. These reflect prevailing industry standards and will be equally applicable to all projects in Egypt. These inputs and assumptions include: rate-of-return (IRR, MIRR) requirements; interest- and debt-service coverage requirements; debt-to-equity ratio; and asset depreciation; and

- *Capacity vs. Throughput.* The models provide for separate assumptions for the capacity of a facility and for the water production or wastewater throughput of the facility. Typically, facilities are built with excess capacity in order to be able to accept periodic peak flows and to accommodate some degree of population or use growth without requiring an expansion. Capacity is important in the projection of capital costs and future expansion needs. The models base revenue projections on production or throughput (i.e., the actual use of the facility).

The models are color-coded. Inputs, or changes to or extensions of formulas, are to be made only in cells indicated in red. The red coding is provided for only model use purposes, not presentation, and the models need not be printed in color.

E3. Summary: Modeling Targets, Results, and Conclusions

Specifically, the prefeasibility model provides for the following principal targets, results and conclusions.

Factor	Importance	Target
NPV	Measures positive cash flows (revenues) against negative cash flows (costs)	LE 0 or slightly positive
MIRR/IRR	Rate of return to equity investor	Equal to but not more than the return stipulated as an assumption
Debt Service Coverage	Measures the capability of the project to pay debt service on time and in full	Equal to but not less than the coverage stipulated as an assumption
Interest Coverage	Measures the capability of the project to pay interest on time and in full	Equal to but not less than the coverage stipulated as an assumption
O&M Margin	Measures returns to the operator for providing O&M services, taking O&M risks and providing O&M guarantees	Prevailing industry standards, as stipulated as an assumption

Factor	Importance	Target
Net Profit	Measures the profit to the investor, based upon accounting principals and reflecting income tax impacts	No target
After-tax Cash Flow to Project	Measures the amount of cash available to service debt	Amount adequate to meet coverage requirements
After-tax Cash Flow to Equity	Measures the amount of cash available to be paid out to the investor	Amount adequate to meet MIRR/IRR requirements
Operating Period Total After-Tax Cash Flow to Project (or, to Equity)	Totals the annual amounts of net cash generated by the project during the full operating term	No target
Project Life-Cycle Total After-Tax Cash Flow to Project (or, to Equity)	Totals the annual amounts of net cash generated by the project during its full life-cycle; the total is less than the operating period total because it factors in construction costs	No target

E4. Improving Financial Performance

There are a number of standard project financing techniques that can be applied to the models to improve the financeability and bankability of a project. The choice and mix of these techniques will depend on the specifics of the project being studied.

- *Raising Revenues*. Raising revenues will increase key factors such as IRR and debt-service coverage. However, this may affect customer affordability or willingness to pay.

- *Decreasing Capital Costs*. Decreasing capital costs (by, for example, substituting technology or reducing the scale of a project) will reduce the amount of investment capital required and, therefore, the cash-flow needs of the project. However, reducing the scale of a project may also reduce the customer base, which will lower annual revenues and cash flow. Another technique for reducing the scale of a project, and, as a result, its capital costs, is to match facility capacity as closely as is technically acceptable with projected production or throughput.

- *Decreasing O&M Costs.* Reducing the scale of a project or substituting technology may also result in lower O&M costs. However, O&M costs should not be reduced by lowering assumptions on critical O&M aspects such as maintenance and annual repairs and replacements. This type of assumption may result in higher O&M costs in future years, as the consequences of deferred maintenance or repairs are felt.

- *Increasing Equity Investment.* When the amount of investor equity is increased, the amount of debt that is needed is lowered, which in turn reduces annual debt-service requirements, increases coverage ratios and increases *Net Profits*. However, increasing investor equity will reduce the IRR, possibly below the required hurdle rate (which might, then, require an increase in the revenue assumed).

- *Creating Additional Revenues.* It may be possible to create additional revenue streams for a project, for example, by selling the sludge or effluent from a wastewater treatment plant for reuse.

- *Extending Debt Terms*. Extending the term of debt will reduce annual debt-service requirements. In no case, however, can the term of a loan exceed the term of the service contract between the utility and the project.

- *Adjusting Debt Amortization*. Different amortization structures are possible. For example, the debt service requirements in the early years of a project can be reduced, or amortization can be structured to gradually increase annually, which may be a feasible approach if it is confidently expected that the customer base and project use (and, therefore, tariff revenues) will increase annually.

- *Establishing a Reserve*. Establishing a reserve fund from cash flows before any dividends or case are paid out to the investor will provide a "cushion" for servicing debt, in the event that there is a period of cash flow shortfall. However, an increase in the tariff to generate cash flow to establish the reserve may be necessary.

- *Assuming a Longer Tax Holiday*. Egyptian law provides an income tax "holiday" for private sector participation infrastructure projects for the first five years of their operation. This reduces cash flow needs in the early years and increases returns to the investor. This is assumed in the models. An extended tax holiday woud increase the financial attractiveness of the project.

The application of these types of adjustments to the models can improve the project's financial performance. The cumulative effect can be significant. However, at some point these types of incremental improvements will not improve the performance of a project that has serious financial or structural flaws.

E5. Modeling Caveats

Models are analytical and decision-making tools. They provide data and projections only. They will not make decisions or recommendations. They cannot factor in the professional judgments and qualitative assessments that will be made, based upon the data and projections resulting from the analyses. And, of course, they are only as reliable as are the assumptions and inputs made.

Prefeasibility analyses can provide reasonably accurate projections of what can be expected in a project. However, the reality of the project will not be known until formal bids are received. Thus, differences between what prefeasibility study results and what actual bids provide for should be expected. An interesting test is to determine the divergence between study results and actual bids, and then determine the causes of such divergence. Depending on the causes, it may open some bid particulars to question or renegotiation.

E6. Modeling Variations

The model provided in this Toolkit is intended to illustrate how the various financial and feasibility principles discussed in this section are applied when a feasibility analysis is performed. The model is academic and designed more as a training tool for learning the basics of project analysis and financing than for application to an actual project that is proposed by a utility. While the model can present a fairly representative picture of a project, it must be amended or adjusted to the particular characteristics of an actual project before it can be applied to a specific prefeasibility study.

As discussed in Section III of this Volume of the Toolkit, there are five fundamental types of private sector participation project approaches that are applicable to the Egyptian water/wastewater sector: service contracts; management contracts; leases; BOT and variants; and, concessions. The model discussed in this section is designed specifically for BOT projects, but can be adapted easily for use in other project types requiring private sector investment, such as concessions. The model can also be adapted easily for lease transactions.

Financial Analysis Tools and Credit Enhancements

A. Financial Analysis Tools

Financial analysis tools are both qualitative and quantitative.

Qualitatively, an important step is to lay out all the components necessary for a successful project, including, but not limited to: market for products or services, finance, construction, operation, and distribution, as well as environmental acceptability; and to evaluate whether or not each is analyzed and addressed satisfactorily to make the level of risk acceptable for investors and lenders. *Some* of the many factors having an impact on any private or PSP project include:

A1. Market for Products or Services

The market for the project's products or services must be well-documented, or guaranteed by a credit-worthy entity through a "take-or-pay" contract or similar arrangement. The presence of the "market," and its readiness to acquire the product or service at a price which enables the project to satisfy its financial obligations is the most critical element in assessing the risk of a project.

A2. Finance

Is debt *available in this particular market* in amounts, currencies, and maturities, and at rates, which will enable the project to be constructed, and operate successfully? Maturities must be long enough to enable the project to repay the loans in a period reasonable for its particular industry. Is equity finance available – will enough cash flow be generated not only to pay off the debt, but also to provide a satisfactory return to equity investors?

A3. Construction

Construction risk is critical. A project which is not completed on schedule and within budget, and does not operate according to specifications, is unlikely to be successful. It is important that only experienced, reputable construction firms are used, and that construction contracts require them to complete the project on time, "on budget", and on-specification. Construction contracts usually require outside bonding or guarantees to ensure compliance.

A4. Operation

This factor covers numerous areas. Is proposed management capable? Are the processes proposed proven and appropriate? Are raw materials available and can they be transported to the site at reasonable cost and on a timely basis? Is power reliable and available at reasonable prices? Is there skilled labor?

A5. Distribution

Can the project's product or service be delivered to its customers reliably and at reasonable cost?

A6. Environmental

Does the project have an unacceptable environmental impact? Unfavorable environmental impacts are not confined to standard measures of degradation, but also include factors such as high noise levels in residential areas.

The major areas for risk examination are many, and include broad categories not mentioned above. There are also sub-components of those mentioned above, which should be identified and examined. The risks are set out and evaluated in a pre-feasibility study, or other financial analysis.

Aspects of project development and operation which show unacceptable levels of risk need that risk to be mitigated if the project is to proceed. Risk mitigation is frequently contractual, in the form of an undertaking from a strong party able to deal with the risk (see Credit Enhancements, below).

A commonly used method for *quantitative* analysis is financial statement ratio analysis. Financial statement ratio analysis is both *vertical* and *horizontal,* and is performed on historical financial statements, as well as financial projections. Ratio analysis seldom answers all the questions. It is a tool that enables the analyst to ask the right questions, by pointing out variations, the cause of which the analyst needs to find out.

Vertical analysis entails looking at a company's statements, and comparing its income statement and balance sheet structure with similar companies in its industry. If there are differences, the analyst finds out why. "If companies in this industry usually have a current ratio of 2:1, why does this company have a current ratio of 5:1?" The examination requires looking at the components of the ratio, and asking questions about them.

Horizontal analysis involves looking at one company over a number of years, and questioning any changes. "Why did electricity costs go up so much last year?"

There are many different balance sheet, profitability and efficiency ratios which are frequently used. Two of them are the Interest Coverage Ratio and Debt-Service Coverage Ratios discussed in the Guidelines for Financial Analysis and Modeling. Broadly speaking, financial ratios address:

- Balance sheet soundness
- Profitability
- Efficient employment of assets

A7. Balance Sheet Ratios

Balance sheet ratios address liquidity and leverage. The most commonly used liquidity ratio is the Current Ratio.

- Current Ratio = Current Assets/Current Liabilities

The Current Ratio is an indication of whether the company's current assets, those scheduled to be converted to cash within one year, will be sufficient to satisfy its liabilities due within one year. Current assets include, among others, cash and receivables. It is important when

evaluating the Current Ratio to examine the quality of the receivables – the likelihood of their being converted to cash. If the assets are good quality, the higher the Current Ratio the better: indicating higher liquidity.

Leverage is a measure of whether or not the company has too much debt – in other words: whether it should be financed with a higher proportion of equity. The amount of debt that is appropriate varies between industries and between companies, and depends on the risk inherent in a company's cash flow. Measures of leverage would be used in conjunction with the Interest Coverage and Debt Service Coverage Ratios.

Leverage can be computed in different ways; a common leverage ratio is Total Liabilities/Net Worth. Net Worth is the total of shareholders' equity. Net Worth always equals Total Assets – Total Liabilities.

- Leverage Ratio = Total Liabilities/Net Worth.

The lower the Leverage Ratio the better, indicating a higher degree of stability due to a higher proportion of equity in a company's financing structure.

A8. Profitability Ratios

Profitability ratios usually measure "profitability" against Revenue, and can be used to measure any definition of profit (for example: EBITDA, EBIT, or Net Profit). Analysts usually examine all levels of profitability, but the most commonly referred to measure is the Net Profit Margin.

- Net Profit Margin = Net Profit/Revenue.

A9. Efficiency Ratios

Efficiency ratios look at how efficiently a company's assets are being used to generate revenues or profits. They are often called "Turnover Ratios." They can be used to evaluate the efficient use of any asset category; for example: accounts receivable, current assets, fixed assets, or total assets. A commonly used efficiency ratio is the Asset Turnover Ratio.

- Asset Turnover Ratio = Revenue/Total Assets.

The higher the figure the better. If the figure is higher, the amount of assets is generating a higher revenue volume, and therefore is being used more efficiently.

B. Credit Enhancements

Credit enhancements mitigate risk, and serve to make a project more acceptable to lenders. Credit enhancements may be seen for *descriptive purposes* as structural or contractual, although in actual financings credit enhancements generally combine both characteristics.

B1. Structural

Structural credit enhancements include changing the financing structure to make it more stable. One common method is to add subordinated debt to the financing mix. From a senior

bank lenders' point-of-view, this has the effect of adding *near equity*, since the senior bank debt has the right to be repaid before the subordinated debt.

Another structural credit enhancement would be to add an additional source of income, to shore up shortfalls in the revenue projections of the company, or in the "certainty" of its revenue projections. For a PSP project, such a source of additional income could be revenue from outside the project area, or a mechanism for providing a subsidy.

Similarly, adding non-project collateral would also be credit enhancement. For example, lenders could be given a security interest in assets not directly connected to the project; this would increase the value of their security when compared to the amount of the loan. This is common practice in the private sector: an entrepreneur might be asked to put a lien on his house, as additional collateral for a business loan. Similarly, a ship-owner, wishing to borrow to finance a new ship, might add a mortgage on another ship to his bank's security package.

B2. Contractual

There are many different contractual credit enhancements. Four of the most common are "take-or-pay" contracts, guarantees, mortgages and assignments.

"Take-or-pay" contracts are undertakings made in favor of a project that the party making the undertaking will purchase an agreed volume or value of products or services, provided that they are made available for purchase. This commits the undertaker to make the purchase, even if, ultimately, it does not need the product or services.

Guarantees, in broad terms, are commitments from a party to perform an action if the entity contractually obligated to perform the action fails to perform. Two types of guarantees common in project financing are guarantees of performance and guarantees of debt repayment.

A guarantee of performance is an undertaking that, if one party does not perform a contractual action, the guarantor will perform the action, or pay a monetary amount to compensate the beneficiary of the guarantee. Included in this category are the usual bonds supporting a construction project, as well as guarantees that payments due under a project "take or pay" contract will be made.

A guarantee of repayment is a guarantee in favor of a lender that the guarantor will repay a loan in full if the borrower fails to do so.

Mortgages give the beneficiary a security interest in an asset. The asset can be immoveable, or moveable.

Assignments give the beneficiary a security interest in a contract's rights. Therefore, if a party is assigned a contract, the assignee has the right to take over the contract, or receive the proceeds of the contract (depending on the terms of the assignment).

A combination of mortgages and assignments may give lenders the right virtually to take over a borrower if the borrower fails to perform under its loan and security documents.

SECTION V

Procurement Guidelines

Important Note on Procurement Guidelines

The Procurement Guidelines ("Guidelines") incorporate international standards and best practices. To some extent, certain provisions of the Guidelines differ from Egyptian law and practice. This Note identifies those differences.

The editors have left the Guidelines intact so that they may provide a guide to the GOE should it decide to amend the Egyptian law and regulations on such guidelines to fully comply with international standards and best practices.

Users of the Guidelines are advised to amend or delete provisions that differ from Egyptian law and substitute provisions that are consistent therewith.

General Comment

Tendering and Tendering Procedure: Tendering and tendering procedures for concessions, management contracts and other types of major contracts are governed by Law 89/1998 (Tenders Law) and its regulations, which are found in Ministerial Decree 1367/1998 (Executive Statutes).

Specific Comments

Section I: Competitive Bidding: This section describes two types of bidding: national/local competitive bidding and international competitive bidding. However, the Tenders Law and Executive Statutes (regulations) describe six (6) types of tendering:

1. *General* (open to national and international bidders)
2. *Limited* (open to specific local and/or international suppliers, contractors, consultants, technicians and experts)
3. *Local* (open to companies operating in the location where works not in excess of LE 200,000 in value are to be implemented)
4. *General Negotiation*
5. *Limited Negotiation*
6. *Direct Contracting*

As to national competitive bidding, the bid documents and other tendering materials should include the locality and value limits of local tendering and describe the other types of bidding specified in the Tenders Law and Executive Statutes (regulations).

Note: Tendering and contracting procedures are governed by Law 89/1998 (Tenders) and Ministerial Decree 1367/1998 (Executive Statutes for Law 89/1998). This document, Procurement Guidelines, describes procurement procedures conforming to international best practices. Where such practices differ from those specified in the Law and Decree, the latter should be used.

A. Competitive Bidding: National/Local vs. International Competitive Bidding

Designing a competitive bidding process — and getting the best possible result — is easiest when the product or service required is a fairly standard one and the technical outputs can be defined with reasonable certainty in the bidding documents. These conditions often do not apply in the water and wastewater sector, especially for network concessions. Therefore, it is important to use accurate information in the design process and provide it to potential bidders in the bidding process.

A competitive bidding process generally has the following parts:

- Public notification of the Government's intention to seek a private partner for the provision of water and wastewater services, including prequalification or a request for letter of interest from private companies

- Distribution of bid documents and draft contracts to potential bidders
- A formal process for screening potential bidders and finalizing a list of qualified bidders
- A formal public process for presenting proposals, evaluating them and selecting a winner

Competitive bidding can be done among local/national Egyptian entities or among interested international companies.

National Competitive Bidding (NCB). This is the competitive bidding procedure normally used for public procurement in Egypt and may be the most efficient and economical way to procure goods, services or works, which by their nature or scope are unlikely to attract foreign competition.

In this case, foreign bidders are not expected to be interested because: the contract values are small; works are scattered geographically or spread over time; works are labor-intensive; and/or the goods or works are available locally at prices below those in the international market. NCB procedures may also be used where the advantages of *international competitive bidding (ICB)* are clearly outweighed by the associated administrative delays or costs.

Other reasons for using NCB include:

- Domestic production or construction facilities are available at reasonable cost, efficient and can be delivered promptly
- The government has specifically requested the adoption of local competitive bidding
- NCB shall not preclude participation by foreign bidders

Publication of a general procurement notice in international journals is not necessary for NCB and advertising may be limited to the Egyptian press or official gazette. Foreign firms who wish to participate may do so provided the terms are acceptable to them (e.g., bid documents are in Arabic).

For ICB, the objective is to provide a wide range of choices in selecting the best bid from competing suppliers/contractors and give all prospective bidders from eligible source countries adequate, fair and equal opportunity to bid on the goods, services and works which are being procured. Whenever procurement is being done under multilateral development bank loans, certain requirements are put in place for ICB. In this case, the GOE, as the borrower, must observe certain guidelines in preparing bid and contract documents and follow certain procedures in advertising bid invitations and accepting, opening and evaluating bids. In addition, draft bid documents, bid evaluation reports and proposed awards of contract are subject to prior review and approval by the lender according to its stipulated guidelines.

B. Prequalification

After selecting an approach to tendering, bidders may be asked to prequalify. One way of ensuring this is through the process of prequalification, beginning with a request for Letter of Interest (LOI) or a more formal application for prequalification. One method of requesting LOIs is by placing advertisements in appropriate trade journals or other publications. Such advertisements should describe the potential investment opportunity and invite potential bidders to make themselves known, with evidence of their suitability by a certain date. When applications for prequalification are used, the application package is sent to potential bidders, who then complete the application with the required information and submit it using the predefined format or forms included in the application package.

Prequalification is usually necessary for large or complex contracts for services or works (for example, a lease, concession or BOT), or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom-designed equipment, industrial plants, specialized services and contracts to be let under turnkey, design-and-build or management contracting. Prequalification may also be useful to determine eligibility for preference for domestic contractors where this is allowed.

Given the complexity of privately financed infrastructure projects, the contracting authority may wish to limit the number of bidders from whom proposals will subsequently be requested to just those whose qualifications satisfy certain criteria.

In traditional government procurements, the preselection proceedings may consist of the verification of certain formal requirements, such as adequate proof of technical capability or prior experience in the type of procurement, so that all bidders who meet the preselection criteria are automatically admitted to the tendering phase. The preselection proceedings for privately financed water and wastewater projects may involve elements of evaluation and selection. This may be the case, for example, where the contracting authority establishes a ranking of preselected bidders.

Bidders should be required to demonstrate that they possess the professional and technical qualifications; financial and human resources; equipment and other physical facilities; and the managerial capacity, reliability and experience necessary to carry out the project.

Additional criteria include:

- Ability to manage the financial aspects of the project
- Previous experience in operating water and wastewater infrastructure or in providing services under regulatory oversight — e.g., quality indicators of their past performance and size and type of their previous projects
- Level of experience of the key personnel to be engaged in the project
- Sufficient organizational ability, including minimum levels of construction, operation and maintenance equipment
- Ability to sustain financing requirements for the engineering, construction and operational phases of the project — e.g., by evidence of the bidder's ability to

provide adequate equity to the project and sufficient evidence from reputable banks attesting the bidder's good financial standing

- Qualification requirements that should cover all phases of an infrastructure project, including financing, management, engineering, construction and operation and maintenance, where appropriate

The bidders should also be required to demonstrate that they meet such other qualification criteria as would typically apply under the general procurement laws of Egypt.

C. Short-listing

By evaluating the information supplied and applying a minimum standard to all respondents, officials will arrive at a list of bidders who qualify for consideration in the next stage of the process. Short-listing is the process of reducing the number of companies to be invited to submit formal bids, possibly after further data-gathering. If no short-listing takes place, all respondents are free to submit a final bid.

Short lists usually range from three to seven companies, with most short lists consisting of four or five companies. As a general rule, the approach adopted to determining the short list should reflect the size and level of the transaction. Typically, it will be sufficient to evaluate those who express interest on the basis of their written submissions. Alternatively, informal screening by telephone might offer a quicker way to identify potential companies to include on the short list, especially for small contracts. If appropriate, government officials could meet with potential bidders. This will provide an opportunity to assess whether bidders should be short-listed and for those bidders to acquire information about whether they ought to invest the time and effort in preparing a bid.

D. Single-stage Bidding

Following the selection of eligible bidders, it is advisable for the contracting authority to review its original feasibility study and the definition of the output and performance requirements and consider whether a revision of those requirements is needed in light of the information obtained during the preselection proceedings. At this stage, the contracting authority should already have determined whether a single-stage or a two-stage procedure will be used to request proposals.

The decision between having a single- or a two-stage procedure for requesting proposals will depend on the nature of the contract, how precisely the technical requirements can be defined, and whether output results (or performance indicators) are used for selection of the contractor or concessionaire. If it is deemed both feasible and desirable for the contracting authority to formulate performance indicators or project specifications to the necessary degree of precision or finality, the selection process may be structured as a single-stage procedure. In that case, after having concluded the preselection of bidders, the contracting authority would proceed directly to issuing a final request for proposals.

E. Two-stage Bidding

For major contracts, the detailed design and engineering of the goods, services and works to be provided, including the preparation of technical specifications and other bid documents, normally precede the invitation to bid. However, in the case of turnkey contracts or contracts

for large, complex plants or works or services of a special nature, it may be undesirable or impractical to prepare complete technical specifications and performance targets in advance. In such a case, a two-stage bidding procedure may be used.

For that purpose, the contracting authority may wish to divide the selection proceedings into two stages and allow a certain degree of flexibility for discussion with bidders.

The first stage is the initial request for proposals, wherein a draft bid package and draft contract are sent to bidders. Only a technical proposal is submitted at this stage, and it would typically consist of solutions on the basis of a conceptual design or performance indicators without indication of financial elements, such as the expected price or level of remuneration. The purpose of this initial stage is to enable the contracting authority to formulate its requirements in a manner that enables a final competition to be carried out on the basis of a single set of parameters. Put simply, this is an opportunity to ensure that in the final evaluation, the contracting authority is able to compare "apples to apples" rather than "apples to oranges."

Typically, during the first stage, bidders are also invited to submit comments on (or "mark up") a draft version of the contract. These mark-ups are then submitted to the contracting authority, which can either reject them or accept them, in which case they are incorporated into the a new draft contract. The new contract, along with a final copy of the bid documents (reflecting the contracting authority's final requirements, terms and performance indicators), is then sent to bidders, who must respond with a second-stage technical bid and a price bid.

In the second stage, technical bids are opened first and reviewed to determine responsiveness to the specifications and whether modifications are necessary. At this point, bidders are ranked[1] and after the technical review has been completed, the price envelopes are then opened for purposes of price comparison. When technical modifications are required in any or some bids and consequent price adjustments are necessary, the accompanying price bids shall be returned unopened to concerned bidders and resubmitted within a specified period.

The contracting authority should be allowed to delete or modify any aspect of the technical or quality characteristics of the project originally set forth in the request for proposals and any criteria originally set forth in those documents for evaluating and comparing bids.

Bidders not wishing to submit a final bid should be allowed to withdraw from the selection proceedings without forfeiting any security that they may have been required to provide.

Suggested Procurement Methods for Types of PSP Options

PSP Option	NCB	ICB	Prequal	Shortlist	1-stage	2-stage
Service Contract	x			x	x	
Management Contract		x	x			x
Lease (Affermage)		x	x			x
BOO/BOT		x	x			x
Concession		x	x			x

[1] Ranking can be carried out in two ways. (1) *Pass/Fail:* using the pass/fail approach, bidders who meet certain threshold criteria receive a passing score; or (2) *Numerical Score:* using numerical scoring. technical bids are evaluated according to predefined evaluation criteria and assigned a numerical score (typically between 1 and 100). Bidders failing to achieve the minimum required technical score (usually 70), fail the technical evaluation and their financial bids are returned to them unopened.

Timeline for Tendering a Contract

Alert potential bidders

Draft information memorandum

Request for prequalification

Prequalification of bidders

Short-listing of bidders

Establish data rooms

Finalize request for bid documents

Request for proposals (bids)

Evaluation of bids

Select winner/negotiate final contract

Award contract

Source: PPIAF Toolkit 2001.

Timeline of Tasks for Key Players

Project Manager (from government and/or donor)		**Project Team/Steering Committee (from government and/or donor)**
Select approach to tendering		Define work program; design budget estimate; identify sources of funding
	Draft terms of reference	
Solicit LOI		
Short-list advisors		Establish evaluation committee
	Finalize RFPs (including TORs)	
Solicit bids		
	Evaluate bids	
Inform unsuccessful bidders		
	Negotiate contract	

Source: PPIAF Toolkit 2001.

Summary Chart

Procurement Method	When It Is Used
National/local competitive bidding	NCB is the competitive bidding procedure normally used for public procurement in Egypt and may be the most efficient and economical way of procuring goods, services or works, which, by their nature or scope, are unlikely to attract foreign competition. In this case, foreign bidders are not expected to be interested because: (1) the contract values are small; (2) works are scattered geographically or spread over time; (3) works are labor-intensive; and/or (4) the goods or works are available locally at prices below the international market.
International competitive bidding	The objective is to provide a wide range of choices in selecting the best bid from competing suppliers/contractors and to give to all prospective bidders from eligible source countries adequate, fair and equal opportunity to bid on goods, services and works, which are being procured.
Prequalification	Prequalification is usually necessary for large or complex projects or works or in circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom-designed equipment, industrial plants, specialized services and contracts to be let under turnkey, and design-and-build or management contracts. Prequalification may also be useful to determine eligibility for preference for domestic contractors where this is allowed.
Short-listing	By evaluating the information supplied and applying a minimum standard to all respondents, officials will arrive at a list of bidders who qualify for consideration in the next stage of the process. Short-listing is the process of trimming the number of companies to be invited to submit formal bids, possibly after further data gathering. As a general rule, the approach adopted to determining the short list ought to reflect the size and level of the transaction.
Single-stage bidding	If it is deemed both feasible and desirable for the contracting authority to formulate performance indicators or project specifications to the necessary degree of precision or finality, the selection process may be structured as a single-stage procedure. In that case, after having concluded the preselection of bidders, the contracting authority would proceed directly to issuing a final request for proposals.
Two-stage bidding	In the case of turnkey contracts or contracts for large complex plants, services or works of a special nature, it may be undesirable or impractical to prepare complete technical or performance specifications in advance. In such cases, a two-stage bidding procedure may be used. For that purpose, the contracting authority may wish to divide the selection proceedings into two stages and allow a certain degree of flexibility for discussion with bidders.

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VOLUME III (1)

Model Procurement Documents

TABLE OF CONTENTS

Volume III (1): Model Procurement Documents

Selected Acronyms, Abbreviations and Definitions i

SECTION I STANDARD PREQUALIFICATION DOCUMENT

A. Introduction I-1
B. How to Use This Book I-2
C. Notes on Invitation for Prequalification (IFP) I-2
D. Model Specific Procurement Notice I-5
E. Model General Instructions to Applicants (GITA) I-6
F. Model Particular Instructions to Applicants (PITA) I-11
G. Model Invitation for Bids I-15
H. Model Letter of Application I-16
I. Model Information Forms I-19

Annex A Why Prequalification? A-1
Annex B Guidance on Notes for Users B-1
Annex C Prequalification Evaluation Summary C-1

SECTION II STANDARD BID DOCUMENTS FOR PERFORMANCE-BASED MANAGEMENT CONTRACT

A. Information Memorandum II-2
B. Model Invitation for Bids II-5
C. Instructions to Bidders II-6
D. Bid Data Sheet II-18
E. Model Performance-Based Management Contract II-24
F. Data Room II-77

SECTION III STANDARD BID-EVALUATION FORM

A. Preface III-1
B. How to Use These Forms III-2
C. Model Standard Bid-Evaluation Forms III-3

Annex A Evaluation Guide A-1
Annex B Bid-Opening and Bid-Evaluation Summary Checklists B-1

SELECTED ACRONYMS, ABBREVIATIONS, AND DEFINITIONS

Acronyms and Abbreviations

BOQ	Bill of Quantities
CDPSP	Central Department for Private-Sector Projects
FIDIC	Federation Internationale des Ingenieurs-Conseils; an association based in Switzerland that produces GCOCs for different classes of projects
GCOC	General Conditions of Contract
GITA	General Instructions to Applicants, in the SPD
GOE	Government of Egypt
ICB	International Competitive Bidding
IF	Information Forms
IFB	Invitation for Bids
IFP	Invitation for Pre-qualification
ITB	Instructions to Bidders
JV	Joint Venture
JVA	Joint Venture Agreement
LIRR-II	Legal, Institutional and Regulatory Reform Project, Phase II
MHUUC	Ministry of Housing, Utilities and Urban Communities
NCB	National Competitive Bidding
PITA	Particular Instructions to Applicants, in the SPD
PSP	Private-Sector Participation
SBD	Standard Bidding Document
SPD	Standard Pre-qualification Document
USAID	United States Agency for International Development
US	United States

Definitions

Construction Manager	A consultant, acting as agent of the Employer, engaged to coordinate and monitor the timing of preparation, bidding award and execution of a number of different contracts comprising a project, but does not take on the responsibility for price, quality or performance of those contracts.
Contractor	The legal entity that is party to and performs a PSP contract, the other party to the contract being the "Employer."
Employer	One of the two parties to a PSP contract, the other party being the "Employer."

General Contractor	A firm, acting as a "Contractor," that does not usually perform contract construction work directly, but manages the work of other (sub) contractors, while bearing full responsibility and risk for price, quality and timely performance of the contract.
Joint Venture	An ad hoc association of firms that pool their resources and skills to undertake a large or complex PSP contract in the role of "Contractor," with all firms (partners in the JV) being legally liable, jointly and severally, for the execution of the contract in the event of a partner's withdrawal.
Nominated Subcontractor	A specialist enterprise selected and approved by the Employer to provide a pre-specified item in the BOQ and nominated as subcontractor to the Contractor for such purpose. (For a more comprehensive definition, see Sub-Clauses 59.1 and 59.2 of the GCOC FIDIC 1987/92.)
Post-qualification	An assessment made by the Employer after the evaluation of bids and immediately prior to award of contract to ensure that the lowest-evaluated, responsive, eligible bidder is qualified to perform the contract in accordance with previously specified qualification requirements.
Pre-qualification	An assessment made by the Employer of the appropriate level of experience and capacity of firms expressing interest in undertaking a particular contract, before inviting them to bid.
Prime Contractor	A firm that performs a substantial part of a PSP contract itself and the balance, if any, by subcontractors, while bearing full responsibility for the whole contract.
Provisional Sum	A sum included provisionally in the BOQ of a contract, normally for a specialized part of the Services or for contingencies, which sum shall be used only on the instructions of the Employer for payments to the contractor and/or to nominated subcontractors.
Services	The total work involvement in a PSP contract, including the management and supervision services, "permanent" works or finished product as specified, and the "temporary" works required by the Contractor for the execution of the contract.
Turnover	The gross earnings of a firm (in this context, a Contractor), defined as revenue from water sales (and/or treated wastewater), normally expressed on an annual basis, and excluding income from other sources.
Writing	For the purpose of this document, any authenticated handwritten, typed or printed communication, including telex, cable, electronic mail and facsimile transmission, with proof of receipt when requested by the sender.

140

SECTION I

Standard Prequalification Document

Important Note on Standard Prequalification Document

The Standard Prequalification Document (SPD) incorporates international standards and best practices. To some extent, certain provisions of the document differ from Egyptian law and practice. This note identifies those differences.

The editors have left the document intact so that it may provide a guide to the Government of Egypt (GOE) should it decide to amend the Egyptian law and regulations on such documents to fully comply with international standards and best practices.

Users of the document are advised to amend or delete provisions that differ from Egyptian law and substitute provisions that are consistent therewith.

General Comment

Tendering and tendering procedure: Tendering and tendering procedures for concessions, management contracts and other types of major contracts are governed by Law 89/1998 (Tenders Law) and its regulations, which are found in Ministerial Decree 1367/1998 (Executive Statutes).

Specific Comments

General Instructions to Applicants: Article 2 "Fraud and Corruption" – Article 24 of the Tenders Law provides that a contract awarded pursuant to the Tenders Law may be cancelled for fraud or corruption.

General Instructions to Applicants: Article 6 "Domestic Price Preference" – Article 16 of the Tenders Law provides for a statutory 15 percent domestic preference in respect of the supply of locally manufactured goods, Services and contracting works.

A. Introduction

In June 1998, the GOE undertook an ambitious program to reform Egypt's water supply and wastewater sector and introduce private-sector participation (PSP). Procurement of PSP projects supported by LIRR-II is carried out in accordance with policies and procedures laid down in this Toolkit.

The Standard Prequalification Document (SPD) in this publication has been prepared for use by utility managers and others involved in planning and implementing procurements of PSP projects, primarily through International Competitive Bidding (ICB). However, the same principles may also be applied if prequalification is needed under National Competitive Bidding (NCB). The procedures presented are based on the requirements of the GOE, Egyptian law and best international practices.

When ICB is the appropriate method for procurement, the use of the SBDs contained in the Toolkit is recommended. For large projects (customarily regarded as more than US$10 million equivalent) or complex projects (such as leases, concessions and build-operate-transfers (BOTs) and their variants), prequalification is usually necessary. Accordingly, the SPD for the procurement of PSP has been prepared on the basis that prequalification, in accordance with this document, will have taken place prior to bidding.

At the end of this document are two explanatory Annexes, A and B. Annex A, Why Prequalification?, explains the reasons for following this procedure, and discusses the advantages and disadvantages of Prequalification. Annex B, Guidance Notes for Users, explains the rationale for certain clauses and provides guidance to utility managers and their

consultants in preparing a particular prequalification questionnaire and evaluating the submissions of applicants.

A Prequalification Evaluation Summary included in Annex C should be completed by the utility managers or their consultants and submitted to the Central Department for Private Sector Participation (CDPSP) for review prior to notification of applicants.

Users of the SPD are encouraged to furnish their comments or questions on this document to the CDPSP

B. How to Use This Book

This SPD is intended primarily for use by utility managers (normally the "Employer") in prequalifying applicants who express an interest in bidding on PSP contracts under ICB procedures. It includes: formats for the Invitation for Prequalification (IFP); General Instructions to Applicants (GITA); Particular Instructions to Applicants (PITA); a standardized Letter of Application; and a set of Information Forms (IF) for applicants to complete.

The annexed Guidance Notes for Users provides assistance in preparing Prequalification questionnaires and evaluating applications. When using the SPD the following directions should be observed:

- No changes should be made to the wording of the GITA; provisions related to a particular contract or contracts should be stated in the PITA;
- The attached IFs may require minor adaptation to suit the individual requirements of particular contracts;
- In the SPD, all bold, italicized text within brackets ("[]") is not part of the model SPD; the bold, italicized, bracketed text contains guidance and instructions for the agency preparing and issuing the document and should not be incorporated in the final customized version; and
- At the discretion of the Employer, the annexes to this SPD may be incorporated in the final document to provide an element of transparency to applicants regarding the preparation of the prequalification criteria and the evaluation of submissions by the Employer.

C. Notes on Invitation for Prequalification (IFP)

Notification and advertising of the IFP shall follow the sample format indicated on page I-5 and shall be issued as:

- An advertisement in at least one newspaper of general circulation in Egypt and in the official journal or gazette;
- An advertisement in the form of a Specific Procurement Notice (SPN) in the United Nations (UN) publication *Development Business*, if the expected value of the contract is large (i.e., more than US$10 million equivalent);

- For complex and highly specialized projects, an advertisement in *Development Business* and/or in well-known technical magazines, newspapers and trade publications of wide international circulation;

- A transmission to all interested bidders who, following the publication of the General Procurement Notice (GPN), have expressed interest in prequalifying for the Services for which the invitation is issued; and

- Optionally, a notice to embassies and trade representatives of countries in Egypt, with likely potential bidders.

The IFP provides information that enables potential bidders to decide whether to participate. Apart from the essential items listed in the SPD, the IFP shall also indicate any important or specialized Prequalification criteria or minimum requirements.

The following are specific guidance notes for preparing the IFP. The wording in italic below appears in the sample Specific Procurement Notice on page 1-5.

- The *brief description of Services to be procured* should include: an overview of scope of work; the location of project; and all other information necessary to enable potential bidders to decide whether or not to respond to the invitation. Bidding documents may require bidders to have specialized experience or capabilities, and such requirements should also be included in this paragraph;

- The *non-refundable fee* should be nominal and cover minor expenses, such as printing, mailing and shipping costs;

- The *method of payment* should be clearing stated, such as cashier's check, direct deposit to specified account, *et cetera*;

- The *delivery procedure* is airmail for overseas delivery and surface mail or courier for local delivery. If urgency dictates, courier services may be required for overseas delivery;

- Note that the office for "bid opening" may not necessarily be the same as that for "inspection or issuance of documents" or "bid submission." If they differ, each address must appear at the end of the notice and be numbered, as, for example, (1), (2), and (3). The text in the paragraph would then refer to address (1), (2), *et cetera* Only one office and its address may be specified for submission, and it should be near the place where bids will be opened; and

- Note that the time allowed for preparation of the Prequalification submission should be sufficient for applicants to gather all the information required, but in any case not less than six weeks after the date the documents are available or the last date of the advertisement, whichever is later. This period may be longer for very large projects, for which more time may be needed for the formation of Joint Ventures (JV) and the assembly of the necessary resources.

Upon completion of an IFP for publication in *Development Business*, the Employer should forward it to the CDPSP for review and subsequent submission to *Development Business* for

publication. *Development Business* is published in paper form twice monthly and is continuously updated on its Internet web site at http://www.devbusiness.com.

The IFP, after preparation for a particular contract, shall be incorporated into the Prequalification document, as pages 1 and 2.

D. Model Specific Procurement Notice

Specific Procurement Notice
Invitation for Prequalification

Arab Republic of Egypt
Brief Description of Services

This Invitation for Prequalification follows the general procurement notice for this project that appeared in *Development Business* No. ***[number]*** of ***[date]***.

The Government of Egypt (GOE) is engaged in the process of reforming Egypt's water supply and wastewater sector, and the goal of this sector-reform program is to increase the autonomy and promote commercial management of local utilities, as well as to encourage private-sector participation. As part of this effort, the ***[name of Employer]*** intends to prequalify Contractors and/or firms for ***[description of Services to be procured]***. It is expected that invitations to bid will be made in ***[month and year]***.

Prequalification will be conducted through prequalification procedures specified in the *Model Procurement Documents* in the Toolkit issued by the Central Department for Private Sector Participation (CDPSP), and is open to all eligible bidders, as defined in herein.

Interested eligible bidders may obtain further information from and inspect the prequalification documents at the ***[name of agency]*** (address below) ***[state address at end of document]*** from ***[office hours]***. A complete set of Prequalification documents in ***[name of language]*** may be purchased by interested bidders on the submission of a written application to the address below and upon payment of a nonrefundable fee of ***[amount in Egyptian pounds]*** or in ***[amount in specified convertible currency]***. The method of payment will be ***[method of payment]***. The document will be sent by ***[delivery procedure]***.

Applications for Prequalification should be submitted in sealed envelopes, delivered to the address below by ***[date]***, and be clearly marked "Application to Prequalify for ***[name of the contract and contract number]***."

[Name of office]
[Name of officer]
[Postal address and/or street address]
[Telephone number and facsimile or cable number, indicating country and city codes]

E. Model General Instructions to Applicants (GITA)

1. Source of Funds and Scope of Work

Source of Funds	1.1	The Employer named in the Particular Instructions to Applicants (PITA) is receiving support from the CDPSP for procurement of the contract for which this Prequalification is issued.
Scope of Work	1.2	The Employer intends to prequalify Contractors for the Services described in the PITA.
Bid Invitation	1.3	It is expected that prequalified applicants will be invited to submit bids during the month and year indicated in the PITA.
Type of Contract	1.4	The bidding procedures, type of contract, and duration of the contract are indicated in the PITA.
Site Information	1.5	General information on the climate, hydrology, topography, geology, access to site, transportation and communications facilities, medical facilities, project layout, facilities, services provided by the Employer, and other relevant data are attached as an Annex to the PITA.

2. Fraud and Corruption

2.1 It is the GOE's policy to require that Employers, as well as bidders/suppliers/Contractors under PSP contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the GOE, as represented by the CDPSP:

(a) Defines, for the purposes of this provision, the terms set forth below as follows:

(i) "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and

(ii) "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer, and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, noncompetitive levels and to deprive the Employer of the benefits of free and open competition.

(b) Will not accept an Employer's proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question; and

(c) Will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a PSP contract in Egypt if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a PSP contract.

3. Eligibility of Countries and Bidders

Eligible Countries	3.1	Except as provided in Sub-Clauses 3.2 and 3.3, this *Invitation for Prequalification* is *open to* all eligible firms from eligible source countries. The CDPSP maintains a list of countries from which bidders, goods, and Services are not eligible to participate in procurement supported by the CDPSP. The list is regularly updated and can be obtained from the CDPSP. Joint ventures that include members from ineligible source countries, or otherwise ineligible firms, shall not be permitted to bid.
	3.2	Firms may be excluded if, (i) as a matter of law or official regulation, the GOE prohibits commercial relations with that country, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Egypt prohibits any import of goods from that country or any payments to persons or entities in that country.
Eligible Bidders	3.3	A firm that has been engaged by the Employer to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing services, goods, or works (other than a continuation of the firm's earlier consulting services) for the same project.
	3.4	Government-owned enterprises in Egypt may participate only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law. No dependent agency of the GOE or Employer shall be permitted

to bid or submit a proposal for the procurement of services, goods, or works under the project.

3.5 A firm declared ineligible by the CDPSP in accordance with Sub-Clause 2.1 (c) above shall be ineligible to bid for a PSP contract in Egypt during the period of time determined by the CDPSP.

4. Qualification Criteria

General 4.1 Prequalification will be based on applicants meeting all the following minimum pass–fail criteria regarding their general and particular experience, financial position, personnel and equipment capabilities, and other relevant information as demonstrated by the Applicant's responses in the Information Forms attached to the Letter of Application. Additional requirements for JVs are given in Clause 5. The qualifications, capacity, and resources of proposed subcontractors will not be taken into account in assessing those of individual or JV Applicants, unless they are named specialist subcontractors pursuant to Sub-Clause 4.4.

Nominated Subcontracting 4.2 If so listed in the PITA, the Employer intends to execute certain specialized elements of the Services by *Nominated Subcontractors* in accordance with the General Conditions of Contract (GCOC) of the bidding documents, and for which Provisional Sums will be included in the Bill of Quantities (BOQ) for the subject Services.

Subcontracting 4.3 If an Applicant intends to subcontract parts of the Services, such that the total of subcontracting is more than the percentage stated in the PITA of the Applicant's approximated Bid Price, that intention shall be stated in the Letter of Application, together with a tentative listing of the elements of the Services to be subcontracted.

Specialist Subcontracting 4.4 If an Applicant intends to subcontract any highly specialized elements of the Services to specialist subcontractors, such elements and the proposed subcontractors shall be clearly identified, and the experience and capacity of the subcontractors shall be described in the relevant Information Forms.

Acceptable Substitutes 4.5 With reference to Sub-Clauses 4.3 and 4.4, the Employer may require Applicants to provide more information about their proposals. If any proposed subcontractor is found ineligible or unsuitable to carry out an assigned task, the Employer may request the Applicant to propose an acceptable substitute, and may conditionally prequalify the Applicant accordingly, before issuing an Invitation for Bids.

Contractor's Responsibility 4.6 After award of the contract, the subcontracting of any part of the Services, other than for the provision of labor and materials, or to subcontractors named in the Contract, shall require the prior consent of the Employer. Notwithstanding such consent, the Contractor shall remain responsible for the acts, defaults, and neglects of all subcontractors during contract implementation.

General Experience 4.7 The Applicant shall provide evidence that:

(a) it has been actively engaged in the water supply and wastewater operation business for at least the period stated in the PITA, immediately prior to the date of submission of applications, in the role of Prime Contractor/operator, partner in a JV, or subcontractor, and

(b) that the Applicant has generated an average annual Turnover during the above period greater than the amount stated in the PITA.

The average annual Turnover is defined as the total revenues from water sales (and/or treated wastewater) by the firm or firms comprising the Applicant, divided by the number of years stated in the PITA.

Particular Experience 4.8

(a) The Applicant shall provide evidence that it has successfully completed, or substantially completed, at least the number of contracts stated in the PITA, of a nature, complexity, and requiring technology similar to the proposed contract, within the period stated in the PITA. The Services may have been executed by the Applicant as a Prime Contractor/operator, or proportionately as member of a JV or subcontractor, with references being submitted to confirm satisfactory performance.

(b) The Applicant shall also provide evidence that it has achieved the minimum monthly and/or annual production rates of water supply or treated wastewater, or served the number of connections, described in the PITA under similar contract conditions.

Financial Capabilities 4.9 The Applicant shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means

(independent of any contractual advance payment) sufficient to meet the cash flow requirements for the subject contract in the event of stoppage, start-up, or other delays in payment, of the minimum estimated amount stated in the PITA, net of the Applicant's commitments for other contracts.

4.10 In the relevant Information Form, the Applicant shall also demonstrate, to the satisfaction of the Employer, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

4.11 The audited balance sheets or, if not required by the laws of the Applicant's country, other financial statements acceptable to the Employer, for the last five years (unless otherwise stated in the PITA) shall be submitted and must demonstrate the current soundness of the Applicant's financial position and indicate its prospective long-term profitability. If deemed necessary, the Employer shall have the authority to make inquiries with the Applicant's bankers.

Personnel Capabilities 4.12 The Applicant shall supply general information on the management structure of the firm, and shall make provision for suitably qualified personnel to fill the key positions listed in the PITA, as required during contract implementation. The Applicant shall supply information on a prime candidate and on an alternate for each key position, both of whom shall meet the experience requirements specified.

Litigation History 4.13 The Applicant shall provide accurate information on the related Application Form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of awards against the Applicant or any partner of a JV may result in failure of the application.

Right to Waive 4.14 The Employer reserves the right to waive minor deviations in the qualification criteria if they do not materially affect the capability of an Applicant to perform the contract.

5. Joint Ventures

Eligibility 5.1 If the Applicant comprises a number of firms combining their resources in a JV, the legal entity constituting the JV and the individual partners in the JV shall be registered in eligible source countries and shall otherwise meet the requirements of Clause 3.

Qualification Criteria 5.2 The JV must satisfy collectively the criteria of Clause 4. For this purpose the following data of each member of the JV may be added together to meet the collective qualifying criteria:

(a) Average annual Turnover (Sub-Clause 4.7 (b));
(b) Particular experience (Sub-Clause 4.8 (a)) and key production rates (Sub-Clause 4.8 (b));
(c) Cash flow (Sub-Clause 4.9); and
(d) Personnel capabilities (Sub-Clause 4.12).

Each partner must satisfy the following criteria individually:

(a) General experience for the period of years stated in Sub-Clause 4.7 (a);
(b) Adequate sources to meet financial commitments on other contracts (Sub-Clause 4.10);
(c) Financial soundness (Sub-Clause 4.11); and
(d) Litigation history (Sub-Clause 4.14).

In accordance with the above, the Application shall include all related information required under Clause 4 for individual partners in the JV.

Partner in Charge 5.3 One of the partners, who is responsible for performing a key function in contract management or is executing a major component of the proposed contract, shall be nominated as being in charge during the Prequalification and bidding periods and, in the event of a successful bid, during contract execution. The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the JV; this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners.

Partner Limitation 5.4 Unless otherwise stated in the PITA, there shall be no limit on the number of partners in a joint venture; however, the attention of Applicants is drawn to the provisions of Sub-Clause 5.5.

Joint and Several Liability 5.5 All partners of the JV shall be legally liable, jointly and severally, during the bidding process and for the execution of the contract in accordance with the contract terms, and a statement to this effect shall be included in the authorization mentioned under Sub-Clause 5.3 above.

148

Joint Venture Agreement	5.6	A copy of the JV Agreement (JVA) entered into by the partners shall be submitted with the Application. Alternatively, a Letter of Intent to execute a JVA in the event of a successful bid shall be signed by all partners and submitted with the Application together with a copy of the proposed Agreement. Pursuant to Sub-Clauses 5.3 to 5.5, the JVA shall include among other things: the JV's objectives; the proposed management structure; the contribution of each partner to the JV operations; the commitment of the partners to joint and several liability for due performance; recourse/sanctions within the JV in the event of default or withdrawal of any partner; and arrangements for providing the required indemnities.
Dissolution of Joint Venture	5.7	The Prequalification of a JV does not necessarily prequalify any of its partners to bid individually or as a partner in any other JV or association. In case of dissolution of a JV prior to the submission of bids, any of the constituent firms may prequalify if they meet all of the Prequalification requirements, subject to the written approval of the Employer. Individual members of a dissolved JV may participate as subcontractor to qualified Applicants, subject to the provisions of Sub-Clause 9.3.

6. Domestic Bidder Price Preference

Eligibility	6.1	If so indicated in the PITA, a 7.5 percent margin of price preference for qualifying domestic bidders shall apply in bid evaluation. On the basis of information submitted by Applicants and available at the time of notification, the Employer will inform prequalified Applicants of their apparent eligibility to qualify for the domestic bidder price preference (subject to subsequent confirmation at bid evaluation), in accordance with Sub-Clause 6.2.
Domestic Bidders	6.2	A *domestic bidder* is one that meets the following criteria: (a) For an individual firm: (i) Is registered in Egypt; (ii) Has more than 50 percent ownership by nationals of Egypt; and (iii) Does not subcontract more than ten percent of the contract price, excluding Provisional Sums, to foreign Contractors. (b) For a JV of domestic firms: (i) Individual member firms shall satisfy 6.2 (a)(i) and (a)(ii); (ii) The JV shall be registered in Egypt; and (iii) The JV shall not subcontract more than ten percent of the contract price, excluding Provisional Sums, to foreign firms.

7. Requests for Clarification

Notification and Response	7.1	Applicants are responsible for requesting any clarification of the Prequalification documents. A request for clarification shall be made in writing to the Employer's address indicated in the PITA. The Employer will respond to any request for clarification that it receives earlier than 14 days prior to the deadline for submission of applications. Copies of the Employer's response, including a description of the inquiry, but without identifying its source, will be forwarded to all purchasers of the Prequalification documents.

8. Submission of Applications

Delivery	8.1	Submission of applications for Prequalification must be received in sealed envelopes, either delivered by hand or by registered mail to the address, not later than the date stated in the PITA. The name and mailing address of the Applicant shall be indicated on the envelope, which shall be clearly marked as indicated in the PITA. A receipt will be given for all applications submitted.
Late Applications	8.2	The Employer reserves the right to accept or reject late applications.
Language	8.3	All information requested for Prequalification shall be provided by Applicants in the language indicated in the PITA. Information may be provided in another language, but it shall be accompanied by an accurate translation of its relevant passages into the language indicated in the PITA. This translation will govern and will be used for interpreting the information.
Lack of Information	8.4	Failure of an Applicant to provide comprehensive and accurate information that is essential for the Employer's evaluation of the Applicant's qualifications, or to provide timely clarification or substantiation of the information supplied, may result in disqualification of the Applicant.

Material Changes	8.5	Applicants, and those subsequently prequalified or conditionally prequalified, shall inform the Employer of any material change in information that might affect their qualification status. Bidders shall be required to update key Prequalification information at the time of bidding. Prior to award of contract, the lowest evaluated bidder will be required to confirm its continued qualified status in a Post-qualification review process.

9. Employer's Notification and Bidding Process

Invitation for Bid	9.1	Within the period stated in the PITA from the date for submission of applications, the Employer will notify all Applicants in writing of the results of their application, including eligibility for domestic bidder price preference, in accordance with Clause 6, and of the names of all prequalified and conditionally prequalified applicants (see Sub-Clause 9.2). At the same time, successful applicants will be invited to submit a bid, in the format of the Invitation for Bids annexed to the PITA.
Conditional Prequalification	9.2	An Applicant may be "conditionally prequalified," that is, qualified subject to certain specified nonmaterial deficiencies in the Prequalification requirements being met by the Applicant to the satisfaction of the Employer, before submitting a bid. Upon full compliance with the Prequalification requirements, other prequalified applicants will be notified accordingly.
One Bid per Bidder	9.3	Only firms and JVs that have been prequalified under this procedure may submit a bid. A firm shall submit only one bid in the same bidding process, either individually as a bidder or as a partner of a JV. No firm can be a subcontractor, while submitting a bid individually or as a partner of a JV in the same bidding process. A firm, if acting in the capacity of subcontractor in any bid, may participate in more than one bid, but only in that capacity. A bidder who submits, or participates in, more than one bid will cause all the proposals in which the bidder has participated to be disqualified.
Bid Security	9.4	Bidders will be required to provide bid security in the form and amount indicated in the bid documents. The successful bidder will be required to provide performance security in the form and amount indicated in the bidding documents.
Changes after Prequalification	9.5	Any change in the structure or formation of an Applicant after being prequalified and invited shall be subject to written approval of the Employer prior to the deadline for submission of bids. Such approval will be denied if as a consequence of any change: (a) An individual firm, or a JV as a whole, or any individual member of the JV fails to meet any of the collective or individual qualifying requirements; (b) The new partners to a JV were not prequalified in the first instance, either as individual firms or as another JV; or (c) In the opinion of the Employer, a substantial reduction in competition may result.
Employer's Rights	9.6	The Employer reserves the right to take the following actions, and shall not be liable for any such actions, to: (a) Amend the scope and cost of any contract to be bid under this project, in which event bids will be invited only from those applicants who meet the resulting amended Prequalification requirements; (b) Reject or accept any Prequalification application, and/or any late application; and (c) Cancel the Prequalification process and reject all applications.

F. Model Particular Instructions to Applicants (PITA)

[All items in the PITA should be filled in by the Employer before issuance of the Prequalification documents. An * inserted after the briefing notes for certain items indicates that supplemental guidance is given in Annex B, Parts A. and B.]

These particular instructions and related Information Forms (IF) are intended to complement, amend, or supplement the provisions in the GITA. In the event of conflict or ambiguity, the provisions in the PITA shall prevail over those in the GITA.

	GITA Sub-Clause Reference
Source of Funds	1.1 The Employer: ***[Name, address, telephone and fax numbers, and electronic mail address for contact purposes.]*** Name of Project: ***[Give the name and describe briefly the principal components of the overall project of which the subject contract forms part.]***
Scope of Work	1.2 Contract Reference: Title: The Services: ***[Give a contract reference number and title, and describe the Services in sufficient detail to identify location, nature, and complexity. The estimated cost or value of the project, contract or Services should not be disclosed in these Instructions or in the Invitation for Prequalification.]***
Bid Invitation	1.3 Expected Date of Invitation for Bids: ***[The date; or alternatively, just the month and year if a precise date has not yet been decided.]***
Type of Contract	1.4 Bidding Procedure: ***[Type of bidding procedure to be used – International Competitive Bidding / National Competitive Bidding; Single-stage Bid Process / Two-stage Bid Process.]*** Type of Contract: ***[Type of PSP contract: Service Contract; Management Contract; Lease; Concession; BOT/BOO/BOOT/ROT; et cetera]*** Duration of Contract: ***[Duration, in years or months.]***
Site Information	1.5 See Annex to the PITA Part B. for the referenced contract. ***[Provide details as described in GITA Sub-Clause 1.5.]***
Nominated Subcontracting	4.1 The Employer intends to execute the following specialized elements of the Services by Nominated Subcontractors: 1) 2) *et cetera.* ***[Describe briefly the specialized items to be subcontracted; if none, enter "Not Applicable."*]***
Subcontracting by Applicant	4.3, 4.4 Provide information if subcontracting accounts for more than about ____ percent of the Applicant's approximated Bid Price. ***[A figure when the Employer wishes to have advance information about all subcontracting by the Applicant. Noting that all specialist subcontracting has to be fully detailed, a figure of up to, say, 20 percent may be appropriate. *]***

General Experience

4.7

(a) Time period in the Water Supply and Wastewater Operations Business:

[The time period is normally five years or more.*]

(b) Required Average Annual Turnover: US$ _____ equivalent.

[The amount stated should normally not be less than twice the estimated annual revenue from water sales (wastewater) in the proposed Services contract. The multiplier of two may be reduced for very large contracts (say, greater than US$200 million equivalent), but should not be less than 1.5.*]

Particular Experience

4.8

(a) Required number of similar contracts completed:

[The range should be two to ten (and is normally five), depending on the size and complexity of the subject contract and the exposure of the Employer to risk of Contractor default. For example, for small- to medium-sized contracts, an Employer may be prepared to risk an award to an applicant with only two previous similar contracts completed. Otherwise, five similar contracts may not limit applications, but would reduce the risk of Contractor default.*]

Within time period of:

[The range is normally five to 30 years, and should be related to the number of similar contracts stated above and to the duration of the subject contract, e.g., thirty years for five contracts of about 20 years' duration, or ten years for five contracts of about five years' duration.*]

(b) Minimum numbers of connections, and key production or treatment rates:

1) _____

2) _____

et cetera.

[List the monthly or annual water supply production or wastewater treatment rates, and number of connections, e.g., "one million m^3 of potable water supplied in one year; X m^3 of wastewater treated in one year; and for a total number of billed connections of not less than Y." The rates should be a percentage (say about 80 percent) of the estimated production or treatment rate under the contract or Services, and the number of connections should be a percentage (say about 80 percent) of the number of connections to be served under the Contract.*]

(c) Other Experience:

1) _____

2) _____

etc.

[List any other requirements, e.g., "experience in the control of unaccounted-for water / non-revenue water" or "rehabilitation and renewal of distribution systems," et cetera.]

Financial Capabilities

4.9

Minimum Required Cash Flow amount: US$ _____ equivalent.

[Calculate the cash flow requirement for a number of months (to the nearest half-month), determined as the total time needed by the Employer to pay a Contractor's invoice, allowing for (a) the time needed by the Contractor to issue the monthly invoice, (c) the time needed by the Employer to pay the invoice amount, and (d) a contingency period of one month to allow for unforeseen delays. The total period should not exceed six months. The assessment of the monthly amount should be based on a straight-line projection of the estimated cash flow requirement over the particular contract period, neglecting the effect of any advance payment and retention monies, but including contingency allowances in the estimated contract cost.*]

Audited Balance Sheets

4.11

Time period, if less than five years:

[The time period may be reduced to three years minimum (in agreement with the CDPSP) under special circumstances. Firms owned by individuals and partnerships may not be required to maintain audited balance sheets by the laws of their countries of origin; in such cases, the Employer may relax the audit requirement, but should request other acceptable financial statements.*]

Personnel Capabilities

4.12

	Total Work/Business Position	In Similar Experience (years)	Work (years)
1)	_____	_____	_____
2)	_____	_____	_____
3)	_____	_____	_____
4)	_____	_____	_____

etc.

***[List only key management and specialist positions required for the subject contract; e.g., project director, technical manager, commercial manager, financial manager, construction manager, site engineer, et cetera.*]**

The Applicant shall provide further details of the proposed personnel and their experience records in the relevant Information Forms 6 and 6A.

Joint Ventures

5.4

Partner Limitation:

["None" if there is to be no limit in the number of partners or, alternatively, a number that the Employer considers appropriate according to the varied nature and size of the contract. Normally, the Applicant, if a JV, should not be limited in the composition and number of partners. However, the risk to an Employer of possible default is greater if a JV were to comprise a large number of firms, jointly and severally bound to complete the contract, and a key firm or firms were to defect. International experience in the water sector shows that the number of partners in JVs for PSP contracts usually ranges from two to five in contracts with a value up to about US$100 million.]

Domestic Bidder Price Preference

6.1

Preference shall apply for Eligible Domestic Bidders: _____

[Answer "Yes" or "No."]

Applicants considering themselves eligible for the Services preference in bid evaluation shall provide information and statements in accordance with GITA Sub-Clauses 6.1 and 6.2 for review by the Employer.

Requests for Clarification

7.1

Address:

[Give address of Employer (or agency) handling clarifications.]

Submission of Applications

8.1

Address:

[Give precise address, and preferably room number, for submission.]

Date for Submission:

[The time allowed for preparation and submission of the Prequalification document should be sufficient for applicants to gather all the information required – preferably eight weeks, but in any case not less than six weeks after the dates when the documents are available for distribution or the date of the advertisement. This period may be longer for very large projects, where time should be allowed for the formation of JVs and assembly of the necessary resources.]

Envelope Marking: "Prequalification Application for: _____/_____."

[Give name of project and contract reference numbers as stated in the Invitation for Prequalification.]

Language

8.3

[The language to be used shall be that in which the Prequalification and bidding documents are written. Arabic, English, French, or Spanish shall be used in International Competitive Bidding (ICB); Arabic may be used for National Competitive Bidding (NCB).]

Employer's Notification	9.1 Time period from submission of applications: _____ days. ***[Depending on the complexity of the contract, and of the evaluation criteria, et cetera, a period between 56 to 84 days is considered appropriate, including seeking the CDPSP's "no objection."]***

Site Information Annex

Pursuant to GITA 1.5, attached hereto is general information and site data relating to the subject contract.

[The Employer should prepare and attach a report providing information (as available at the time) on the topics listed in GITA 1.5.]

G. Model Invitation for Bids

[This sample basic form may be adapted by the Employer to notify conditionally prequalified Applicants (ref GITA 9.2 and Annex B, Part B5.). If the evaluation of applications has been made on the basis of the maximum bidding capacity of Applicants, consult the Guidance on Notes For Users (Annex B, Part B.).]

Invitation for Bids

[Letterhead paper of the Employer]

Date: _____

To: *[Name of Contractor]*
[Address]
Reference: *[Contract name and number]*

Dear Sirs:

We hereby inform you that you are prequalified for bidding for the above-cited contract. A list of prequalified and conditionally prequalified Applicants is attached to this invitation.

On the basis of information submitted in your application, you would ***["not", if appropriate]*** appear eligible for application of the domestic bidder price preference in bid evaluation. Eligibility is subject to confirmation at bid evaluation.

We now invite you and other prequalified Applicants to submit sealed bids for the execution and completion of the cited contract.

You may obtain further information from, and inspect and acquire the bidding documents at, our offices at ***[mailing address, street address, and cable/telex/facsimile numbers]***.

A complete set of bidding documents may be purchased by you at the above office, on or after ***[time and date]*** and upon payment of a nonrefundable fee of ***[amount and currency]***.

All bids must be accompanied by a security in the form and amount specified in the bidding documents, and must be delivered to ***[address and exact location]*** at or before ***[time and date]***. Bids will be opened immediately thereafter in the presence of bidders' representatives who choose to attend.

Please confirm receipt of this letter immediately in writing by cable, fax, or telex. If you do not intend to bid, we would appreciate being so notified also in writing at your earliest opportunity.

Yours truly,

Authorized Signature: _____
Name and Title: _____
Employer: _____

H. Model Letter of Application

*[Spaces marked with * on this and on subsequent forms are to be completed by the Employer.]*

Letter of Application

[Letterhead paper of the Applicant or partner responsible for a Joint Venture, including full postal address, and telephone, facsimile, and e-mail address]

Date: _____

To: _____ *[Name and address of the Employer]**

Name of Contract: _____*

1. Being duly authorized to represent and act on behalf of _____ (hereinafter referred to as "the Applicant"), and having reviewed and fully understood all of the Prequalification requirements and information provided, the undersigned hereby applies for Prequalification to bid on the contract or contracts referenced above.

2. Attached to this letter are copies of original documents defining[i]:

   (a) The Applicant's legal status;

   (b) The Applicant's principal place of business; and

   (c) The place of incorporation (for Applicants that are corporations), or the place of registration and the nationality of the owners (for Applicants that are partnerships or individually owned firms).

3. With reference to GITA Sub-Clause 4.3, it is our intention to subcontract approximately _____ percentage of the Bid/Contract Price, details of which are provided herein.

4. Your Agency and its authorized representatives are hereby authorized to conduct any inquiries or investigations to verify the statements, documents, and information submitted in connection with this application, and to seek clarification from our bankers and clients regarding any financial and technical aspects. This Letter of Application will also serve as authorization to any individual or authorized representative of any institution referred to in the supporting information to provide such information deemed necessary and as requested by yourselves to verify statements and information provided in this application, such as the resources, experience, and competence of the Applicant.

5. Your Agency and its authorized representatives may contact the following persons for further information[ii]:

---

[i] For applications by joint ventures, all the information requested in the prequalification documents is to be provided for the joint venture, if it already exists, and for each party to the joint venture separately. The lead partner should be clearly identified. Each partner in the joint venture shall sign the letter.

[ii] Applications by joint ventures should provide on a separate sheet equivalent information for each party to the application.

General and managerial inquiries	
Contact 1	Address and communication facilities
Contact 2	Address and communication facilities

Personnel inquiries	
Contact 1	Address and communication facilities
Contact 2	Address and communication facilities

Technical inquiries	
Contact 1	Address and communication facilities
Contact 2	Address and communication facilities

Financial inquiries	
Contact 1	Address and communication facilities
Contact 2	Address and communication facilities

6. This application is made with the full understanding that:

   (a) Bids by prequalified Applicants will be subject to verification of all information submitted for Prequalification at the time of bidding;

   (b) Your Agency reserves the right to:

   - Amend the scope and value of any contracts to be bid under this project; in which event, bids will be invited only from those Applicants who meet the resulting amended Prequalification requirements; and

   - Reject or accept any application, cancel the Prequalification process, and reject all applications.

   (c) Your Agency shall not be liable for any such actions under 6 (b) above.

Note: Applicants who are not JVs should delete paras. 7 and 8 and initial the deletions. The attention of Applicants who are JVs is drawn to GITA Sub-Clause 5.6 regarding Letters of Intent.

7. Appended to this application, we give details of the participation of each party, including capital contribution and profit/loss agreements, in the Joint Venture or association. We also

specify the financial commitment in terms of the percentage of the value of the contract, and the responsibilities for execution of the contract.

8. We confirm that if we bid, that bid, as well as any resulting contract, will be:

   (a) Signed so as to legally bind all partners, jointly and severally; and

   (b) Submitted with a joint-venture agreement providing the joint and several liability of all partners in the event the contract is awarded to us.

9. The undersigned declare that the statements made and the information provided in the duly completed application are complete, true, and correct in every detail.

Signed Name	Signed Name
For and on behalf of (name of Applicant or lead partner of a joint venture)	For and on behalf of (name of partner)

Signed Name	Signed Name
For and on behalf of (name of partner)	For and on behalf of (name of partner)

Signed Name	Signed Name
For and on behalf of (name of partner)	For and on behalf of (name of partner)

I. Model Information Forms

[These basic Information Forms should be finalized by the Employer with appropriate minor changes to suit the particular Prequalification requirements of the specific contract. Supplementary information may be provided by Applicants as deemed necessary.]

INFORMATION FORM (1) PAGE __ OF __ PAGES

General Information

All individual firms and each partner of a Joint Venture applying for Prequalification are requested to complete the information in this form. Nationality information should be provided for all owners or Applicants that are partnerships or individually owned firms.

Where the Applicant proposes to use named subcontractors for highly specialized components of the Services (reference Sub-Clause 4.4 of the GITA), the following information should also be supplied for the subcontractor(s), together with the information in Forms 2, 3, 3A, 4, and 5.

1.	Name of firm	
2.	Head office address	
3.	Telephone	Contact
4.	Fax	E-mail
5.	Place of incorporation / registration	Year of incorporation / registration

Nationality of owners[1]

	Name	Nationality
1.		
2.		
3.		
4.		
5.		

To be completed by all owners of partnerships or individually owned firms.

INFORMATION FORM (2) PAGE __ OF __ PAGES

General Experience

(ref. GITA Sub-Clause 4.7)

Name of Applicant or partner of a Joint Venture

The information supplied should be the annual Turnover of the Applicant (or each member of a Joint Venture), in terms of revenue from water sales or wastewater treatment for each year for work in progress or completed, converted to U.S. dollars at the rate of exchange at the end of the period reported. The annual periods should be calendar years, with partial accounting for the year up to the date of submission of applications.

A brief note on each contract should be appended, describing the nature of the work, duration and amount of contract, managerial arrangements, Employer, and other relevant details.

Use a separate sheet for each partner of a Joint Venture.

Applicants should not enclose testimonials, certificates, and publicity material with their applications; they will not be taken into account in the evaluation of qualifications.

Item	Unit	Quantity				
		Year 5	Year 4	Year 3	Year 2	Year 1
Population Served	Number					
Volume of Water Produced	m^3/year					
Volume of Wastewater Treated	m^3/year					
Connections	Number					
Turnover (from water sales)	US$/year					
Number of construction contracts and corresponding capacities and cost over the last 20 years. Indicate areas of firm's own investments.						

INFORMATION FORM (2A) PAGE __ OF __ PAGES

Joint Venture Summary

Names of all partners of a Joint Venture
1. Partner in charge
2. Partner
3. Partner
4. Partner
5. Partner
6. Other

Total value of annual Turnover, in US$ equivalent, converted at the rate of exchange at the end of the period reported:

Annual Turnover Data (US$ equivalent)						
Partner	Form 2 page no.	Year 5	Year 4	Year 3	Year 2	Year 1
1. Partner in charge						
2. Partner						
3. Partner						
4. Partner						
5. Partner						
6. Other						
Totals						

INFORMATION FORM (3) PAGE __ OF __ PAGES

Particular Experience

(ref. GITA Sub-Clauses 4.4 and 4.8)

Name of Applicant or partner of a Joint Venture or named Subcontractor

The Applicant shall be required to provide in conformity with GITA Sub-Clause 4.8(a) an indication of its experience in construction of water supply production facilities, pipeline rehabilitation and renewal.

The Applicant must indicate the capacity of each production facility constructed or under construction for the past twenty (20) years, and lengths of pipeline renewed and rehabilitated per year for the past ten (10) years.

In the case of a Joint Venture, only the member or members with relevant experience should fill out the form.

INFORMATION FORM (3A) PAGE __ OF __ PAGES

Details of Contracts of Similar Nature and Complexity

Name of Applicant or partner of a Joint Venture

Use a separate sheet for each contract.

1.	Number of Contract	
	Name of Contract	
	Country	
2.	Name of Employer	
3.	Employer Address	
4.	Nature of Services and special features relevant to the contract for which the Applicant wishes to prequalify.	
5.	Contract role (check one) ☐ Prime Contractor ☐ General Contractor ☐ Subcontractor ☐ Partner in a Joint Venture	
6.	Amount of the total contract/subcontract/partner share (*in specified currencies* at completion, or at date of award for current contracts). Currency Currency Currency	
7.	Equivalent amount US$ Total contract: $_____; Subcontract: $_____; Partner share: $_____	
8.	Date Of Award/Completion	
9.	Special contractual/constructional requirements, including monthly/annual water supply production or *wastewater treatment rates.*	
10.	Indicate the approximate percent of total contract value (and US$ amount) of work undertaken by subcontract, if any, and the nature of such work.	

INFORMATION FORM (4) PAGE __ OF __ PAGES

Technical Information

Name of Applicant or partner of a Joint Venture

Applicants and each partner to an application should provide information on their current water supply and wastewater operations.

Country	Capacity of water production facility(ies)	Length of pipe network	No. of water supply connections	Actual production	Volume billed	No. of waste-water connections	Towns with population >500,000	Investment from own funds
1.								
2.								
3.								
4.								
5.								
6.								

164

INFORMATION FORM (5) PAGE __ OF __ PAGES

Financial Capabilities

Name of Applicant or partner of a Joint Venture

Applicants, including each partner of a Joint Venture, shall provide financial information to demonstrate that they meet the requirements stated in the GITA. Each applicant or partner of a Joint Venture shall complete this form. If necessary, separate sheets shall be used to provide complete banker information. A copy of the audited balance sheets shall be attached.

Autonomous subdivisions of parent conglomerate businesses shall submit financial information related only to the particular activities of the subdivision.

Banker	Name of banker	
	Address of banker	
	Telephone	Contact name and title
	Fax	E-mail

Summarize actual assets and liabilities in U.S. dollar equivalent (at the rates of exchange current at the end of each year) for the previous five calendar years, or such period as stated in PITA 4.11. Based upon known commitments, summarize projected assets and liabilities in U.S. dollar equivalent for the next two calendar years, unless the withholding of such information by stock-market-listed public companies can be verified by the Applicant.

Financial information in US$ equivalent	Actual: Previous five years						Projected: Next two years	
	5.	4.	3.	2.	1.	0	1.	2.
1. Total assets								
2. Current assets								
3. Total liabilities								
4. Current liabilities								
5. Profit before taxes								
6. Profit after taxes								

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total cash flow demands of the subject contract as indicated in PITA 4.9.

Source of financing	Amount (US$ equivalent)
1.	
2.	
3.	
4.	

Attach audited financial statements — including, as a minimum, profit and loss account, balance sheet, and explanatory notes — for the period stated in PITA 4.11 (for the individual Applicant or each partner of a Joint Venture).

If audits are not required by the laws of Applicants' countries of origin, partnerships and firms owned by individuals may submit their balance sheets certified by a registered accountant, and supported by copies of tax returns.

INFORMATION FORM (6)

PAGE __ OF __ PAGES

Personnel Capabilities

Name of Applicant

For specific positions *essential* to contract management and implementation (and including those positions specified in PITA Sub-Clause 4.12), Applicants should provide the names of at least two candidates qualified to meet the specified requirements stated for each position. The data on their experience should be supplied on separate sheets using one Form 6A for each candidate.

Applicants may propose alternative management and implementation arrangements requiring different key personnel, whose experience records should be provided.

1.	Title of position*
	Name of prime candidate
	Name of alternate candidate
2.	Title of position*
	Name of prime candidate
	Name of alternate candidate
3.	Title of position*
	Name of prime candidate
	Name of alternate candidate
4.	Title of position*
	Name of prime candidate
	Name of alternate candidate

**As listed in PITA 4.12.*

INFORMATION FORM (6A) PAGE __ OF __ PAGES

Candidate Summary

Name of Applicant

Position		Candidate ☐ Prime ☐ Alternate
Candidate information	Name of candidate	Date of birth
	Professional qualifications	
Present employment	Name of Employer	
	Address of Employer	
	Telephone	Contact (manager / personnel officer)
	Fax	E-mail
	Job title of candidate	Years with present Employer

Summarize professional experience over the last twenty (20) years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company / Project / Position / Relevant technical and management experience

168

INFORMATION FORM (7)

PAGE __ OF __ PAGES

Experience in Developing Countries

Name of Applicant

The Applicant shall provide adequate information to demonstrate clearly that it has the capability to work in a developing country. The Applicant must provide on a separate form its experience in construction, operations, and management of water supply or wastewater in developing countries.

INFORMATION FORM (8) PAGE __ OF __ PAGES

Litigation History

(ref. GITA Sub-Clause 4.14)

Name of Applicant or partner of a Joint Venture

Applicants, including each of the partners of a Joint Venture, shall provide information on any history of litigation or arbitration resulting from contracts executed in the last five (5) years or currently under execution. A separate sheet should be used for each partner of a Joint Venture.

Year	Award For or Against Applicant	Name of client, cause of litigation, and matter in dispute	Disputed amount (current value, US$ equivalent)

170

Why Prequalification?

The successful execution of PSP contracts requires that contracts are awarded only to firms, or combinations of firms, that are suitably experienced in the type of services, work and technology involved, that are financially and managerially sound, and that can provide all the personnel and services required in a timely manner. The assessment by an Employer, or its consultants, of the suitability of firms to carry out a particular contract *prior* to being invited to submit a bid is a process called prequalification.

A. The Requirement for Prequalification of Bidders

The CDPSP recommends the prequalification of firms for large or complex PSP contracts, followed by a closed competitive bidding procedure, in which only those firms meeting specified prequalification criteria are invited to submit a bid. It is CDPSP policy that all applicants meeting the specified criteria shall be allowed to bid. Therefore, prequalification should not be used for limiting competition to a predetermined number of potential bidders.

The decision whether to carry out prequalification is a matter of professional judgment, based upon a number of considerations about the contract itself, and about the actual process of prequalification. Contract considerations include size, complexity, duration, the nature of the services or works, environmental impact, associated risks, *etcetera*. Considerations regarding the process of prequalification should weigh the potential benefits against the potential disadvantages, which are topics discussed below.

B. Benefits of Prequalification

The prequalification process may be of benefit to both bidders and the Employer alike, in that:

1. The process enables prospective bidders, who may be insufficiently qualified on their own, to avoid the expense of bidding, or to form a joint venture that may give a better chance of success;

2. With prequalification, well-qualified firms will price their bids with the knowledge that they are competing against other qualified bidders meeting realistic minimum competence criteria – the assurance that inadequately qualified competitors will be excluded from submitting unrealistically low bids encourages leading contractors to bid;

3. Prequalification enables Employers to assess the interest from qualified firms generated by the contract and, in the event that only a limited number of applications are received, to make any necessary adjustments in the procurement process (including, in particular, the special conditions of the contract – sharing of risk, payment terms, liquidated damages, or performance targets, which may be perceived as onerous by potential bidders);

4. It helps to expose potential conflicts of interest by identifying contractors who may have a business association with consultants to the project;

5. It reduces the amount of work and time involved by Employers in evaluating bids from unqualified contractors;

6. It encourages local firms to form joint ventures with other local or international firms, thereby benefiting from their resources and experience;

7. It enables the Employer to assess the likelihood of contractors' eligibility for domestic bidder price preference, where this is applicable;

8. It reduces significantly, if not eliminates, problems of rejection associated with low-priced bids submitted by bidders of doubtful capability; and

9. It gives the CDPSP some indication of an Employer's ability to manage an important, early procurement function.

C. Disadvantages of Prequalification

On the negative side, prequalification has some potential disadvantages:

1. It may increase procurement lead time, although this can be minimized by good procurement scheduling, e.g., undertaking the prequalification process while bid documents are being prepared;

2. The Employer is required to review all prequalification applications, whereas post-qualification requires the review of the qualifications of, normally, only one (the lowest evaluated) bidder;

3. Collusion (and the possibility of price-rigging) is easier among a limited number of identified bidders, particularly, if they are of the same nationality; and

4. The element of subjective judgment required by evaluators when applying the prequalification criteria to a number of Applicants, and the discretionary rights reserved to the Employer, provide opportunities for externally influenced deviations from the expected high standards of ethics and impartiality in prequalifying applicants.

The CDPSP, from its own experience, believes that on balance the benefits of prequalification under transparent conditions for large PSP contracts outweigh by a considerable margin the potential disadvantages, for both Employers and Applicants alike.

Guidance on Notes for Users

A. Completion of the PITA

A1. Qualification Criteria (GITA 4)

The CDPSP's policy on prequalification is that all potential bidders that meet pre-defined minimum requirements regarding general experience, particular or specialized experience, financial capabilities, personnel capabilities, and other experience should be invited to bid. The procedure requires the implementing agency (Employer) to set pass/fail criteria, which if are not met substantially by the Applicants for prequalification, would disqualify them.

The criteria adopted must relate to characteristics that are essential to ensure satisfactory execution of the contract, and must be precisely stated. Basically, the criteria must be chosen so that only Applicants that are qualified to carry out the work are permitted to bid. The criteria must also be set so that they neither inhibit competition nor limit the number of eligible firms to be prequalified. All Applicants that meet the criteria should be invited to bid. However, an element of subjective judgment will still be required in evaluating the submissions of Applicants.

A2. Subcontracting (PITA 4.2, 4.3, and 4.4, GITA 4.5 and 4.6)

In large, complex PSP contracts, the Employer's strategy may provide for the execution of certain specialized elements of the Services by *Nominated Subcontractors* in accordance with the provisions of Sub-Clauses 59.1 to 59.5 of the *Federation Internationale Des Ingénieurs-Council* (GCOC) 1987/92. In such cases, *Provisional Sums* (representing the estimated cost of each element) are included in the BOQ of the bidding documents. A typical example would be the supply and installation of the ventilation and lighting systems for a tunnel contract. If nominated subcontracting is contemplated in the subject contract, the Employer should make appropriate entries in PITA 4.2.

Under the FIDIC GCOC included in the CDPSP's Standard Bid Document (SBD) for PSP Contracts, the Employer's consent is required for any subcontracting during execution of the Contract, except for previously named subcontractors, and for the supply of labor and materials. Nevertheless, the Employer may wish to have a general knowledge of elements of the Services proposed for subcontracting by Applicants under PITA 4.3, particularly if the nature of the work (e.g., construction of a treatment facility) suggests that Applicants are likely to include general contractors. Any percentage for subcontracting given at the prequalification stage can only be indicative, and a figure of up to, say, 20 percent of an Applicant's approximated Bid Price is suggested, noting that any specialist subcontracting has to be fully detailed under GITA 4.4.

The Employer should have detailed knowledge of any specialized subcontracting proposed by Applicants, and have an opportunity to prescreen and comment upon the experience and capabilities of such subcontractors (GITA 4.4). Effectively this is a "mini-prequalification" of the proposed specialists, with a view to their being named in the bid, and in any subsequent Contract Agreement. The particular experience, specialized personnel, and resources of

named specialist subcontractors may be taken into account in determining an Applicant's compliance with the relevant qualifying criteria. These Applicants may be prequalified and invited to bid, on condition that the specialist subcontractor (or acceptable alternate) is named in the bid.

A3. General Experience (PITA 4.7)

The Applicant's general capabilities in managing PSP contracts in the water and wastewater sector should be related to its record of recent experience and to the value of work undertaken. Experience requirements should be stipulated as a minimum average annual turnover (from projects) over a stated period, normally five years, calculated by applying an appropriate multiplier to the projected annual revenues from water sales and wastewater treatment. The recommended multiplier is normally 2.0, but may be reduced to 1.5 for contracts over about US$200 million.

Example: Estimating required minimum "Average Annual Turnover"

Subject Contract	
Description:	Water Supply and Wastewater Treatment Concession
Estimated Revenues from Water Sales and Wastewater Treatment (including contingencies):	US$400m
Duration:	20 years

1. Average annual turnover (revenue from water sales and wastewater treatment), assuming a straight-line projection: $400 ÷ 20 = <u>$20m</u>

2. Applying the normal multiplier of 2.0

   Required minimum turnover: $20m × 2.0 = <u>$40m</u>

A4. Particular Experience (PITA 4.8)

Applicants should demonstrate that they have successfully carried out services, substantially of a nature, size, value, and complexity similar to that of the contract in question. There are two principal criteria for prequalification:

1. The Applicant should have carried out similar work of a magnitude approximating that of the package of Services for which prequalification is sought. Depending on the nature of the Services to be bid, the criterion should be related to the Applicant having completed, or substantially completed, one or more contracts each of a value (not less than about 80 percent) of that of the proposed contract over the last five to thirty years (see Notes in PITA 4.8).

2. The Applicant should have performed operations of a volume, quality, and rate of execution similar to those required for the timely completion of the subject contract. For example, where water supply production and distribution and wastewater collection and treatment are required, the Applicant should demonstrate experience in those operations, having performed them at the rates necessary to meet a percentage (e.g., 80 percent) of the estimated peak monthly and/or annual rates required for the subject contract.

Applicants should not be required to have had direct experience in Egypt, but only under similar climatic, geological, and other general conditions, or in developing countries generally.

A5. Financial Capabilities (PITA 4.9)

Example: Estimating minimum Cash-flow Requirement

Consider the subject contract A3 above:

1. Estimated Cost:	US$330m
2. Duration:	20 years
3. Average monthly "cash flow" amount:	$330m ÷ 240 = $1.375m

Elapsed period (sample):

1. Contractor issues invoice	15 days
2. Employer pays invoice	45 days
3. Contingency period	1 month
Total	3 months

Cash flow requirement for three months: (insert in PITA 4.9) 3 × $1.375 = $4.125m

A6. Personnel Capabilities (PITA 4.12)

The managerial and technical competence of a contractor is largely related to the key personnel on site. The extent to which the Applicant should demonstrate having staff with extensive experience should be limited to those requiring critical management, operational, or technical skills. The prequalification criteria should therefore refer to a limited number of key personnel, for instance, the project director or construction manager and those specialized directors working under the project director who will be responsible for major components (e.g., managers specializing in commercial, financial, technical, and other aspects of the Services).

Applicants should normally be required to name a principal candidate and an alternate for each key position. Criteria of acceptability should be based on:

- A minimum number of year of experience in a similar position
- A minimum number of years of experience and/or number of comparable projects carried out in a specified number of preceding years

The requirement of specified education and academic qualifications is normally unnecessary for such positions, as contractors often employ competent staff who have learned their profession on the job rather than through academic training.

It is appropriate to specify that certain positions are filled by individuals who have held posts of comparable authority for, say, three years with the Applicant, so that key staff in executive site positions have sufficient knowledge of the Applicant's management, policy, procedures, and practices to act with confidence and authority within that framework.

B. Evaluation of Submissions

B1. General Procedure

The following notes are intended to give guidance on some of the principal issues confronting the evaluating team, and cover:

- Contract evaluation
- The assessment of an Applicant's financial soundness
- Analysis of litigation history
- Conditional prequalification
- Prequalification evaluation summary
- Notification to Applicants

Many other factors will need to be considered and evaluated before the Employer makes a decision on the acceptance, conditional acceptance, or rejection of an application. Inevitably, final decisions will require an element of subjective judgment by the evaluators.

B2. Contract Evaluation

The average annual amount of the Applicant's past turnover (revenue from water sales and wastewater treatment) stated by the Applicants in Information Form 2 should be equal to or greater than that stated in PITA Clause 4.7. If there has been a downward trend in turnover in more recent years over the specified period, a clarification should be sought by the evaluator with a view to a possible weighting of the more recent years in determining the annual average (see example below).

Example:

Year	Turnover	US$ equivalent $m
1. 2001 (to end June)	(completed in different currencies)	20
2. 2000	"	40
3. 1999	"	80
4. 1998	"	120
5. 1997	"	100
Totals:	4.5 years	$360m
Average T/O p.a.:	360 ÷ 4.5 =	$80m p.a.
Minimum Average Requirement stated in PITA 4.7:		$60m p.a.

Note: Although appearing to pass the qualifying criterion, the Applicant has only averaged $56m p.a. (140÷2.5) in the last two and one-half years, with decreasing turnover. In such cases, the Employer should make a thorough investigation of the financial soundness of the Applicant (from data submitted with IF5 and, failing a satisfactory resolution, the Applicant could be disqualified.

The particular experience on similar contracts, and minimum key production rates as stated in PITA Clause 4.8, should be compared with information provided in IF3 and IF3A. The contribution of named specialist subcontractors may be a factor in satisfying these criteria.

The minimum required cash flow amount stated in PITA Clause 4.9 should be adequately supported by the Applicant's statements in IF4 and IF5. If the Applicant is a joint venture, the available contribution of each partner may be aggregated.

The sources of financing for "Services in Progress" IF (4) should be satisfactory.

Other criteria relating to staffing, subcontracting, *et cetera,* should be acceptable. Again, contributions by named specialist subcontractors may be a factor in meeting these criteria.

B3. The Assessment of Financial Soundness (PITA 4.11, GITA 4.11)

B3a. General Information

The purpose of assessing the Applicant's financial soundness is to reassure the Employer that the individual Applicant's financial position does not have structural weaknesses that may result in its financial inability to perform, and to give an indication of the scope and value of the services it would be able to undertake. To place a detailed analysis in context, it is necessary to look at trends in key figures over a number of years and compare the Applicant's annual activities to its results from previous years.

Because of differing international accounting practices and tax laws, published information on the financial position of companies and financial ratios derived therefrom do not provide a uniform and satisfactory basis to compare the financial standing of an Applicant with other Applicants for prequalification purposes. Nevertheless, audited financial statements or balance sheets should be sought as a general guide to the financial situation of the Applicant. Firms owned by individuals and partnerships may not be required to maintain audited accounts by the laws of their countries of origin. In such cases, balance sheets should be certified by a registered accountant and supported by tax returns.

In any case, the Employer should require Applicants to provide the following background information to support the presentation in the Information Forms:

- Audited or certified financial statements for the last five years, or for the period stated in the PITA, supported respectively by audit statements or tax returns

- Names and addresses of the Applicant's banker(s), as well as the names and addresses of clients or organizations familiar with its financial standing

B3b. Development of Indicators and Ratios

The financial information provided by an Applicant should be reviewed in its entirety to allow a truly informed judgment, and the pass–fail decision on the financial position of the Applicant should be given on this basis. To assist in this review, the indicators used most frequently are working capital and net worth. The following table summarizes the financial information of a sample firm as would be reported by an Applicant in IF (5), as well as an evaluation by the Employer of the Applicant's *working capital* and *net worth.*

Example:

Financial Information (US$ million equivalent)

	Actual: Previous Five Years					Projected: Next Two Years	
	5	4	3	2	1 0	1	2
1. Total assets	18.5	19.0	20.0	23.0	25.0	25.5	25.3
2. Current assets	12.0	13.0	14.5	14.0	15.0	16.0	16.2
3. Total liabilities	9.0	10.5	10.0	11.0	11.5	12.0	12.6
4. Current liabilities	7.0	6.5	7.0	7.5	7.8	9.0	9.5
5. Profits before taxes	1.4	1.3	1.3	1.4	1.8	2.1	2.1
6. Profits after taxes	1.0	0.9	0.9	1.0	1.3	1.5	1.5

Overview Analysis

7. Net worth (1) - (3)	9.5	8.5	10.0	12.0	13.5	13.5	12.7
8. Current ratio (2)/(4)	1.7	2.0	2.1	1.9	1.9	1.8	1.7
9. Return on equity %		13.7	15.3	14.0	15.0	15.5	15.5
(5)/(7 of prior year)							

Working capital is the difference between current assets and current liabilities, and measures the firm's ability to generate cash in the short term. Current assets are cash and other assets suitable for conversion into cash within one year. Current liabilities are monetary obligations that must be paid out within the current year. To help in the interpretation of the adequacy of working capital, the current ratio, which compares the current assets with the current liabilities, is more helpful than a figure for working capital. In the example, the current ratio of the firm varies from 1.7 to 2.1 over the previous five years and the projected ratios for the next two years are also within this range. This indicates that the firm has had a consistent record of its working capital with at least US$1.7 in current assets to back each dollar of its current liabilities. Water and wastewater utility operations firms normally have small inventories and accounts receivable are easy to collect; they can therefore operate safely with a low current ratio. The sample firm appears healthy from its working capital point of view.

Net worth or net equity is the difference between total assets and total liabilities. The net worth measures a firm's ability to produce profits over the long run, as well as its ability to sustain losses. Although the yearly figures for the net worth indicate the growth of the firm, the return on equity gives a better indication of the efficiency with which equity is employed within the firm. This is obtained by dividing the annual profit before taxes by the net worth of the previous year and expressed as a percentage. In the example, for every dollar of equity, the firm made 13.7 to 15.3 cents during the five-year period. The sample firm shows a rather consistent net worth record.

Any discontinuities or abnormal features in the above indicators or ratios should alert the Employer to potential financial problems, and the need to seek expert professional advice for further review and interpretation.

B4. The Analysis of Litigation History (GITA 4.13)

The execution of any PSP contract will normally result in the payment by the Employer of a number of reasonable claims from the Contractor. However, some Contractors have an established business practice of bidding low to obtain a contract and then flooding the Employer with excessive or frivolous claims to increase their income, or failing to meet key performance indicators because they have not made sufficient investments. Employers should

be on guard against any Contractor who habitually resorts to excessive claims, arbitration, and litigation in the execution of contracts.

Applicants with a consistent and significant history of excessive arbitration and litigation, resulting in awards or decisions against them, should not be qualified to bid. So that the litigation history may be evaluated, Applicants should be required to list all contracts over a stated period of time (normally five years) that resulted in litigation or arbitration proceedings, with an indication of the matters and amounts in dispute, the parties involved, and the resolution of the dispute.

The criterion for rejection should be that of numerous arbitral awards or court decisions *against* the Applicant in relation to awards *for* the Applicant, taking into account the number and amount of the contracts executed. As an indicative example, the occurrence of one or two adverse cases over five years for a Contractor handling, on average, ten PSP contracts simultaneously, should not be a cause for rejection. If a pattern of frequent resort to dispute-resolution is found in the Applicant's business, it may indicate an attitude that could be dangerous for the Employer if the Applicant were awarded the contract, and further investigation of the Applicant's relationships with previous Employers may be warranted.

B5. Conditional Prequalification (GITA 9.2)

Applicants may not fully meet all the prequalification criteria with their initial applications. Provided the deficiencies do not materially affect the ability of the Applicant to perform the proposed contract, Applicants should be conditionally prequalified. In this case, Applicants should be notified of the deficiencies that they must correct to the satisfaction of the Employer before submitting their bids.

Typical circumstances for which conditional prequalification of Applicants may be appropriate are, *inter alia*:

- The provision of additional critical information
- The revision of a preliminary JVA
- Proposals for subcontracting specialized elements of the Services
- Improvement in senior management and key personnel
- Retention of experts in specialized fields, e.g., community outreach, public relations, service to the poor, computer programming and software development, etc.
- Questionable ability to undertake the subject contract, together with other pending contract awards

B6. Prequalification Evaluation Summary

After evaluating the applications received, the Employer or its consultants should prepare a summary, in the format of Annex C, to be submitted to the CDPSP for review and comment. The summary should address each of the pass–fail criteria set in the documents.

Disqualification of Applicants who fail to meet the criteria should be explained, and details of any conditional prequalified Applicants should be submitted. The CDPSP may ask the Employer to justify the evaluation and provide further information or clarification.

B7. Notification to Applicants (GITA 9)

The Employer should await the CDPSP's "no objection" to the proposals in the evaluation summary before notifying Applicants of its decisions. After receiving the CDPSP's "no objection," the implementing agency should:

- Notify each disqualified Applicant, indicating the reasons for disqualification.
- Invite all qualified Applicants to bid. The sample form of Invitation for Bids, following the PITA in this document, is a basic form that should be adapted appropriately by the notifying agency to cover the following points as required:
  - The conditions, if any, for prequalification stating explicitly the deficiencies that must be corrected to meet all the conditions and the time to fulfill them
  - The apparent eligibility, or ineligibility, for the domestic bidder price preference
  - The finalization of preliminary joint venture agreements and any modifications required

All Applicants, whatever their classification, should be provided with a list (and addresses) of the qualified and conditionally qualified Applicants (without disclosing details of the conditions). Conditionally qualified Applicants should be invited to submit a bid upon satisfactory compliance with the related conditions, whereupon all previously qualified Applicants and the remaining conditionally qualified Applicants should be notified accordingly.

Bid documents should be issued only to prequalified Applicants. Verification of the information provided in the submission for prequalification shall be confirmed at the time of award of contract. Award may be denied to a bidder that is judged to no longer have the capability or resources to successfully perform the contract.

After prequalification, all Applicants are deemed to have the necessary capabilities to carry out the subject contract or contracts. During the bidding period, however, employers may be approached for approval to changes in the formation or composition of Applicants prior to bid submission. The provisions of GITA 9.6 should be followed by the Employer in deciding whether to accept such changes, and the CDPSP should be notified accordingly.

Prequalification Evaluation Summary

This annex is intended specifically to assist in reporting the results of the evaluation of the applications for prequalification. The implementing agency of the Employer should evaluate the applications received and prepare a detailed analysis of them. A summary report of this analysis should be submitted to the CDPSP for review; the summary should address each of the pass–fail criteria set in the prequalification documents. Disqualification of the Applicants who fail to meet the criteria should be explained.

Tables 1–5 should invariably accompany the summary, but they may be adapted to suit specific requirements of the prequalification documents. The summary should include a number of attachments and additional tables to explain details of the individual evaluation of Applicants who where not prequalified or conditionally prequalified. References to pertinent clauses in the prequalification documents should be used as necessary.

The summary should make special mention of Joint Venture Applicants in regard to the completeness of their documentation, eligibility requirements including domestic bidder price preference, sharing provisions, and liability of the JV partners. A checklist for the evaluation summary is presented in Table 6.

A. Identification Table

Table 1. Identification

Name of Employer	
Date of effectiveness	
Closing date *Original* Revised	
Name of project	
Employer a) Name b) Address	
Contract number (identification)	
Description of the Services	
Estimated Value[1]	
Method of procurement (check one)	ICB _____ NCB _____ Other _____
Procurement review required	Yes _____ No _____
Domestic preference allowed	Yes _____ No _____
Proposed contract type	BOT (or variant) _____ Concession _____ Lease _____ Management Contract _____ Service Contract _____ Other (please specify) _____
Cofinancing, if any a) agency name b) percent financed by agency	_____ _____

[1] *Cite source and date of feasibility report or other study*

B. Prequalification Process Table

Table 2. Prequalification Process

General Procurement Notice a) First issue date b) Latest update	 _____ _____
Specific Procurement Notice (Invitation for prequalification) a) *UN Development Business* issue date b) Name of Egyptian newspaper & issue date c) Name of international publication & issue date	 _____ _____ _____
Number of firms notified	_____
prequalification Document a) Title, publication date b) Date of CDPSP's no objection c) Date of issue to applicants	 _____ _____ _____
Number of firms issued documents	_____
Amendments to documents, if any a) List of all issue dates b) Date(s) of CDPSP's no objection	 1. ____ 2. ____ 3. ____ 1. ____ 2. ____ 3. ____
Dates of response to requests for clarification	1. ____ 2. ____ 3. ____
Applications' submission deadline a) Original date b) Extensions, if any c) Late submissions	 _____ _____ _____
Number of applications submitted	_____

C. Preliminary Pass–Fail of Applications Table

Table 3. Preliminary Pass–Fail of Applications

Name of Applicant	Country[1]	Date of Submission of Application	Completeness,[2] Verification[3] of Documentation	Eligibility[4]	JV Requirements[5]	Eligibility for Domestic Preference[6]	Explanation[7]

1. Place of incorporation (for corporations) or place of registration (for partnerships or individually owned firms).

2. Completeness of documentation: Are the applications offering all of the items and essential information requested? Major deviations to the requirements such as no presentation of financial statements or balance sheets, or failure to present sufficient information on financial means to meet the specified cash requirements may be a basis for a fail mark.

3. Verification: Attention should be directed toward deficiencies related to the validity of the application itself. For example: Is the letter properly signed? Are the applications of Joint Ventures signed by each partner in the joint venture? Has a copy of the JVA or Letter of Intent been signed by all JV partners and submitted with the application?

4. Eligibility: In addition to the eligibility based on nationality, applicants shall be eligible to participate in the bidding of the Services in reference to the Fraud and Corruption policy of the CDPSP. (See GITA sections 2 and 3 for details.)

5. JV requirements: Is the lead partner of the JV clearly identified and properly authorized? Are the JV's sharing provisions in compliance with the minimum participation specified in PITA 5.4? Are all partners in the JV legally liable, jointly and severally, during bidding and execution of the contract?

6. Eligibility for domestic preference: Eligibility of applicants to qualify for application of the preference should be assessed on the basis of criteria stated in GITA Sub-Clauses 6.1 and 6.2.

7. If the application fails preliminary acceptance in one of the column topics or if conditional acceptance has been given, the reasons shall be clearly explained in this Explanation column or in an attachment, as necessary.

D. Qualification Evaluation Summary (Pass–Fail Criteria) Table

Table 4. Qualification Evaluation Summary (Pass–Fail Criteria)

Qualification Topic	Specified Criteria		Application			Explanations[1]
	(as stated in GITA and PITA)		1	2	etc.	
Subcontracting (4.3, 4.4) Adequacy of subcontractors and specialists, if any.	4.3 Applicant to provide tentative list and brief record of proposed subcontractors, if subcontracting is above ____ % of approximated price, and 4.4 A detailed record of all specialist subcontractors.	4.3 Pass–Fail 4.4 Pass–Fail				
General Experience (4.7) Average annual turnover over the last five years (or as stated in the PITA).	Minimum average turnover US$ ____ equivalent.	Amount US$				
Particular Experience (4.8) Experience in the successful execution of similar contracts.	- Required number of similar contracts ____ - Time period ____	Number Years				
(4.8) Water supply production and wastewater treatment rates, number of connections and other experience needed to complete the contract.	Minimum key production rates and other experience as specified in PITA 4.8 - - -	Rates No. of Connections				
Financial Capabilities (4.9) Adequacy of financial strength of the Applicant.	Minimum required amount US$ _____ equivalent Adequate financing of contracts in progress and future commitments (4.10)	Amount US$ Pass–Fail				

[1] *If the Applicant fails a specific criteria or if "pass" has been given, accepting a minor deviation (GITA 4.16), the reasons shall be clearly explained in the Explanation column or in a separate attachment, as necessary.*

Table 4. Qualification Evaluation Summary (Pass–Fail Criteria) (cont'd)

Qualification Topic	Specified Criteria (as stated in GITA and PITA)		Application 1	2	etc.	Explanations[1]
	Adequate financial statements (4.11)	Pass–Fail				
Personnel Capabilities (4.12) Ability to provide the required positions essential to contract management.	Position 1: _____ - years of work experience - years of similar work experience Other	Years				
	Position 2: _____ - years of work experience - years of similar work experience	Years				
Litigation History/ Business Practices (4.13) Acceptability of Applicant's history on litigation or arbitration.	Applicant to demonstrate acceptable record on litigation/arbitration over the last five years (4.13)	Pass–Fail				
(2.0) Eligibility of Applicant in regard to CDPSP's policy on fraud and corruption practices.	Applicant has not been engaged in corrupt or fraudulent practices in competing for or in executing a Bank-financed contract.	Pass–Fail				

[1] *If the Applicant fails a specific criteria or if "pass" has been given, accepting a minor deviation (GITA 4.15), the reasons shall be clearly explained in the Explanation column or in a separate attachment, as necessary.*

E. Proposed Prequalification Decision Table

Table 5. Proposed Prequalification Decision

1. Fully prequalified Applicants a) _____ b) _____ c) _____ etc.	
2. Conditionally prequalified Applicants Applicant's name a) _____ b) _____ c) _____ other.	Deficiencies to be rectified to the Employer's satisfaction a) b) other a) b) etc. a) b) other.
3. Rejected Applicants Applicant's name _____ _____ _____ other	Reasons for rejection _____ _____ _____

184

F. Summary Checklist

Table 6. Prequalification Evaluation Summary Checklist Table

1. Attach Identification and prequalification Process data (Tables 1 and 2).

2. Provide a list of applicants and their countries of origin and place of registration/inspection as well as the date of submission of their applications (first three columns of Table 3).

3. Provide details on eliminating any applications during preliminary examination (Table 3). Particular attention should be given to issues related to eligibility and JV requirements.

4. Eligibility to qualify for application of the domestic bidder price preference should be assessed in accordance with GITA Sub-Clauses 6.1 and 6.2. Provide details of exclusions.

5. Attach copies of any letters to Applicants requesting clarifications or substantiation of information. Provide copy of responses.

6. Explain the reasons for giving a "fail" mark to an Applicant in any of the specified criteria (Table 4). If necessary, include a separate attachment with explanations.

7. Provide detailed reasons for refusing the prequalification of an Applicant.

8. Provide details of the conditional prequalification of applicants with nonmaterial deficiencies to the prequalification requirements.

9. Attach copies of any correspondence from Applicants that raise objections to the evaluation process, together with detailed responses.

SECTION II

Standard Bid Documents for Performance-Based Management Contract

Single-Stage Bidding Procedure Flowchart

I. Bid Documents Issued by *[Tendering Agency]*

Information Memorandum	Bid Data Sheet
Invitation for Bids	Contract Model
Prefeasibility Study	Sample Forms and Procedures
Instructions to Bidders	Procurement Rules

↓

II. The Bid Submitted by Bidder

Cover Letter	3. Bidder's Eligibility (Joint Venture, if any)
Technical Bid (Bid Form)	4. Subcontractors proposed by Bidder (if any)
Attachments to Technical Bid:	Price Bid (Price Schedules)
1. Bid Security	
2. Power of Attorney	

↓

III. Contract Documents

Notification of Award	Forms and Procedures
Technical Bid (Bid Form)	Any other documents agreed as forming a part of the Contract
Price Bid (Price Schedules)	
Performance-Based Management Contract and Appendices	

A. Information Memorandum

Information Memorandum

[NAME OF PROJECT]

Performance-Based Management Contract for Water and Wastewater Services

1. Purpose of this Information Memorandum

This Memorandum contains information that the *[tendering agency]* considers to be important parameters of the Project. Bidders are advised to take these parameters into consideration when preparing their Bids.

More complete information on the Project is in the Prefeasibility Study, which is a part of the Standard Bid Documents.

Bidders shall prepare their Bids on the basis of the Standard Bid Documents, of which this Memorandum is a part. In the event of a conflict between the Standard Bid Documents and the Contract or Agreement eventually executed in the Project, the latter shall govern.

2. Description of the Project

A. Background

[Describe the conditions that make the Project necessary, for example: rising population; demand for services; et cetera.]

B. Existing Situation for Water and Wastewater Facilities

[Describe the existing facilities.]

C. Existing Conditions

[Describe the following:]

i. **Location and Land-use;**

ii. **Existing Water Infrastructure;**

iii. **Existing Wastewater Infrastructure;**

iv. **Soil Conditions;**

v. **Climatic Conditions;**

vi. **Topography;**

vii. **Existing Customer Billing System;**

viii. **Metering;**

ix. **Existing Government Authorities; and**

x. **Site Location for Water Intake and Treatment Facilities.**

3. **Other Site-Related Information**

[Insert brief description of any significant environmental information affecting the Project, referring to any environmental assessments that may be a part of the Standard Bid Documents.]

4. **Adjacent Facilities**

[Describe the general nature and location of any Adjacent Facilities that may be included in the Project.]

5. **Operator's Responsibilities Under Project**

The Project requires the Operator to manage the facilities. The Operator shall have full authority and responsibility for performing the tasks described in the Sample Contract that forms a part of these Standard Bid Documents. The Operator will be responsible for achieving the performance standards contained in the Sample Contract and its compensation will be tied in part to the incentive payments contained therein.

A. **Sludge Disposal**

Sludge disposal shall be the sole responsibility of the Operator and shall comply, as a minimum, with the [applicable regulations of the appropriate environmental and health authorities].

6. **Tendering Agency's Guarantees**

A. The [tendering agency] shall guarantee minimum dry-weather wastewater flow to the plant of _____ cubic meters/day and the Operator should be able to treat daily average wastewater flow of _____ cubic meters/day to the standard shown [insert reference to the Standard Bid Documents].

B. The [tendering agency] will guarantee the purchase of all the reclaimed water that the treatment plant shall produce as per the standard shown [insert reference to the Standard Bid Documents].

7. **Project Award**

The Project will be awarded to the successful Bidder on the basis of a performance-based management contract for a term of _____ years. Bidding has been restricted to prequalified Bidders, whose prequalification was based in substantial part on their having the technical and financial capacity to perform the Contract.

8. Commercial Operations Date

[Insert the date at which the Contractor is expected to begin operations.]

9. Electrical Power Charges

Consumption of electrical power inside the plant shall be charged at the rate of ____ piastres/LE per kWh, with a __ percent annual compounded increase in price.

10. Interpretation

This Tender shall be interpreted in a comprehensive and harmonious manner. The order of the documents and the provisions contained in the documents shall not be interpreted as an order of priority among them, unless otherwise expressly indicated.

The titles used in this Tender are for reference purposes only and shall not affect the interpretation of their respective texts.

All of the terms expressed in days in this Tender are calendar days, unless otherwise expressly indicated. The terms indicated in months and years are calendar months and years.

11. Language

All documents in this Tender shall be in [insert English or Arabic]. [Insert English or Arabic] translations for some documents shall be available.

B. Model Invitation for Bids

Invitation for Bids

Arab Republic of Egypt
[Name of Project or Program]

Performance-Based Management Contract for Water and Wastewater Services

12. This Invitation for Bids follows the general procurement notice for this project that appeared in ***[e.g., Development Business or a similar publication]***, issue no. ***[number]*** of ***[date]***.

13. ***[If applicable]*** The Government of Egypt has applied for a ***[loan or grant]*** from the ***[Donor]*** toward the cost of the ***[name of project or program]***, and intends to apply part of the proceeds of this ***[loan or grant]*** to payments under the Performance-Based Management Contract for Water and Wastewater Services.

14. The ***[Tendering Agency]*** now invites sealed Bids from eligible Bidders for the Performance-Based Management Contract.

15. Interested eligible Bidders may obtain further information from the ***[Tendering Agency]*** and inspect the Bid Documents at the address given below from 09:00 to 17:00 hours, Sunday through Thursday.

16. A complete set of Bid Documents in English may be purchased by interested Bidders on the submission of a written application to the address below and upon payment of a nonrefundable fee of _____ Egyptian pounds or _____ in U.S. dollars. The method of payment will be cashier's check. The Bid Document will be sent by courier.

17. Bids must be delivered to the address below at or before ***[date]***. All Bids must be accompanied by a Bid Security of ***[e.g., US$50,000.00 (fifty thousand United States dollars)]*** or an equivalent amount in a freely convertible currency. Late Bids will be rejected. Bids will be opened in the presence of the Bidders' representatives who choose to attend at the address below at ***[e.g., 12:00 noon (Cairo, Egypt, time) on September 7, 2002]***.

[Tendering Agency]
Attn: ***[Name and address of appropriate person]***
Cairo, Egypt
Tel: _____, Fax: _____, Email: _____

C. Instructions to Bidders

[Pending changes in the law and regulations, the following Note should appear here.]

Note: These Tender and Contracting Procedures are governed by Law 89/1998 (Tenders Law) and Presidential Decree 1367/1998 (Tenders Regulations), respectively referred to herein as "the Law" and "the Regulations".

C1. Introduction

1. Source of Funds	1.1	***[If applicable]*** The Borrower named in the Bid Data Sheet has received/applied for a ***[loan or grant]*** (hereafter called "loan" or "grant") from the ***[Donor]*** (as identified in the Bid Data Sheet and hereafter interchangeably called "***[Donor]***") of the U.S. dollar amount indicated in the Bid Data Sheet. The grant will be used in various currencies toward the cost of the Project named in the Bid Data Sheet. The Borrower intends to apply a portion of the proceeds of this ***[loan or grant]*** to eligible payments under the contract for which this Invitation for Bids is issued.
	1.2	***[If applicable]*** Payment by ***[Donor]*** will be made only at the request of the Borrower and upon approval by ***[Donor]***, in accordance with the terms and conditions of the ***[loan or grant]*** agreement, and will be subject in all respects to the terms and conditions of that agreement. The ***[loan or grant]*** agreement prohibits a withdrawal from the ***[loan or grant]*** account for the purpose of any payment to persons or entities, or for any import of plant and equipment, if such payment or import, to the knowledge of ***[Donor]***, is prohibited by a decision of the United Nations (UN) Security Council taken under Chapter VII of the Charter of the UN. No party other than the Borrower shall derive any rights from the ***[loan or grant]*** agreement or have any claim to the ***[loan or grant]*** proceeds.
2. Eligible Bidders	2.1	This Invitation for Bids, issued by the Employer named in the Bid Data Sheet, is open to all Bidders from any country.
	2.2	Bidders should not be associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates that has been engaged by the Employer to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services to be purchased under this Invitation for Bids.
	2.3	***[If applicable]*** Government-owned enterprises in the Borrower's country may only participate on their own or as members of a joint venture or a consortium if they are legally and financially autonomous, operate under commercial law, and are not dependent agencies of the Borrower or Sub-Borrower.
	2.4	***[If applicable]*** Bidders shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by ***[Donor]***.
	2.5	The Operator must provide professional, objective, and impartial advice and at all times hold the Employer's interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests. The Operator shall not be hired for any assignment that would be in conflict with their prior or current obligations to other Employers, or that may place them in a position of not being able to carry out the assignment in the best interest of the Employer.
	2.6	The Operator may be hired for subsequent work, when continuity is essential, in which case this possibility shall be indicated in the Data Sheet and the factors used for the selection of the consultant should take the likelihood of continuation into account. It will be the exclusive decision of the Employer whether or not to have the subsequent assignment carried out, and if it is carried out, which Bidder will be hired for the purpose.
	2.7	If a Bidder considers that it does not have all the expertise required to carry out the Scope of Work in Appendix A. to the Contract Model (in these Bid Documents), it may obtain a full range of expertise by associating with other entities or individual consultants in a joint venture or subcontract, as appropriate.

3. Eligible Plant, Equipment, and Services	3.1	For the purposes of these Bid Documents, the words "services," "facilities," "plant and equipment," "installation services," *et cetera.*, shall be construed in accordance with the respective definitions given to them in the Contract Model in these Bid Documents).
	3.2	All plant and equipment to be supplied and installed and services carried out under the Contract shall have their origin in eligible source countries, defined in the procurement guidelines of the applicable funding agency, and all expenditures made under the Contract will be limited to such plant, equipment, and services.
	3.3	For purposes of this clause, "origin" means the place where the plant and equipment or component parts thereof are mined, grown, or produced. Plant and equipment are produced when, through manufacturing, processing, or substantial and major assembling of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.
	3.4	The origin of the plant, equipment, and services is distinct from the nationality of the Bidder.
4. Cost of Bidding and Bidding Timetable	4.1	The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process.
	4.2	The Bidding Timetable is specified in the Bid Data Sheet. The Employer may, in its sole discretion and without prior notice to Bidders, amend the estimated Bidding Timetable. Bidders shall not rely in any way whatsoever on the estimated Bidding Timetable, and the Employer shall not incur any liability whatsoever arising out of changes to the estimated Bidding Timetable.

C2. The Bid Documents

5. Content of Bid Documents	5.1	The services required, bidding procedures, contract terms, and technical requirements are prescribed in the Bid Documents. The Bid Documents include the following sections: • Invitation for Bids (IFB) • Instructions to Bidders (ITB) • Bid Data Sheet (BDS) • Contract Model (CM) • Forms and Procedures (FP)
	5.2	The Bidder is expected to examine all instructions, forms, terms, specifications, and other information in the Bid Documents. Failure to furnish all information required by the Bid Documents or submission of a Bid not substantially responsive to the Bid Documents in every respect will be at the Bidder's risk and may result in rejection of its Bid.
6. Clarification of Bid Documents and Pre-Bid Meeting	6.1	A prospective Bidder requiring any clarification of the Bid Documents may notify the Employer in writing or by cable (hereinafter, the term cable is deemed to include email, telex, or fax) at the Employer's mailing address indicated in the Bid Data Sheet. Similarly, if a Bidder feels that any important provision in the Bid Documents, such as those listed in ITB Sub-Clause 22.5, will be unacceptable, such an issue should be raised at this stage. The Employer will respond in writing to any request for clarification or modification of the Bid Documents that it receives no later than twenty-eight (28) days prior to the deadline for submission of Bids prescribed by the Employer. Written copies of the Employer's response (including an explanation of the query but not identification of its source) will be sent to all prospective Bidders that have received the Bid Documents.
	6.2	The Bidder is advised to visit and examine the Data Room and the site where the services are to be performed and its surroundings and obtain for itself, on its own responsibility, all information that may be necessary for preparing the Bid and entering into a contract for provision of the services. The costs of visiting the Data Room and site shall be at the Bidder's own expense.
	6.3	The Bidder and any of its personnel or agents will be granted permission by

	the Employer to enter upon its premises and lands for the purpose of such inspection, but only upon the express condition that the Bidder, its personnel and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof and will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs, and expenses incurred as a result of the inspection. 6.4 The Bidder's designated representative is invited to attend a Pre-Bid Meeting, which, if convened, will take place at the venue and time stipulated in the Bid Data Sheet. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. The Bidder is requested, as far as possible, to submit any question in writing or by cable, to reach the Employer not later than one week before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted as indicated hereafter. Minutes of the meeting, including the text of the questions raised and the responses given, together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the Bid Documents. Any modification of the Bid Documents listed in ITB Sub-Clause 5.1 that may become necessary as a result of the Pre-Bid Meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB Clause 7 and not through the minutes of the Pre-Bid Meeting.
7. Amendment of Bid Documents	7.1 At any time prior to the deadline for submission of Bids, the Employer may, for any reason, whether at its own initiative, or in response to a clarification requested by a prospective Bidder, amend the Bid Documents. 7.2 The amendment will be notified in writing or by cable to all prospective Bidders that have purchased the Bid Documents and will be binding on them. Bidders are required to immediately acknowledge receipt of any such amendment, and it will be assumed that the information contained therein will have been taken into account by the Bidder in its Bid. 7.3 In order to afford prospective Bidders reasonable time in which to take the amendment into account in preparing their Bids, the Employer may, at its discretion, extend the deadline for the submission of Bids, in which case the Employer will notify all Bidders in writing of the extended deadline.

C3. Preparation of Bids

8. Language of Bid	8.1 The Bid prepared by the Bidder and all correspondence and documents related to the Bid exchanged by the Bidder and the Employer shall be written in the language specified in the Bid Data Sheet, provided that any printed literature furnished by the Bidder may be written in another language, as long as such literature is accompanied by a translation of its pertinent passages in the language specified in the Bid Data Sheet, in which case, for purposes of interpretation of the Bid, the translation shall govern.
9. Documents Comprising the Technical Bid	9.1 In preparing the Technical Bid, Bidders are expected to examine these Bid Documents in detail. Material deficiencies in providing the information requested may result in rejection of a bid. The Technical Bid submitted by the Bidder shall comprise the following documents: (a) *Technical Bid*: Bid Form in accordance with ITB Sub-Clause 9.2, below, duly completed and signed by the Bidder, together with all Attachments identified in ITB Sub-Clause 9.3, below. *The Technical Bid shall contain no prices or price schedules or other reference to rates and prices for performing the services under the Contract. Technical Bids containing such price information will be rejected.* (b) *Price Bid:* Price Schedules duly completed by the Bidder. 9.2 *Technical Bid – Bid Form:* The Bidder is required to provide full and detailed information as specified in the Bid Data Sheet and in the format provided in the Bid Documents. All information should be provided in hard copy and in electronic format, readable in Microsoft Word. 9.3 *Attachments to the Technical Bid:* Each Bidder shall submit with its Technical Bid the following attachments:

(a) *Attachment 1 – Bid Security:* A Bid Security furnished in accordance with ITB Clause 13.

(b) *Attachment 2 – Power of Attorney:* A power of attorney, duly notarized, indicating that the person(s) signing the Bid has/have the authority to sign the Bid and thus that the Bid is binding upon the Bidder during the full period of its validity in accordance with ITB Clause 14.

(c) *Attachment 3 – Bidder's Eligibility and Qualifications:* The documentary evidence of the Bidder's eligibility to bid shall establish to the Employer's satisfaction that the Bidder, at the time of submission of its Bid, is from an eligible source country as defined in ITB Sub-Clause 2.1.

The documentary evidence of the Bidder's qualifications to perform the contract, if its Bid is accepted, shall establish to the Employer's satisfaction that the Bidder has the financial, technical, procurement, shipping, and other capabilities necessary to perform the contract, and, in particular, meets the experience and other criteria outlined in the Bid Data Sheet.

Bids submitted by a joint venture or a consortium of two or more firms as partners shall comply with the following requirements:

(i) The Bid shall include all the information required for Attachment 3 as described above for each joint venture or consortium partner.

(ii) The Bid shall be signed so as to be legally binding on all partners.

(iii) One of the partners responsible for performing a key component of the contract shall be designated as leader, this authorization shall be evidenced by submitting with the Bid a power of attorney signed by legally authorized signatures.

(iv) The leader shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture or consortium, and the entire execution of the contract, including payment, shall be done exclusively with the leader.

(v) All partners of the joint venture or consortium shall be liable jointly and severally for the execution of the contract in accordance with the contract terms.

(vi) A copy of the agreement entered into by the joint venture or consortium partners shall be submitted with the Bid.

In order for a joint venture or consortium to qualify, each of its partners or combination of partners must meet the minimum criteria listed for an individual Bidder for the component of the Contract they are designated to perform. Failure to comply with this requirement will result in rejection of the joint venture or consortium's Bid.

A firm can be a partner in only one joint venture or consortium; Bids submitted by joint ventures or consortia including the same firm as partner will be rejected.

(d) *Attachment 4 – Subcontractors Proposed by the Bidder:* The Bidder shall include in its Bid details of all major items of supply or services that it proposes to purchase or sublet, and shall give details of the name and nationality of the proposed Subcontractor, including vendors, for each of those items. No adjustment of the rates and prices quoted for Subcontractors in the Price Bid ***[the Technical Bid must contain no price information]*** will be permitted.

The Bidder shall be responsible for ensuring that any Subcontractor proposed complies with the requirements of ITB Sub-Clause 2.1, and that any plant, equipment, or services to be provided by the Subcontractor comply with the requirements of ITB Clause 3 and ITB Sub-Clause 9.3 (c).

The Employer reserves the right to delete any proposed Subcontractor from the list prior to award of contract, and after discussion between the Employer and the Operator, the corresponding Appendix to the form of Contract Agreement shall be completed, listing the approved Subcontractors for each item concerned.

10. Documents Comprising the Price Bid	10.1 The Price Bid shall be comprised of the completed Bid Form and the appropriate Price Schedules furnished in the Bid Documents, as indicated therein, and in the Subsection "Bid Form and Price Schedules" of the Bid Documents, following the requirements of ITB Clauses 11 and 12.
11. Bid Prices	11.1 Unless otherwise specified, the Total Management Fixed Fee that Bidders quote shall be for the entire scope of services on a "single responsibility" basis, such that the Total Management Fixed Fee covers all the Operator's obligations mentioned in or to be reasonably inferred from the Bid Documents. This includes the Operator's responsibilities for the acquisition of all permits, approvals, and licenses, *et cetera*; the operation, maintenance, training services, and such other items and services as may be specified in the Bid Documents, all in accordance with the requirements of the Contract Model. Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items. 11.2 Bidders are required to quote the Price for contractual and technical obligations outlined in the Bid Documents. No deviations to the Bid will be permitted. A Bid that includes deviations will be deemed non-responsive. 11.3 Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules. 11.4 The price set out in the Bidder's Price Schedules shall include all taxes, duties, levies, and charges of any kind whatsoever.
12. Bid Currencies	12.1 The Bidder may quote its price in the currency of any country (including the Euro). If the Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly, but may use no more than three currencies.
13. Bid Security	13.1 The Bidder shall furnish, as part of its Bid, a Bid Security in the amount stipulated in the Bid Data Sheet in the currency of the Employer's country, or in the equivalent amount in a freely convertible currency. 13.2 The Bid Security shall, at the Bidder's option, be in the form of a certified check, letter of credit, or a bank guarantee from a reputable bank selected by the Bidder and located in any eligible country. The format of the bank guarantee shall be in accordance with the form of Bid Security included in the Bid Documents; other formats may be permitted, subject to the prior approval of the Employer. Bid security shall remain valid for a period of twenty-eight (28) days beyond the original bid-validity period, and beyond any extension subsequently requested under ITB Sub-Clause 14.2. 13.3 Any Bid not accompanied by an acceptable Bid Security shall be rejected by the Employer as being non-responsive, pursuant to ITB Clause 22.5. The Bid Security of a joint venture must be in the name of all the partners in the joint venture submitting the Bid. 13.4 The Bid Securities of unsuccessful Bidders will be returned as promptly as possible, but not later than twenty-eight (28) days after the expiration of the bid-validity period. 13.5 The Bid Security of the successful Bidder will be returned when the Bidder has signed the Contract, pursuant to ITB Clause 35, and has furnished the required Performance Security, pursuant to ITB Clause 36. 13.6 The Bid Security may be forfeited: (a) if the Bidder withdraws its Bid during the period of bid validity specified by the Bidder in the Bid Form; or, in the case of a successful Bidder, (b) if the Bidder fails within the specified time limit to: (i) sign the Contract, in accordance with ITB Clause 35, or (ii) furnish the required Performance Security, in accordance with ITB Clause 36.

14. Period of Validity of Bid

14.1 Bids shall remain valid for the period named in the Bid Data Sheet after the closing date prescribed by the Employer for the receipt of Bids, pursuant to ITB Sub-Clause 17.1. A Bid valid for a shorter period shall be rejected by the Employer as being non-responsive.

14.2 In exceptional circumstances, the Employer may solicit the Bidders' consent to an extension of the bid-validity period. The request and responses thereto shall be made in writing or by cable. If a Bidder accepts to prolong the period of validity, the Bid Security shall also be suitably extended. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request will not be required nor permitted to modify its Bid, except as provided in ITB Sub-Clause 14.3.

14.3 In the case of fixed-price contracts (not subject to price adjustment), if the bid-validity period is extended beyond sixty (60) days, the amounts payable in both local and foreign currencies to the Bidder selected for award shall be increased by applying the factors specified in the request for extension to both the local and the foreign currency component of the payments, respectively, for the period of delay beyond sixty (60) days after the expiry of the initial bid validity up to the time of notification of award. Bid evaluation will be based on the Bid Prices without considering the above correction.

15. Format and Signing of Bid

15.1 The Bidder shall prepare an original and the number of copies/sets of the Technical Bid and Price Bid specified in the Bid Data Sheet, clearly marking each one as "Original Technical Bid," "Original Price Bid," "Technical Bid Copy No. 1," "Price Bid Copy No. 1," "Technical Bid Copy No. 2," *et cetera*, as appropriate. In the event of any discrepancy between them, the original shall govern.

15.2 The original and all copies of the Bid, each consisting of the documents listed in ITB Sub-Clause 9.1, shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the Contract. The latter authorization shall be indicated by written power of attorney accompanying the Bid and submitted as Attachment 2 to the Bid under ITB Sub-Clause 9.3. All pages of the Bid, except for unamended printed literature, shall be initialed by the person or persons signing the Bid.

15.3 The Bid shall contain no alterations, omissions, or additions, unless such corrections are initialed by the person or persons signing the Bid.

15.4 The Bidder shall furnish information as described in the last paragraph of the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the Contract.

C4. Submission of Bids

16. Sealing and Marking of Bids

16.1 The original and all copies of the Technical Bid shall be placed in a sealed envelope clearly marked "Technical Bid," and the original and all copies of the Price Bid in a sealed envelope clearly marked "Price Bid" and warning: "Do Not Open with the Technical Bid." Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Data Sheet and be clearly marked, "Do Not Open, Except in Presence of the Bid Examination Committee."

16.2 The envelopes containing the Technical and Price Bids shall be separately sealed, and then sealed within a single outer envelope.

16.3 The inner and outer envelopes shall:

(a) be addressed to the Employer at the address given in the Bid Data Sheet, and

(a) bear the contract name indicated in the Bid Data Sheet, the Invitation for Bids title and number indicated in the Bid Data Sheet, and the statement "Do Not Open Before ***[date]***," to be completed with the time and date specified in the Bid Data Sheet, pursuant to ITB Sub-Clause 20.1.

16.4 The inner envelopes shall also indicate the name and address of the Bidder so that the Bid can be returned unopened in case it is declared "late."

16.5 If the outer envelope is not sealed and marked as required by ITB Sub-Clause 16.3, above, the Employer will assume no responsibility for the Bid's misplacement or premature opening. If the outer envelope discloses the Bidder's identity, the Employer will not guarantee the anonymity of the Bid submission, but this disclosure will not constitute grounds for Bid rejection.

17. Deadline for Submission of Bids

17.1 Bids must be received by the Employer at the address specified under ITB Sub-Clause 16.3 no later than the time and date stated in the Bid Data Sheet.

17.2 The Employer may, at its discretion, extend this deadline for submission of Bids by amending the Bid Documents in accordance with ITB Sub-Clause 7.3, in which case all rights and obligations of Employer and Bidders will thereafter be subject to the deadline as extended.

18. Late Bids

18.1 Any Bid received by the Employer after the Bid submission deadline prescribed by the Employer, pursuant to ITB Clause 17, will be rejected and returned unopened to the Bidder.

19. Modification and Withdrawal of Bids

19.1 The Bidder may modify or withdraw its Bid after submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the deadline prescribed for Bid submission.

19.2 The Bidder's modifications shall be prepared, sealed, marked, and dispatched as follows:

(a) The Bidders shall provide an original and the number of copies specified in the Bid Data Sheet of any modifications to its Bid, clearly identified as such, in two inner envelopes duly marked "Bid Modifications – Original" and "Bid Modifications – Copies." The inner envelopes shall be sealed in an outer envelope, which shall be duly marked "Bid Modifications."

(b) Other provisions concerning the marking and dispatch of Bid modifications shall be in accordance with ITB Sub-Clauses 16.2, 16.3, and 16.4.

19.3 A Bidder wishing to withdraw its Bid shall notify the Employer in writing prior to the deadline prescribed for Bid submission. The notice of withdrawal shall:

(a) be addressed to the Employer at the address named in the Bid Data Sheet, and

(b) bear the Contract name, the IFB number, and the words "Bid Withdrawal Notice." Bid withdrawal notices received after the Bid submission deadline will be ignored, and the submitted Bid will be deemed to have been validly submitted.

19.4 No Bid may be withdrawn in the interval between the Bid submission deadline and the expiration of the bid-validity period specified in ITB Clause 14. Withdrawal of a Bid during this interval may result in the Bidder's forfeiture of its Bid Security, pursuant to ITB Sub-Clause 13.6.

C5. Bid Opening and Evaluation

20. Opening of Technical Bids by Employer

20.1 After the deadline for submission of Bids, the Technical Bid, including withdrawals and modifications made pursuant to ITB Clause 19, shall be opened immediately by the Bid Examination Committee in the presence of Bidders' designated representatives who choose to attend, at the time, date, and location stipulated in the Bid Data Sheet. The Price Bid shall remain sealed and deposited with a respectable public auditor or independent authority until all submitted Bids are opened publicly. The Bidders' representatives who are present shall sign a register evidencing their attendance.

20.2 Envelopes marked "Withdrawal" shall be opened first and the name of the Bidder shall be read out. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 19 shall not be opened, and shall be returned to the Bidder.

20.3 The Bidders' names, Bid modifications and withdrawals, the presence (or absence) of Bid Security, and any such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. Subsequently, all envelopes marked "Modification" shall be opened and the submissions therein read out in appropriate detail. *Bid Modifications shall*

	contain no financial information. No Technical Bid shall be rejected at Bid opening except for late Bids pursuant to ITB Clause 18. 20.4 The Employer shall prepare minutes of the Technical Bid opening, including the information disclosed to those present in accordance with ITB Sub-Clause 20.3. 20.5 Bids not opened and read out at Bid opening shall not be considered further for evaluation, irrespective of the circumstances. 20.6 Evaluators of Technical Bids shall have no access to the Price Bids until the Technical Evaluation, including any reviews or approvals, is concluded.
21. Clarification of Technical Bids	21.1 During Technical Bid evaluation, the Employer may, at its discretion, ask the Bidder for a clarification of its Bid. The request for clarification and the response shall be in writing, and no change in the price or substance of the Bid shall be sought, offered, or permitted.
22. Preliminary Examination of Technical Bids	22.1 The Employer will examine the Technical Bids to determine whether they are complete, whether required sureties have been furnished, whether the documents have been properly signed, and whether the Bids are generally in order. 22.2 Errors will be rectified on the following basis. If there is a discrepancy between words and figures, the amount in words will prevail. If the Bidder does not accept the correction of errors, its Bid will be rejected. 22.3 The Employer may waive any minor informality, nonconformity, or irregularity in a Technical Bid that does not constitute a material deviation, and that does *not prejudice or affect the relative ranking of any Bidder as a result of the* Technical Evaluation, pursuant to ITB Clause 27. 22.4 Prior to the detailed evaluation, the Employer will determine whether each Technical Bid is of acceptable quality, complete, and substantially responsive to the Bid Documents. For purposes of this determination, a substantially responsive Bid is one that conforms to all the terms, conditions, and specifications of the Bid Documents without material deviations, objections, conditionalities, or reservations. A material deviation, objection, conditionality, or reservation is one (i) that affects in any substantial way the scope, quality, or performance of the Contract; (ii) that limits in any substantial way, inconsistent with the Bid Documents, the Employer's rights or the successful Bidder's obligations under the Contract; or (iii) whose rectification would unfairly affect the competitive position of other Bidders who are presenting substantially responsive Bids. 22.5 If a Technical Bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by the Bidder by correction of the nonconformity. The Employer's determination of a Bid's responsiveness is to be based on the contents of the Bid itself without recourse to extrinsic evidence. 22.6 After the Technical Evaluation is completed, the Employer shall notify those *Bidders whose Bids did not meet the minimum composite Technical Score* (ST) or were considered non-responsive to the Bid Documents and Scope of Work, indicating that their Price Bids will be returned unopened after completing the selection process. The Employer shall simultaneously notify the Bidders that have secured the minimum composite Technical Score, indicating the date and time set for opening the Price Bids. The opening date shall not be sooner than two weeks after the notification date. The notification may be sent by registered letter, cable, telex, facsimile, or electronic mail.
23. Opening of Price Bids by Employer	23.1 At a time and date to be determined during the Procurement Process (and conveyed in writing by the Employer to the Bidders), the Employer will open the Price Bids of all passing Technical Bidders in the presence of Bidders' designated representatives who choose to attend. The Bidders' *representatives who are present shall sign a register evidencing their* attendance. 23.2 The Bidders' names, their Total Management Fixed Fee, and any such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. 23.3 The Employer shall prepare minutes of the Price Bid opening, including the

	information disclosed to those present in accordance with ITB Sub-Clause 23.2. 23.4 Bids not opened and read out at Bid opening shall not be considered further for evaluation, irrespective of the circumstances.
24. Clarification of Price Bids	24.1 During Price Bid evaluation, the Employer may, at its discretion, ask the Bidder for a clarification of its Bid. The request for clarification and the response shall be in writing, and no change in the price or substance of the Bid shall be sought, offered, or permitted.
25. Preliminary Examination of Price Bids	25.1 The Employer will examine the Price Bids to determine whether they are complete, whether any computational errors have been made, whether the documents have been properly signed, and whether the Bids are generally in order. 25.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price, which is obtained by multiplying the unit price and quantity, or between subtotals and the total price, the unit or subtotal price shall prevail, and the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words will prevail. If the Bidder does not accept the correction of errors, its Bid will be rejected. 25.3 The Employer may waive any minor informality, nonconformity, or irregularity in a Price Bid that does not constitute a material deviation, and that does not prejudice or affect the relative ranking of any Bidder as a result of the Price evaluation, pursuant to ITB Clause 28. 25.4 Prior to the detailed evaluation, the Employer will determine whether each Price Bid is of acceptable quality, complete, and substantially responsive to the Bid Documents. For purposes of this determination, a substantially responsive Bid is one that conforms to all the terms, conditions, and specifications of the Bid Documents without material deviations, objections, conditionalities, or reservations. A material deviation, objection, conditionality, or reservation is one (i) that affects in any substantial way the scope, quality, or performance of the Contract; (ii) that limits in any substantial way, inconsistent with the Bid Documents, the Employer's rights or the successful Bidder's obligations under the contract; or (iii) whose rectification would unfairly affect the competitive position of other Bidders who are presenting substantially responsive Bids. 25.5 If a Price Bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by the Bidder by correction of the nonconformity. The Employer's determination of a Bid's responsiveness is to be based on the contents of the Bid itself without recourse to extrinsic evidence.
26. Conversion to Single Currency	26.1 To facilitate evaluation and comparison, the Employer will convert all Bid prices expressed in the amounts in various currencies in which the Bid Price is payable to either: (a) the currency of the Employer's country at the selling exchange rate established for similar transactions by the central bank or by a bank in the Employer's country, or (b) a currency widely used in international trade, such as U.S. dollars, at the selling rate of exchange published in the international press for the amount payable in foreign currency, and at the selling exchange rate established for similar transactions by the central bank in the Employer's country for the amount payable in the currency of the Employer's country. 26.2 The currency selected for converting Bid prices to a common base for the purpose of evaluation, along with the source and date of the exchange rate, is specified in the Bid Data Sheet.

27. Technical Evaluation

27.1 The Employer will carry out a detailed technical evaluation of the Bids previously determined to be substantially responsive in order to determine whether the technical aspects are in accordance with the requirements set forth in the Bid Documents. In order to reach such a determination, the Employer will examine and compare the technical aspects of the Bids on the basis of the information supplied by the Bidders, taking into account the following factors:

(a) *overall completeness and compliance (the* Bid that does not meet minimum acceptable standards of completeness, consistency, and detail will be rejected for non-responsiveness);

(b) achievement of specified performance criteria; and

(c) any other relevant factors, if any, listed in the Bid Data Sheet, or that the *Employer deems necessary or prudent to take into consideration.*

27.2 The Bid Examination Committee, appointed by the Employer, as a whole and each of its members individually, evaluates the Bids on the basis of their responsiveness to the Scope of Work (Appendix A of the Contract Model in these Bid Documents), applying the evaluation criteria, subcriteria, and point system specified in the Data Sheet. Each responsive Technical Bid will be given a composite Technical Score (St). A Technical Bid shall be rejected at this stage if it does not respond to important aspects of the Scope of Work or if it fails to achieve the minimum composite Technical Score indicated in the Data Sheet.

28. Price Evaluation

28.1 The Price Bid containing the lowest Total Management Fixed Fee (Fm) will be given a Financial Score (Sf) of 100 points. The financial scores (Sf) of the other Price Bids will be computed as indicated in the Data Sheet. Bids will be ranked according to their combined Technical (St) and Financial (Sf) Scores using the weights (T = the weight given to the Technical Bid; P = the weight given to the Price Bid; $T + P = 1$) indicated in the Data Sheet: $S = St \times T\% + Sf \times P\%$. The firm achieving the highest combined Technical and Financial Score will be invited for negotiations.

28.2 The following evaluation methods will be followed:

(a) *Time schedule (program of performance)*: The services covered by this bidding are required to be performed within the period named in the Bid Data Sheet after the effective date specified in the Form of Contract Agreement. Bidders are required to base their prices on the time schedule given in the Bid Data Sheet, as well as the schedule for achieving the performance targets included in the Contract Model. No credit will be given for earlier completion. Bids that reflect achievement of performance targets beyond the maximum designated period shall be rejected.

(b) *Specific additional criteria:* The relevant evaluation method, if any, shall be detailed in the Bid Data Sheet.

28.3 Bid prices quoted by Bidders shall remain unaltered.

29. Contacting the Employer

29.1 From the time of Bid opening to the time of contract award, if any Bidder wishes to contact the Employer on any matter related to its Bid, it should do so in writing.

29.2 Any effort by a Bidder to influence the Employer in the Employer's Bid evaluation, Bid comparison, or contract award decisions may result in rejection of the Bidder's Bid.

C6. Award of Contract

30. Changes in Qualification Status

30.1 Prior to proceeding with the award of contract, the Employer will determine to its satisfaction that no circumstances, in particular the Bidder's financial status, contract work in hand, future commitments, and current litigation, have arisen or intervened during the period between the submission of the Application for Prequalification and the submission of the Technical and Price Bids that would change the Employer's opinion as to whether the Apparent Successful Bidder is still qualified to satisfactorily perform the Contract.

	30.2 An affirmative determination will be a prerequisite for award of the Contract to the Bidder. A negative determination will result in rejection of the Bidder's Bid, in which event the Employer will proceed to the next lowest evaluated Bid to make a similar determination of that Bidder's capabilities to perform satisfactorily. 30.3 The capabilities of the vendors and subcontractors proposed in the Bid to be used by the lowest evaluated Bidder will also be evaluated for acceptability. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a vendor or subcontractor be determined to be unacceptable, the Bid will not be rejected, but the Bidder will be required to substitute an acceptable vendor or subcontractor without any change to the Bid price.
31. Award Criteria	31.1 Subject to ITB Clause 32, the Employer will award the contract to the successful Bidder whose Bid has been determined to be substantially responsive and to be the lowest evaluated Bid, further provided that the Bidder is determined to be qualified to perform the contract satisfactorily.
32. Employer's Right To Accept Any Bid and To Reject Any or All Bids	32.1 The Employer reserves the right to accept or reject any Bid, and to annul the Tender and reject all Bids at any time prior to award of contract, without thereby incurring any liability to the affected Bidder or Bidders, or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer's action.
33. Notification of Award	33.1 Prior to the expiration of the period of bid validity, the Employer will notify the successful Bidder in writing by registered letter or by cable, to be confirmed in writing by registered letter, that its Bid has been accepted.
34. Negotiations	34.1 The Employer will notify the Apparent Successful Bidder of the location, date, and time for negotiations. The aim of negotiations is to reach agreement on all points and sign a contract. 34.2 Negotiations will include a discussion of the Technical Bid, the proposed Workplan, Staffing Plan, and any suggestions made by the firm to improve the Scope of Work. The Employer and Apparent Successful Bidder will then work out final Scope of Work, staffing, and bar charts indicating activities, staff, periods in the field and in the home office, staff-months, logistics, and reporting. The agreed Workplan and final Scope of Work will then form part of the Contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from the Employer to ensure satisfactory implementation of the assignment. 34.3 The financial negotiations will include a clarification (if any) of the firm's tax liability in the Employer's country and the manner in which it will be reflected in the Contract; and will reflect the agreed technical modifications in the cost of the services. Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (breakdown of fees), other proposed unit rates, or the amount of incentive compensation. 34.4 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, the Employer expects to negotiate a contract on the basis of the experts named in the Technical Bid. Before contract negotiations, the Employer will require assurances that the experts will be actually available. The Employer will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable, or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the Bid without confirming their availability, the firm may be disqualified. 34.5 The negotiations will conclude with a review of the Contract Model. To complete negotiations the Employer and the Apparent Successful Bidder will initial the agreed contract. If negotiations fail, the Employer will invite the Bidder who received the second highest combined Technical and Financial Score to negotiate a Contract.

35. Signing the Contract	35.1 The Contract will be awarded following negotiations. After negotiations are completed, the Employer will promptly notify other Bidders that they were unsuccessful and return the unopened Price Bids of those Bidders who did not pass the Technical Evaluation. At the same time as the Employer notifies the Apparent Successful Bidder that its Bid has been accepted, the Employer will send the Bidder the Contract provided in the Bid Documents, incorporating all agreements between the parties. 35.2 Within twenty-eight (28) days of receipt of the Contract, the Apparent Successful Bidder shall sign and date the Contract and return it to the Employer. 35.3 Upon receipt of the signed Contract and following the successful Bidder's furnishing of the performance security pursuant to ITB Clause 36, the Employer will promptly notify each unsuccessful Bidder and will discharge its Bid Security, pursuant to ITB Sub-Clause 13.4.
36. Performance Security	36.1 Within twenty-eight (28) days after receipt of the notification of award, the successful Bidder shall furnish the Performance Security in the amount given in the Bid Data Sheet and in the form provided herein, Sample Forms and Procedures, of the Bid Documents or in another form acceptable to the Employer. 36.2 Failure of the successful Bidder to comply with the requirements of ITB Clause 36 or Clause 37 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security, in which event the Employer may make the award to the next lowest evaluated Bidder or call for new Bids.
37. Corrupt or Fraudulent Practices	37.1 ***[If applicable] [Donor]*** requires that Borrowers (including beneficiaries of ***[Donor loans or grants]***, as well as Bidders/Suppliers/Operators under ***[Donor]***-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ***[Donor]***: (a) defines, for the purposes of this provision, the terms set forth below as follows: (i) "corrupt practice" means the offering, giving, receiving, or soliciting any thing of value to influence the action of a public official in the procurement process or in contract execution; and (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish Bid Prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition; (b) will reject a Bid for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question; (c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a bank-financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a ***[Donor]***-financed contract.
38. Confidentiality	38.1 Information relating to evaluation of Bids and recommendations concerning awards shall not be disclosed to the Bidders who submitted the Bids or to other persons not officially concerned with the process, until the Apparent Successful Bidder has been notified that it has been awarded the Contract.

D. Bid Data Sheet

The following bid-specific data for the Services to be procured shall amend and/or supplement the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in the ITB.

D1. Introduction

ITB 1.1	***[If applicable]*** *Name of the Borrower:* Government of Egypt, ***[Tendering Agency]***
ITB 1.1	*Name of Project:* ***[name]***
ITB 1.1	*Name of Contract:* Performance-Based Management Contract for Water and Wastewater Services (or "Management Contract")
ITB 2.1	*Name of Employer:* ***[Tendering Agency]*** ***[If applicable]*** The Employer has appointed as its representative the Government of Egypt's ***[Tendering Agency]***. This Invitation to Bid is open only to Prequalified Bidders. Prequalified Bidders are those Bidders that were short-listed per the ***[Tendering Agency]***'s prequalification process for the Management Contract, conducted in ***[for example, in May and June 2002]***.
ITB 2.6	*Subsequent Work:* The following applies regarding contract renewal and the right to bid on subsequent arrangements: *A. Contract Renewal* The Management Contract will be renewable for a term of five (5) years at the discretion of the Employer, and with the agreement of the Operator. As part of this renewal process, the Employer or the Operator shall be entitled to request that the contract be amended and that the performance targets be renegotiated. If the Employer decides to award another Management Contract, but does not wish to automatically renew the contract with the incumbent Operator, then it shall award the subsequent contract through international competitive bidding, and the Operator shall be entitled to participate in this procurement process (however, the incumbent Operator shall not be given any preferential treatment). *B. Right to Bid on Subsequent Arrangements* The Operator will be eligible to bid on subsequent long-term arrangements such as leases, concessions, or other similar arrangements. However, the incumbent Operator will not be given preferential treatment (including, but not limited to, the right of first refusal) in bidding on subsequent arrangements.
ITB 2.7	Bidders are encouraged to seek the participation of local firms or individuals by entering into a joint venture with, or subcontracting part of the assignment to, Egyptian firms or individuals.
ITB 3	*Source of Funds:* ***[If applicable]*** The source of the funds to be used in paying the Operator's Fixed Fee and Incentive Compensation is the ***[Donor]***.
ITB 4.2	*Bidding Timetable:* The Employer estimates that the procurement process will take approximately three (3) months from the issuance of the Bid Documents to the identification by the Evaluation Committee of the Bidder that has been successful in the bidding process (the "Apparent Successful Bidder"). The execution of the Contract is expected to follow within approximately one (1) month thereafter. The estimated Bidding Timetable is as follows ***[dates indicative only]***: (a) Issuance of Bid Documents — June 29, 2002 (b) Data Room opens — July 2, 2002 (c) Last day to submit questions on the Bid Documents (Bid Document Questions) — July 20, 2002 (d) Responses to questions on the Bid Documents issued (Responses to Questions Document #1) — July 27, 2002

(e)	Site visits	July 29, 2002 - August 3, 2002
(f)	Pre-Bid Meeting	August 1, 2002
(g)	Last day to submit questions arising out of site visits and response to questions document #1 (Site Visit and Follow-Up Questions)	August 10, 2002
(h)	Responses to Site Visit and Follow-Up Questions issued (Responses to Questions Document #2)	August 17, 2002
(i)	Date for the calculation of the conversion to a single currency for Bid Evaluation	August 24, 2002
(j)	Bid submission deadline	September 7, 2002 (12:00 noon Cairo, Egypt, time)
(k)	Opening of Technical Bids	September 7, 2002
(l)	Opening of Price Bids (where applicable)	October, 2002
(m)	Identification of Apparent Successful Bidder	October, 2002

D2. The Bid Documents

ITB 6.1 *Address of Employer:*
[Tendering Agency]
[Address, phone, fax, email]

ITB 6.2 Reference documentation relating to the Management Contract has been made available to Bidders in a Data Room established in the ***[Tendering Agency]***'s offices in Cairo (the Data Room). The Data Room is open for use by Bidders Sundays through Thursdays, from 09:00 to 17:00, from July 2, 2002, excluding Egyptian public holidays. Visits to the Data Room will not be permitted in the five (5) working days prior to the Bid submission deadline.

Bidders that wish to visit the Data Room must submit a written request to the Employer at least seven (7) days in advance of any proposed visit, and must specify the time, dates, duration, and sites of any proposed visit, and provide details of the individuals who will participate in the visit (which may include agents appointed by the Bidders). Bidders must sign a Confidentiality Agreement with the Employer before they will be permitted to enter the Data Room.

Bidders are prohibited from obtaining documents or other written materials pertaining to the Management Contract or the Employer from sources other than the Data Room. The contents of the Data Room may not be removed at any time. The Disclaimer included at the beginning of the Bidding Instructions also applies to the contents of the Data Room.

The Data Room includes the following information:

- General macroeconomic data;
- Financial and institutional information on UtilityCo;
- Geographical data;
- Legislation and regulations;
- Price contracts;
- Management and staffing information;
- Engineering and technical data;
- Demand projections;
- Relevant consultants' reports; and
- Estimates of required future investments in the ***[e.g., UtilityCo system]***.

Detailed Data Room Procedures and a Data Room Index shall be provided under separate cover. Bidders will be permitted to visit and examine the sites to obtain and verify information that they deem necessary for the preparation of their Bids. Site visits have been scheduled for the week of ***[indicative dates]*** July 29 to August 3, 2002. At this time, Bidders will have access to personnel and to inspection of any documentation that supplements the information provided in the Data Room. Failure to visit or otherwise conduct investigations in relation to the Sites will not give the Bidder grounds for subsequently altering its Bid, nor will it relieve the Bidder from any responsibility for appropriately estimating the difficulty

	or cost of implementing the Management Contract.
ITB 6.3	The Employer will not provide rights of inspection over existing or potential customer's land.
ITB 6.4	*Venue, time, and date of Pre-Bid Meeting:* The Pre-Bid Meeting is scheduled to take place on ***[indicative date]*** August 1, 2002. The location of the meeting is ____. Non-attendance at the Pre-Bid Meeting will not be a cause for disqualification.
ITB 8.1	*Language of Bid:* English
ITB 9.2	*Technical Bid – Bid Form:* The detailed required content for the Technical Bid is: *A. Staffing Plan:* A detailed staffing plan (the "Staffing Plan") setting out the Bidder's proposed staffing arrangements (the Bidder's own staff only) for carrying out the Services and divided into the following sections: (i) "Staffing Chart" that consists of a chart setting out a list of all proposed staff, the role of each staff member, the duration of the involvement of each staff member, and the location of each staff member during their periods of assignment to carry out the Services; (ii) "Summary of Staff Qualifications" that consists of a summary table setting out the names of each proposed staff member and their qualifications, years of experience, and areas of expertise; and (iii) "Curriculum Vitae" that contains the signed curriculum vitae of all proposed staff members. It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or have an extended and stable working relationship with it. *B. Workplan:* A detailed strategy and workplan (the "Workplan") setting out the manner in which the Bidder proposed to carry out the Services as defined in the Scope of Work in Appendix A. of the Contract Model in these Bid Documents), meet the performance standards, and achieve ratings of "Excellent" in accordance with the Incentive Compensation Appendix (Appendix G. of the Contract Model). The Workplan shall be divided into the following sections: (i) "Strategy for Improving the Efficiency and Operation of the Water and Sewerage Systems;" (ii) "Strategy for Improving Service to Less-Developed Areas;" (iii) "Strategy for Improving the Efficiency of Revenue Collection and Implementing the Cost Recovery Policies of the Government of Egypt;" (iv) "Strategy for Improving the Efficiency of the Customer Service and Public Relations Functions;" (v) "Strategy for Improving the Effectiveness of the Management of the Water and Sewerage Systems;" (vi) "Strategy for Improving the Long-range Performance of the Water and Sewerage Systems;" (vii) "Strategy for Assisting in Implementing the Investment Component that will be Carried Out in Parallel and Financed by other Donors;" (viii) "Support for Ongoing Integration of Utilities." The information provided in the above sections should describe the Bidder's Workplan as it relates to the Scope of Work (Appendix A., Contract Model (in these Bid Documents)).
ITB 9.3 (c) & (d)	*Bidder's Eligibility and Qualifications:* All Bidders have been prequalified in the manner described in BDS 2.1, above. If Bidders comprising a consortium change members of the consortium, then the Employer will be entitled to disqualify that consortium. The Employer will not disqualify the consortium if the changes are acceptable to it. Bidders shall notify the Employer of any material changes or additions to the information submitted as part of the Bidders' prequalification package. If there are no material changes, the Bidder is required to include a letter to that effect as part of the Bid.

D3. Bid Price and Currency

ITB 11	The Bidder will confirm in its Price Bid its willingness to provide an unconditional Performance Security.
ITB 11.4	For the information of Bidders, the provisions with respect to taxes, duties, levies, and charges appear in Clause 1.10 of the Contract Model (included herein).

D4. Bid Preparation and Submission

ITB 13.1	*Amount of Bid Security:* ***[amount indicative only]*** US$ 50,000.00 (fifty thousand United States dollars)
ITB 14.1	*Bid Validity Period:* 120 days
ITB 15.1 & 19.2	*Format and Signing of Bid:* The Bidder shall prepare an original and six (6) copies of both the Technical Bid and the Price Bid. In addition, Bids should be submitted in hard-back folders or binders. Each section must be segregated using tabbed divider cards that identify that section. A table of contents must be included in each folder or binder that identifies the contents of each section of the Bid.
ITB 17.1	*Address of Bid submission:* Government of Egypt ***[Tendering Agency]*** ***[appropriate official, title, address, phone, fax, email]*** *Deadline for Bid submission:* 12:00 noon local Cairo, Egypt, time on September 7, 2002.
ITB 20.1	*Location, time, and date of Bid opening:* Opening of the Technical Bids will occur at 12:00 noon local Cairo, Egypt, time, on September 7, 2002.

D5. Bid Evaluation

ITB 26.2	*Currency chosen for the purpose of converting to a common currency:* United States dollars *Source of exchange rate:* The Financial Times *Date of exchange rate:* ***[date indicative only]***August 24, 2002
ITB 27	*Technical Evaluation:* The Employer will convene a Bid Examination Committee comprising representatives of the ***[Tendering Agency]***, consultants, and other relevant parties. The Committee will write a Bid Examination Report that indicates the responsiveness of each Bid. The Committee will: (a) prepare a comparative table of the various Bids received, taking into account the information requested in the ITB (table will be used to check the responsiveness of the Bid and will rank each Bid according to the evaluation criteria contained in the Bid Data Sheet); (b) check that the Bidder accepts the performance targets listed in Appendix H. of the Contract Model in these Bid Documents, and that the Bidder's strategy for achieving these targets is consistent with the timetable; (c) check the overall consistency of the various strategies described in accordance with requirements embodied in the Management Contract; and (d) calculate each Bidder's composite Technical Score (St), according to the evaluation criteria and weightings set forth below. *A. Technical Evaluation Criteria:* In the technical examination, the Committee will pay particular attention to the quality of the Bidders' Staffing Plan and Workplans, as required by ITB 9.2, for accomplishing the SOW included in Appendix A., Contract Model (Section IV, Bid Documents). Specific attention will be paid to: (i) The evaluation of the Workplan shall be based on (a) the degree to which the Workplan demonstrates an understanding of GOE policies in the affected geographical area; (b) the extent to which the Workplan addresses the

specific services that are required by the SOW in Appendix A. of the Contract Model; and (c) the extent to which the Bidder demonstrates that it will meet the performance standards.

(ii) The evaluation of the Staffing Plan shall be based on (a) its clarity, comprehensiveness, and level of detail; (b) the extent to which the appropriate expertise, in accordance with the Management Staff Expertise table, is included; and (c) the extent to which it addresses the specific services that are required by the Scope of Work in Appendix A., Contract Model.

(iiii) The evaluation of the qualifications and competence of proposed staff shall be based on the (a) professional qualifications and experience of the Resident Project Manager; (b) professional qualifications and experience of the proposed resident Management Staff (experience in the sector, number of years employed by the Operator, experience in developing countries, experience in the region, and English language capabilities); (c) degree to which they have the expertise listed in the Management Staff Expertise table included in Appendix A. of the Contract Model; and (d) qualifications and experience of staff supporting the resident Management Staff (short-term and headquarters staff).

B. Scoring the Technical Evaluation Criteria

The number of points to be given under each of the evaluation criteria are:

Evaluation Category [points indicative only]	*Total Points*
Quality of the Staffing Plan (minimum score = 5)	10
Qualifications and Competence of Proposed Staff (minimum score = 20)	
- Qualifications and experience of Resident Project Manager	10
- Qualifications and experience of Proposed Management Staff	20
- Qualifications and experience of Supporting Staff	2
Subtotal:	*32*
Quality of the Workplan (minimum score = 40)	
- Strategy for Improving the Efficiency and Operation of the Water and Sewerage Systems	10
- Strategy for Improving Services in Less-Developed Areas	10
- Strategy for Improving the Efficiency of Revenue Collection and Implementing the Cost Recovery Policies of the Government of Egypt	10
- Strategy for Improving the Efficiency of the Customer Service and Public Relations Functions	8
- Strategy for Improving the Effectiveness of the Management of the Water and Sewerage Systems	8
- Strategy for Improving the Long-range Performance of the Water and Sewerage Systems	4
- Strategy for Assisting in Implementing the Investment Component that will be Carried Out in Parallel and Financed by other Donors	4
- Support for Ongoing Integration of Utilities Plan	4
Subtotal:	*58*
TOTAL:	*100*

	A Bid that contains explicit reservations on the performance targets or performance index included in the Contract Model (in these Bid Documents), or whose proposed strategies are judged inconsistent with the performance targets, will be ruled non-responsive. *C. Calculating the Technical Score* A Technical Bid must receive at least: • A composite Technical Score (St) of 75 out of a total possible 100 points; and • The minimum scores noted in parentheses for each of the criteria scored, to qualify to be considered further in the procurement process. Technical Bids that receive fewer than 75 points or do not receive at least the minimum scores in each scored category will not be considered further and the Bid Examination Committee will not open the associated Price Bid envelopes. (Under this evaluation process, it is possible to meet or exceed the minimum scores for each criterion and still not receive the required 75 points to be considered further.) Technical Bids that receive the minimum composite Technical Score (St) of 75 points and the minimum scores for each category will be issued a "Pass" score, and will proceed to the Price Evaluation.
ITB 28.1	*Price Evaluation:* The Price Bids of passing Bidders will be ranked by the Bid Examination Committee from lowest to highest based on the Total Management Fixed Fee (the combined total of the fixed fee and incentive payments) in each Bidder's Price Schedules. The formula for determining the financial scores is the following: $Sf = 100 \times Fm/F$ in which Sf is the financial score, Fm is the lowest Total Management Fixed Fee, and F the Total Management Fixed Fee of the Bid under consideration. The weights given to the Technical and Price Bids are: T = 0.80, and P = 0.20 In the Price Schedules, Bidders are required to indicate the portion of the Total Management Fixed Fee that is attributable to the services to be provided for the Less-Developed Area Program (Task (b), Subtasks (i) through (iv), of the Scope of Work in Appendix A. – included in these Bid Documents). The purpose of presenting the price for services in this manner is to enable the Employer to evaluate the impact of the services required under such Program on the total cost of the Contract. The Employer may, at its sole discretion, remove such Program from the scope of services following opening of Bidders' Price Bids. In this case, the portion of the Bidder's fixed fee attributable to such Program will be deducted from the Total Management Fixed Fee to arrive at an Amended Total Management Fixed Fee
ITB 28.2 (a)	*Time schedule:* The services to be provided under the Management Contract must be completed within the five (5) year term of the Management Contract. The specific timetable for achieving the performance targets under the Management Contract is included in Appendix H. of the Contract Model (in these Bid Documents).
ITB 28.2 (b)	*Specific additional criteria:* No specific additional criteria shall be considered.

D6. Contract Award

ITB 36	*Amount of Performance Security:* ***[e.g., US$ 250,000.00 (two hundred and fifty thousand United States Dollars)]***

E. Model Performance-Based Management Contract

E1. Model Cover Page

Performance-Based Management Contract for Water Supply and Wastewater Services in Egypt

between

UtilityCo
[The Tendering Agency]

and

[The Operator]

Date _____

E2. Model Table of Contents

Performance-Based Management Contract

1. General Conditions

1.1 Definitions
1.2 Relation Between the Parties
1.3 Law Governing Contract
1.4 Language
1.5 Headings
1.6 Notices
1.7 Location
1.8 Authority of Member in Charge
1.9 Authorized Representatives
1.10 Taxes and Duties

2. Commencement, Completion, Modification, Renewal, and Termination of Contract

2.1 Effectiveness of Contract
2.2 Termination of Contract for Failure to Become Effective
2.3 Commencement of Services
2.4 Expiration of Contract
2.5 Entire Agreement
2.6 Modification
2.7 Renewal
2.8 Right to Bid on Subsequent Arrangements
2.9 *Force Majeure*
2.10 Suspension
2.11 Termination

3. Obligations of the Operator

3.1 General
3.2 Conflict of Interests
3.3 Confidentiality
3.4 Liability of the Operator
3.5 Insurance to Be Taken by the Operator
3.6 Accounting, Inspection, and Auditing
3.7 Operator's Actions Requiring Employer's Approval
3.8 Reporting Obligations
3.9 Documents Prepared by the Operator to be the Property of the Employer

3.10 Equipment and Materials Furnished by the Employer

4. Operator's Personnel

4.1 General
4.2 Description of Personnel
4.3 Approval of Personnel
4.4 Working Hours, Overtime, Leave, *et cetera*
4.5 Removal and/or Replacement of Personnel
4.6 Resident Project Manager

5. Obligations of the Employer

5.1 Delegation of Day-to-day Management
5.2 Assistance and Exemptions
5.3 Access to Land and Information
5.4 Change in the Applicable Law
5.5 Services, Facilities, and Property of the Employer
5.6 Payment
5.7 Counterpart Personnel

6. Payments to the Operator

6.1 Cost Estimates, Ceiling Amount
6.2 Currency of Payment
6.3 Payments
6.4 Valuation of Currencies
6.5 Mode of Billing and Payment

7. Control

7.1 Independent Technical and Financial Auditors

8. Fairness and Good Faith

8.1 Good Faith
8.2 Operation of the Contract

9. Settlement of Disputes

9.1 Amicable Settlement
9.2 Right to Arbitration
9.3 Selection of Arbitrators
9.4 Rules of Procedure
9.5 Substitute Arbitrators
9.6 Nationality and Qualifications of Arbitrators
9.7 Miscellaneous

Appendices to Contract

A. Description of Services
B. Reporting Requirements
C. Key Personnel and Subcontractors
D. Hours of Work for Key Personnel
E. Duties of the Employer
F. Cost Estimates in Foreign Currency
G. Incentive Payments
H. Form of Bank Guarantee for Advance Payments
I. Guarantee
J. Procurement Procedures

E3. Model Performance-Based Management Contract

Performance-Based Management Contract

THIS CONTRACT (hereinafter, together with all Appendices attached hereto and forming an integral part hereof, called the "Contract") is made the _____ day of the month of ***[month]***, 2002, between, on the one hand, UtilityCo (hereinafter called the "Employer") and, on the other hand, _____ (hereinafter called the "Operator"). The Employer has designated its Board of Directors to administer this contract on its behalf. The Operator shall fully cooperate with the Employer and the Board.

WHEREAS:

(a) the Employer has requested the Operator to provide certain services as defined in this Contract;

(b) the Operator, having represented to the Employer that it has the required professional skills, personnel, and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;

(c) the Employer has received a credit from the ***[name of Donor]*** (hereinafter called "***[Donor]***") toward the cost of Services and intends to apply a portion of the proceeds of this credit to eligible payments under this Contract, it being understood (i) that payments by ***[Donor]*** will be made only at the request of the Employer and upon approval by ***[Donor]***, (ii) that such payments will be subject, in all respects, to the terms and conditions of the agreement providing for the credit, and (iii) that no party other than the Employer shall derive any rights from the agreement providing for the credit or have any claim to the credit proceeds; and

(d) the Operator's Parent has guaranteed this Contract as provided for in Appendix J.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. General Conditions

1.1 Definitions

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

(a) "Applicable Law" means the laws and any other instruments having the force of law in Egypt, as they may be issued and in force from time to time;

(b) "Board" or "Board of Directors" means the Board of Directors of UtilityCo;

(c) "Contract" means this Contract between the Employer and the Operator;

(d) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause 2.1 hereof;

(e) "Employer" means UtilityCo;

(f) "foreign currency" means any currency other than the currency that constitutes legal tender in Egypt;

(g) "Egypt" means the Arab Republic of Egypt;

(h) "Local currency" means a currency that constitutes legal tender in Egypt;

(i) "Member" in case the Operator consists of a joint venture or more than one entity, means any of these entities, and "Members" means all of these entities;

(j) "Party" means the Employer or the Operator, as the case may be; and "Parties" means both of them;

(k) "Personnel" means persons hired by the Operator or by any Subcontractor as employees and assigned to the project or any part thereof; "Foreign Personnel" means such persons who at the time of being so hired had their domicile outside Egypt; and "Local Personnel" means such persons who at the time of being so hired had their domicile in Egypt;

(l) "Project" means providing water and/or wastewater services in Egypt;

(m) "Services" means the work to be performed by the Operator pursuant to this Contract for the purposes of the Project, as described in Appendix A. hereto;

(n) "Starting Date" means the date referred to in Clause 2.3 hereof;

(o) "Subcontractor" means any entity to which the Operator subcontracts any part of the Services in accordance with the provisions of Clause 3.8 hereinafter; and

(p) "Third Party" means any person or entity other than Egypt, the Employer, the Operator, or a Subcontractor.

1.2 Relation between the Parties

The Operator, subject to this Contract, has complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by it or on its behalf hereunder. The Employer will provide its current personnel as counterpart, who will fall under the supervision of the Operator.

1.3 Law Governing Contract

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

1.4 Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.5 Headings

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

1.6 Notices

1.6.1 Any notice, request, or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request, or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telegram, or facsimile to such Party at the following address:

For the Employer:
Attention: _____
Cable address: _____
Facsimile: _____

For the Operator:
Attention: _____
Cable address: _____
Facsimile: _____

1.6.2 Notice will be deemed to be effective as follows:

(a) in the case of personal delivery or registered mail, on delivery;
(b) in the case of telegrams, four (4) hours following confirmed transmission; and
(c) in the case of facsimiles, four (4) hours following confirmed transmission.

1.6.3 A Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to this Clause.

1.7 Location

The Services shall be performed at such locations as are specified in Appendix A. hereto and, where the location of a particular task is not so specified, at such locations, whether in Egypt or elsewhere, as the Employer may approve.

1.8 Authority of Member in Charge

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

1.9 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract, may be taken or executed:

(a) on behalf of the Employer by its Board of Directors or his designated representative; and

(b) on behalf of the Operator by _____ or his designated representative.

1.10 Taxes and Duties

The Employer warrants that the Operator and the Personnel shall be exempt from (or that the Employer shall pay on behalf of the Operator and the Personnel) any taxes, duties, fees, levies, and other impositions imposed, under the Applicable Law, on the Operator and the Personnel in respect of:

(a) any payments whatsoever made to the Operator, Subcontractors, and the Personnel of either of them (other than nationals or permanent residents of Egypt), in connection with the carrying out of Services;

(b) any equipment, materials, and supplies brought into Egypt by the Operator or Subcontractors for the purpose of carrying out the Services and which, after having been brought into such territory, will be subsequently withdrawn therefrom by them;

(c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Employer and which is treated as property of the Employer;

(d) any property brought into Egypt by the Operator, any Subcontractors, the Personnel of either of them (other than nationals of Egypt or permanent residents of Egypt), or the eligible dependents of such Personnel for their personal use and which will subsequently be withdrawn therefrom by them upon their respective departure from Egypt, provided that:

   i. the Operator, Subcontractors, and Personnel, and their eligible dependents, shall follow the usual customs procedures of Egypt in importing property into Egypt; and
   ii. if the Operator, Subcontractors, or Personnel, or their eligible dependents, do not withdraw but dispose of any property in Egypt upon which customs duties and taxes have been exempted, the Operator, Subcontractors, or Personnel, as the case may be, (1) shall bear such customs duties and taxes in conformity with the regulations of Egypt, or (2) shall reimburse them to the Employer if they were paid by the Employer at the time the property in question was brought into Egypt.

2. Commencement, Completion, Modification, Renewal, and Termination of Contract

2.1 Effectiveness of Contract

This Contract shall come into force and effect on the date this Contract is executed (the "Effective Date") contingent on final approval of funding by ***[Donor]***.

2.2 Termination of Contract for Failure To Become Effective

If this Contract has not been finally approved by ***[Donor]*** within sixty (60) days of the Effective Date, either Party may, by not less than four (4) weeks' written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

2.3 Commencement of Services

The Operator shall begin carrying out the Services not later than on a date (the "Starting Date") the later of forty-five (45) days after the Effective Date or approval of the Contract by ***[Donor]***, or on such later date as the Parties may agree in writing.

2.4 Expiration of Contract

Unless terminated earlier pursuant to Clause 2.9 hereof, this Contract shall terminate on the fifth anniversary of the Starting Date, except if the Parties agree to extend the Contract under the same terms and conditions for an additional period not to exceed five (5) years.

2.5 Entire Agreement

This Contract contains all covenants, stipulations, and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise, or agreement not set forth herein.

2.6 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services, may only be made by written agreement between the Parties; provided, however, that if during the term of this Contract other contractors are engaged for work with respect to the water and sewerage systems in Egypt and their activities materially impact the incentive payments pursuant to clause 6.3 (d), the Parties shall mutually agree on appropriate adjustments to such incentive payments. ***[If appropriate: Modifications shall not be effective until the consent of (Donor) has been obtained.]*** Pursuant to Clause 7.2 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

2.7 Renewal

The Contract is renewable for a term of five (5) years at the discretion of the Employer, and with the agreement of the Operator. As part of the renewal process, the Employer or the Operator shall be entitled to request that the Contract be modified or that performance targets be renegotiated.

If the Employer decides to award another management contract, but does not wish to automatically renew the Contract with the incumbent Operator, then it shall award the subsequent contract through international competitive bidding, and the incumbent Operator shall be entitled to participate in this bidding process (however, the Operator shall not be given any preferential treatment).

2.8 Right To Bid on Subsequent Arrangements

The Operator shall be eligible to bid on subsequent long-term arrangements such as leases, concessions, or other similar arrangements that result from or follow-on the Contract. However, the Operator shall not be given preferential treatment (including, but not limited to, the right of first refusal) in bidding on subsequent arrangements.

2.9 *Force Majeure*

2.9.1 Definition

(a) For the purpose of this Contract, "*Force Majeure*" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts, or other industrial action (expect where such strikes, lockouts, or other industrial action are within the power of the Party invoking *Force Majeure* to prevent), confiscation, or any other action by government agencies.

(b) *Force Majeure* shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Subcontractors, agents, or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Contract and (B) avoid or overcome in the carrying out of its obligations hereunder.

(c) *Force Majeure* shall not include insufficiency of funds or failure to make any payment required hereunder.

2.9.2 No Breach of Contract

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

2.9.3 Measures To Be Taken

(a) A Party affected by an event of *Force Majeure* shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.

(b) A Party affected by an event of *Force Majeure* shall notify the other Party of such event as soon as possible, and in no event later than five (5) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

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

2.9.4 Extension of Time

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

2.9.5 Payments

During the period of their inability to perform the Services as a result of an event of *Force Majeure*, the Operator shall be entitled to continue to be paid under the terms of this Contract as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Services after the end of such period.

2.9.6 Consultation

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

2.10 Suspension

The Employer may, by written notice of suspension to the Operator, suspend all payments to the Operator hereunder if the Operator fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Operator to remedy such failure within a period not exceeding thirty (30) days after receipt by the Operator of such notice of suspension.

2.11 Termination

2.11.1 By the Employer

The Employer may, by not less than thirty (30) days' written notice of termination to the Operator (except in the event listed in paragraph (f) below, for which there shall be a written notice of not less than sixty (60) days), such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause 2.11.1, terminate this Contract:

(a) if the Operator fails to remedy a failure in the performance of its obligations hereunder (a failure to meet a composite performance factor of 2.5 pursuant to Appendix H. shall put the Operator on notice of possible termination and failure to meet a composite performance of 3.5 is grounds for termination), as specified in a notice of suspension pursuant to Clause 2.8 hereof, within thirty (30) days of receipt of such notice of suspension or within such further period as the Employer may have subsequently approved in writing;

(b) if the Operator becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or takes advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;

(c) if the Operator fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 8 hereof;

(d) if the Operator submits to the Employer a statement which has a material effect on the rights, obligations, or interests of the Employer and which the Operator knows to be false;

(e) if, as the result of *Force Majeure*, the Operator is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

(f) if the Employer, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

2.11.2 By the Operator

The Operator may, by not less than thirty (30) days' written notice to the Employer, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause 2.11.2, terminate this Contract:

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

(b) if the Employer is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Operator may have subsequently approved in writing) following the receipt by the Employer of the Operator's notice specifying such breach;

(c) if, as the result of *Force Majeure*, the Operator is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

(d) if the Employer fails to comply with any final decision reached as a result of arbitration pursuant to Clause 8 hereof.

2.11.3 Cessation of Rights and Obligations

Upon termination of this Contract pursuant to Clauses 2.2 or 2.11 hereof, or upon expiration of this Contract pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause 3.3 hereof, (iii) the Operator's obligation to permit inspection, copying and auditing of its accounts and records set forth in Clause 3.6(ii) hereof, and (iv) any right which a Party may have under the Applicable Law.

2.11.4 Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses 2.11.1 or 2.11.2 hereof, the Operator shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Operator and equipment and materials furnished by the Employer, the Operator shall proceed as provided, respectively, by Clauses 3.9 or 3.10 hereof.

2.11.5 Payment upon Termination

Upon termination of this Contract pursuant to Clauses 2.11.1 or 2.11.2 hereof, the Employer shall make the following payments to the Operator:

(a) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the effective date of termination;

(b) reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the effective date of termination; and

(c) except in the case of termination prior to paragraphs (a) through (d) of Clause 2.11.1 hereof, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract including the cost of the return travel of the Operator's personnel and their eligible dependents.

2.11.6 Disputes about Events of Termination

If either Party disputes whether an event specified in paragraphs (a) through (e) of Clause 2.11.1 or in Clause 2.11.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 8 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. Obligations of the Operator

3.1 General

3.1.1 Standard of Performance

The Operator shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency, and economy, in accordance with generally accepted techniques and practices used in the water and sewerage industry and with professional engineering and consulting standards recognized by international professional bodies, and shall observe sound management, technical, and engineering practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials, and methods. The Operator shall, in respect of any matter relating to this Contract or to the Services, at all times support and safeguard the Employer's legitimate interests in any dealings with Subcontractors or Third Parties.

3.1.2 Law Governing Services

The Operator shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Subcontractors, as well as the Personnel and agents of the Operator and any Subcontractors, comply with the Applicable Law. The Employer shall advise the Operator in writing of relevant local customs and the Operator shall, after such notifications, respect such customs.

3.2 Conflict of Interests

3.2.1 Operator Not To Benefit from Commissions, Discounts, *et cetera*

The remuneration of the Operator pursuant to Clause 6 hereof shall constitute the Operator's sole remuneration in connection with this Contract or the Services and, subject to Clause 3.2.2 hereof, the Operator shall not accept for its own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of its obligations hereunder, and the Operator shall use its best efforts to ensure that any Subcontractors, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

3.2.2 Procurement Rules of Funding Agencies

(a) The Operator, as part of the Services, has the responsibility on behalf of the Employer to procure goods, works, and services. The Operator shall comply with any applicable procurement guidelines of ***[Donor]*** and other funding agencies (see Appendix J., Procurement Procedures) and shall at all times exercise such responsibility in the best interest of the Employer. Any discounts or commissions obtained by the Operator in the exercise of such procurement responsibility shall be for the account of the Employer.

(b) The Operator shall prepare an Annual Strategic Plan that includes all procurements which the Operator anticipates will be necessary for the year. After the Employer has approved the Annual Strategic Plan, the identified expenditures are eligible for procurement by the Operator and shall be paid by the Employer. The Operator shall be authorized to make additional procurements valued at less than ***[e.g., US $3,000.00]*** equivalent that are not detailed in the Annual Strategic Plan, up to an annual ceiling of ***[e.g., US $20,000.00]***, without the prior consent of the Employer. Separate monthly invoices for all procurements shall be presented to the Employer for approval and, if necessary, subsequent forwarding to ***[Donor]*** or other funding agencies as required under disbursement procedures and consistent with the requirements of Clause 6.5(b) hereof, except payments pursuant to this Clause 3.2.2 instead of Clause 6.3 hereof, and all payments shall be made consistent with Clause 6.5(c) hereof.

3.2.3 Operator and Affiliates Not To Be Otherwise Interested in Project

The Operator agrees that, during the term of this Contract and after its termination, the Operator and any entity affiliated with the Operator, as well as any Subcontractor and any entity affiliated with such Subcontractor, shall be disqualified from providing goods, works, or services (other than the Services and any continuation thereof) for the Project and any project resulting from or closely related to the Services, except as specifically provided for in this Contract.

The Operator will be eligible to bid on subsequent long-term arrangements such as leases, concessions, or other similar arrangements. However, the incumbent Operator will not be given preferential treatment (including, but not limited to, the right of first refusal) in bidding on subsequent arrangements.

3.2.4 Prohibition of Conflicting Activities

Neither the Operator nor its Subcontractors nor the Personnel of either of them shall engage, either directly or indirectly, in any business or professional activities in Egypt that would conflict with the activities assigned to them under this Contract.

3.3 Confidentiality

The Operator, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Employer's business or operations without the prior written consent of the Employer.

3.4 Liability of the Operator

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

(a) The Operator shall not be liable for any damage or injury caused by or arising out of the act, neglect, default or omission of any persons other than the Operator, its Subcontractors or the Personnel of either of them; and

(b) The Operator shall not be liable for any loss or damage caused by, or arising out of, circumstances over which the Operator had no control.

3.5 Insurance To Be Taken Out by the Operator

The Operator shall (i) take out and maintain, and shall cause any Subcontractors to take out and maintain, at their (or the Subcontractors', as the case may be) own cost, but on terms and conditions approved by the Employer, insurance against the risks, and for the coverages, set forth below, and (ii) at the Employer's request, provide evidence to the Employer showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid:

(a) Third Party motor vehicle liability insurance in respect of motor vehicles operated in Egypt by the Operator or its Personnel or any Subcontractors or their Personnel, with a minimum coverage of *[e.g., US$1,000,000]*;

(b) Third Party liability insurance, with a minimum coverage of *[e.g., US$1,000,000]*;

(c) Professional liability insurance, with a minimum coverage of *[e.g., US$1,000,000]*;

(d) Employer's liability and workers' compensation insurance in respect of the Personnel of the Operator and of any Subcontractor, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to the Personnel, any such life, health, accident, travel, or other insurance as may be appropriate; and

(e) Insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Operator's property used in the performance

of the Services, and (iii) any documents prepared by the Operator in the performance of the Services.

3.6 Accounting, Inspection, and Auditing

The Operator (i) shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the bases thereof (including the bases of the Operator's representations referred to in Clause 6.3 hereof), and (ii) shall permit the Employer or its designated representative periodically, and up to one year from the expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Employer.

3.7 Operator's Actions Requiring Employer's Prior Approval

The Operator shall obtain the Employer's prior approval in writing before taking any of the following actions:

(a) Appoint Personnel who, for exceptional reasons, must replace Personnel proposed by the Operator in its bid, or who supplement the Personnel proposed by the Operator in its bid;

(b) Enter into a contract with a value of more than *[e.g., US $3,000.00]* equivalent (and not exceeding an annual ceiling of *[e.g., US $20,000.00]*) for the supply of goods or subcontract for the performance of any part of the Services, it being understood that the Operator shall remain fully liable for the performance of the Services by the Subcontractor and its Personnel pursuant to this Contract. In this regard, approval of the annual strategic plan pursuant to Clause 3.2.2 hereof will constitute approval for the Operator entering into the necessary contracts.

3.8 Reporting Obligations

The Operator shall submit to the Employer ten (10) copies in English of the reports and documents specified in Appendix B. hereto, within the time periods set forth in said Appendix.

3.9 Documents Prepared by the Operator To Be the Property of the Employer

All plans, drawings, specifications, designs, reports, and other documents prepared by the Operator in performing the Services shall become and remain the property of the Employer, and the Operator shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Employer, together with a detailed inventory thereof. The Operator may retain a copy of such documents but shall not use them for purposes unrelated to this Contract without the prior written approval of the Employer.

3.10 Equipment and Materials Furnished by the Employer

The assets of the water and sewerage systems in Egypt will remain under the ownership and control of UtilityCo. Equipment and materials made available to the Operator by the Employer, or purchased by the Operator with funds provided by the Employer, shall be the property of the Employer and shall be marked accordingly. Upon termination or expiration of

this Contract, the Operator shall make available to the Employer an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the Employer's instructions. While in possession of such equipment and materials, the Operator shall insure them at the expense of the Employer in an amount equal to their full replacement value. The cost of such insurance shall be treated as a procurement pursuant to Clause 3.2.2 hereof.

Contracts entered into by UtilityCo that are still in force at the Effective Date of this Contract, shall remain in force until the Operator recommends to the UtilityCo Board of Directors: 1) that they not be renewed; or 2) that they be modified and/or renegotiated; or 3) that responsibility for the scope of the contracts be transferred to UtilityCo, either through cancellation or non-renewal of said contracts.

4. Operator's Personnel

4.1 General

The Operator shall employ and provide such qualified and experienced Personnel as are required to carry out the Services. In addition, the Operator may provide bonus payments pursuant to Employer's procedures to the Employer's personnel. Any such bonus payments shall be the Operator's responsibility, but will be payable at cost as a procurement pursuant to Clause 3.2.2 hereof.

4.2 Description of Personnel

(a) The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of each of the Operator's Key Personnel are described in Appendix C.

(b) If required to comply with the provisions of Clause 3.1.1 hereof, adjustments with respect to the estimated periods of engagement of Personnel set forth in Appendix C may be made by the Operator by written notice to the Employer, provided (i) that such adjustments shall not alter the originally estimated period of engagement of any individual by more than 10 percent or one week, whichever is larger, and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause 6.1(b) hereof. Any other such adjustments shall only be made with the Employer's written approval.

(c) If additional work is required beyond the scope of the Services specified in Appendix A., the estimated periods of engagement of Personnel set forth in Appendix C. may be increased by agreement in writing between the Employer and the Operator, provided that any such increase shall not, except as otherwise agreed, cause payments under this Contract to exceed the ceilings set forth in Clause 6.1(b) hereof.

4.3 Approval of Personnel

The Personnel and Subcontractors listed by title as well as by name in Appendix C. are hereby approved by the Employer. In respect of other full time Personnel that the Operator proposes to use in the carrying out of the Services, the Operator shall submit to the Employer for review and approval a copy of their biographical data. If the Employer does not object in

writing (stating the reasons for the objection) within twenty-one (21) calendar days from the date of receipt of such biographical data, such Personnel shall be deemed to have been approved by the Employer.

4.4 Working Hours, Overtime, Leave, *et cetera*

(a) Working hours and holidays for foreign Personnel are set forth in Appendix D. hereto. To account for travel time, foreign Personnel carrying out Services inside Egypt shall be deemed to have commenced (or finished) work in respect of the Services such number of days (not to exceed in any event one day per trip) before their arrival in (or after their departure from) Egypt as is specified in Appendix D. hereto.

(b) The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation except as specified in Appendix D. hereto, and except as specified in such Appendix, the Operator's remuneration shall be deemed to cover these items. All leave to be allowed for the Personnel is included in the man-months of service set forth in Appendix C. Any taking of leave by Personnel shall be subject to the prior approval by the Operator who shall ensure that absence for leave purposes will not delay the progress and adequate supervision of the Services.

(c) Actual presence of Personnel in the man-months of service set forth in Appendix C is subject to audit, and a corresponding certification of said audit will be included as a note in the Operator's Annual Report.

4.5 Removal and/or Replacement of Personnel

(a) Except as the Employer may otherwise agree, no changes shall be made in the Personnel. If, for any reason beyond the reasonable control of the Operator, it becomes necessary to replace any of the Personnel, the Operator shall forthwith provide as a replacement a person of equivalent or better qualifications.

(b) If the Employer (i) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Operator shall, at the Employer's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Employer.

(c) Any of the Personnel provided as a replacement under Clauses (a) and (b) above, the rate of remuneration applicable to such person as well as any reimbursable expenditures (including expenditures due to the number of eligible dependents) the Operator may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Employer.

(d) Except as the Employer may otherwise agree, (i) the Operator shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (iii) the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the Personnel replaced.

4.6 Resident Project Manager

The Operator shall ensure that at all times during the Operator's performance of the Services in Egypt a resident project manager, acceptable to the Employer, shall take charge of the performance of such Services.

5. Obligations of the Employer

5.1 Delegation of Day-to-day Management

(a) The Employer will appoint the resident project manager as General Manager of UtilityCo, and will vest him with total responsibility for the day-to-day management of the services. The General Manager will not be restricted in his ability to manage nor be impeded from carrying out his duties and responsibilities. The General Manager will have the authority to commit and approve expenditures to a level commensurate with the Operator's obligations to manage the Employer successfully and the scope of activities agreed upon in the Annual Plan for Procurement.

(b) The General Manager and other Personnel under this Contract, and within the constraints of the agreed Annual Strategic Plan, has the obligation to implement the strategies in said plan, and is authorized to manage the organization in every area of its operations in order to achieve those goals. The relationship between the General Manager and the Board of Directors shall be such that information flows readily between them, and consultation is used to reach consensus on strategic matters.

(c) The Employer will cooperate and not interfere with the Operator's Personnel in their execution of their duties or in the day-to-day management of the Services. In this respect, the Employer will give timely consideration to the reports and proposals made to it by the Operator, and approval for such reports and proposals shall not be unreasonably withheld.

5.2 Assistance and Exemptions

The Employer shall use its best efforts to:

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

(b) arrange for the Personnel and, if appropriate, their eligible dependents to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits, and any other documents required for their stay in Egypt;

(c) facilitate prompt clearance through customs of any property required for the Services, and of the personal effects of the Personnel and their eligible dependents;

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

(e) exempt the Operator and the Personnel and any Subcontractors employed by the Operator for the Services from any requirement to register or obtain any permit to practice their

given profession or to establish themselves either individually or as a corporate entity according to the Applicable Law; and

(f) grant to the Operator, any Subcontractor and the Personnel of either of them the privilege, pursuant to the Applicable Law, of bringing into Egypt reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Personnel and their dependents and of withdrawing any such amounts as may be earned therein by the Personnel in the execution of the Services.

5.3 Access to Land and Information

(a) The Employer warrants that the Operator shall have, free of charge, unimpeded access to all land in Egypt in respect of which access is required for the performance of the Services. The Employer will be responsible for any damage to such land or any property thereon resulting from such access and will indemnify the Operator and each of the Personnel in respect of liability for any such damage, unless such damage is caused by the default or negligence of the Operator or any Subcontractor or the Personnel of either of them.

(b) The Employer shall give the Operator full access to all information, plans, policies, Board papers, reports, and data necessary to permit the Operator to carry out the Services.

5.4 Change in the Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law which increases or decreases the cost or reimbursable expenses incurred by the Operator in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Operator under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause 6.1(b) hereof.

5.5 Services, Facilities, and Property of the Employer

The Employer shall make available to the Operator and the Personnel, for the purposes of the Services and free of any charge, the services, facilities, and property described in Appendix F at the times and in the manner specified in said Appendix F, provided that if such services, facilities, and property shall not be made available to the Operator as and when so specified, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Operator for the performance of the Services, (ii) the manner in which the Operator shall procure any such services, facilities, and property from other sources, and (iii) the additional payments, if any, to be made to the Operator as a result thereof pursuant to Clause 3.2.2 hereof.

5.6 Payment

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

5.7 Counterpart Personnel

The Employer will put at the disposal of the Operator, under the time periods and conditions stipulated in Appendix F, free of charge, the personnel that are employed by UtilityCo for the provision of water and sewerage services. Said personnel will work under the exclusive direction of the Operator, but will retain their legal employment status as employees of UtilityCo. The Operator will have all of the rights and powers established in the Articles of Incorporation and Bylaws of UtilityCo to remove, promote/demote, and hire personnel in order to improve the quality and efficiency of services provided by UtilityCo, always under the terms established by the Scope of Work presented in Appendix A.

6. Payments to the Operator

6.1 Cost Estimates, Ceiling Amount

(a) An estimate of the cost of the Services payable in foreign currency is set forth in Appendix F.

(b) Except as otherwise agreed under Clauses 2.6 and 6.5 hereof, payments under this Contract shall not exceed a ceiling of US$ ***[total fixed fee]*** minus US$ ***[total fixed fee portion times 20percent – this equals the advance payment]*** (with a calendar monthly ceiling equal to 1/60th of such ceiling accumulating through the sixty (60) months of the Contract, prorated for beginning and ending short months if the Starting Date is in the middle of a month) for Services and US$ ***[total incentive compensation]*** (the incentive payment cannot exceed 20% of such amount for any year) for incentive payments pursuant to Clause 6.3(d) hereof in foreign currency.

6.2 Currency of Payment

Payments in foreign currency shall be made in _____.

6.3 Payments

(a) Subject to the ceilings specified in Clause 6.1(b) hereof, the Employer shall pay to the Operator in foreign currency (i) remuneration as set forth in Clause 6.3(b) hereof; (ii) reimbursable expenditures as set forth in Clause 6.3(c) hereof; and (iii) incentive fees as provided in Clause 6.3(d) hereof. Payments for remuneration made in accordance with Clause 6.3(a) hereof in foreign currency shall be adjusted as follows: Remuneration paid in foreign currency pursuant to the rates set forth in Appendix G shall be adjusted every 12 months (and, the first time, with effect for the remuneration earned in the 13th calendar month after the date of the Contract) by applying the following formula:

$$Rf = Rfo \times If/Ifo$$

where *Rf* is the adjusted remuneration, *Rfo* is the remuneration payable on the basis of the rates set forth in Appendix F. for remuneration payable in foreign currency, *If* is the official index for salaries in the country of the foreign currency for the first month for which the adjustment is supposed to have effect and *Ifo* is the official index for salaries in the country of foreign currency for the month of the date of the Contract.

(b) Remuneration for the Personnel shall be determined on the basis of time actually spent by the Personnel in the performance of the Services after the Starting Date (including time for necessary travel via the most direct route) at a the rates specified in respect of such Personnel in Appendix F, subject to the following:

i. It is understood (A) that the remuneration rates shall cover (1) such salaries and allowances as the Operator shall have agreed to pay to the Personnel as well as factors for social charges and overhead based on the Operator's average costs, as represented by the financial statements of the Operator's latest three fiscal years, (2) the cost of backstopping by home office staff not included in the Personnel listed in Appendix C, and (3) the Operator's fee; and (B) that bonuses or other means of profit sharing shall not be allowed as an element of overhead.

ii. Remuneration for periods of not less than one month shall be calculated on an hourly basis for actual time spent in the Operator's home office and directly attributable to the Services (one hour being equivalent to 1/240th of a month) and on a calendar day basis for time spent away from home office (one day being equivalent to 1/30th of a month).

(c) Reimbursable expenditures, as shown in Appendix F, shall consist of the following types of expenditures actually and reasonably incurred by the Operator in the performance of the Services:

i. A per diem allowance for each of the Personnel for every day in which such Personnel shall be absent from his home office (the home office in Egypt, in the case of long-term personnel, and the home-office in the Operator's home country, in the case of short term personnel) and shall be outside the country of Egypt for the purpose of the Services at the daily rate specified in Appendix F;

ii. The following transportation costs:

1. the cost of international transportation of the foreign Personnel and, as specified below, eligible dependents of the foreign Personnel, by the most appropriate means of transport and the most direct practicable route to and from the Operator's home office; in the case of air travel, this shall be by less than first class;

2. for any foreign Personnel spending twelve (12) consecutive months or more in Egypt, one extra round trip will be reimbursed for every twelve (12) months of assignment in Egypt. Such Personnel will be entitled to such extra round trip only if upon their return to Egypt, such Personnel are scheduled to serve for the purposes of the Project for a further period of not less than six (6) consecutive months;

3. the cost of transportation to and from Egypt of eligible dependents who shall be the spouse and all unmarried dependent children under eighteen (18) years of age of those of the foreign Personnel assigned to resident duty in Egypt for the purpose of the Services for periods of six (6) consecutive months or longer, provided that the stay of such dependents in Egypt shall have been for not less than six (6) consecutive months duration. If the assignment period for resident

staff of the foreign Personnel will be thirty (30) months or more, one extra economy class air trip for their eligible dependents for every twelve (12) month assignment will be reimbursed;

4. for the air travel of each of the foreign Personnel, and each eligible dependent, the cost of excess baggage up to twenty (20) kilograms per person, or the equivalent in cost of unaccompanied baggage or air freight;

5. miscellaneous travel expenses such as the cost of transportation to and from airports, airport taxes, passport, visas, travel permits, vaccinations, *et cetera*, at a fixed unit price specified in Appendix F per round trip;

iii. The cost of communications (other than those arising in Egypt) reasonably required by the Operator for the purpose of the Services;

iv. The cost of printing, reproducing, and shipping of the documents, reports, drawings, *et cetera*, specified in Appendix F hereof;

v. The cost of acquisition, shipment, and handling of equipment, instruments, materials, and supplies required for the Services as specified in Appendix F hereof;

vi. The cost of shipment of personal effects as specified in Appendix F;

vii. The cost of programming and use of, and communication between, the computers for the purposes of the Services at the rate set forth in Appendix F;

viii. The cost of training of the Employer's personnel outside Egypt, as specified in Appendix F;

ix. The cost of laboratory tests on materials, model tests, and other technical services authorized or requested by the Employer, as specified in Appendix F;

x. The foreign currency cost of any subcontract required for the Services and approved in writing by the Employer; and

xi. The cost of items not covered in the foregoing but which may be required by the Operator for completion of the Services, subject to the prior authorization in writing the Employer.

(d) In addition the Operator shall be paid incentive amounts as calculated pursuant to Appendix G.

6.4 Valuation of Currencies

Whenever it shall be necessary to determine the equivalent amount in one currency in terms of another for the purposes of this Contract, the conversion shall be made at the rate legally applicable at the time and place of, and to the currency utilized in, the underlying expenditure or transaction.

6.5 Mode of Billing and Payment

Billings and payments in respect of the Services shall be made as follows:

(a) On the Starting Date, the Employer shall cause to be paid to the Operator advance payments of US$ *[fixed fee for 5 years]* times twenty percent (20%) in foreign currency. The advance payments will be set off by the Employer in equal installments against the statements for the first sixty (60) months of the services until said payments have been fully set off. The advance payments will be due after provision by the Operator to the Employer of a bank guarantee by a bank acceptable to the Employer in an amount of foreign currency equal to the foreign currency portion of the advance payments, such bank guarantee to (i) remain effective until the advance payments have been completely set off as provided above, and (ii) be in the form set forth in Appendix H hereto or in such other form as the Employer shall have approved in writing.

(b) As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, the Operator shall submit to the Employer, in duplicate, itemized statements, accompanied by copies of receipted invoices, vouchers, and other appropriate supporting materials, of the amounts payable pursuant to Clauses 6.3 hereof for such month. Each such separate statement shall distinguish that portion of the total eligible costs which pertains to remuneration from that portion which pertains to reimbursable expenditures.

(c) The Employer shall cause the payment of the Operator's statements within sixty (60) days after the receipt by the Employer of such statements with supporting documents. Only such portion of a statement that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Operator, the Employer may add or subtract the difference from any subsequent payments. Interest at the rate of ten (10)percent per year shall become payable as from the above due date on any amount due by, but not paid on, such due date.

(d) All payments under this Clause shall be made only after all reports pursuant to Appendix B required prior to the statement shall have been submitted by the Operator and approved as satisfactorily by the Employer. Reports shall be deemed completed and finally accepted by the Employer and shall be deemed approved by the Employer as satisfactory thirty (30) calendar days after receipt of the report unless the Employer, within such thirty (30) day period, gives written notice to the Operator specifying in detail deficiencies in the Services or the report. The Operator shall thereupon promptly make any necessary corrections, and upon completion of such corrections, the foregoing process shall be repeated. Any amount which the Employer has paid or caused to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of this Contract shall be reimbursed by the Operator to the Employer within thirty (30) days after receipt by the Operator or notice thereof. Any such claim by the Employer for reimbursement must be made within twelve (12) calendar months after receipt by the Employer of a report approved by the Employer in accordance with the above.

(e) The incentive amounts shall be paid pursuant to Operator's statements for each twelfth calendar month following the Starting Date and shall consist of five (5) payments with the

last payment pursuant to the invoice for the last calendar month (short month if applicable) of this Contract. The Operator shall include in such statements all information required to calculate the amount of any such payment and shall promptly supply any further information required by the Employer to determine the amount of such payment.

(f) All payments under this Contract shall be made to the account of the Operator with: ***[Specify bank account]***

7. Control

7.1 Independent Technical and Financial Auditors

Within four (4) months of the Effective Date of the Contract, the Operator shall nominate and contract (with the approval of the Employer – such approval shall not be unreasonably withheld) qualified independent technical and financial auditors whose function shall be to certify, within their professional capacity, that the Operator is maintaining files and accounts in the form, quality, and quantity sufficient to achieve the objectives and scope of the Contract, and that the information provided by the Operator is an accurate reflection of the Operator's management of UtilityCo, and that the systems and procedures used to compile said information are reasonable and accurate.

The Independent Technical and Financial Auditors shall additionally, on an annual basis, review the Operator's Annual Report (which contains the Operator's self-assessment of its performance in achieving performance targets and milestones under the Contract) and provide to the UtilityCo Board of Directors a report certifying the Operator's performance in achieving the performance targets and milestones specified in Appendix G. This certification shall be used by the UtilityCo Board of Directors as the basis for calculating the Operator's incentive compensation.

All costs associated with contracting independent technical and financial auditors shall be borne by the Employer.

8. Fairness and Good Faith

8.1 Good Faith

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

8.2 Operation of the Contract

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is in their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

9. Settlement of Disputes

9.1 Amicable Settlement

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

9.2 Right to Arbitration

Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party to arbitration in accordance with the provisions of Clauses 9.3 through 9.7 hereof.

9.3 Selection of Arbitrators

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

(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to the International Chamber of Commerce ("ICC") for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, the ICC shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.

(b) Where the Parties do not agree that the dispute concerns a technical matter, the Employer and the Operator shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by the ICC.

(c) If, in a dispute subject to Clause 9.3(b) hereof, one (1) Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the ICC to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.

9.4 Rules of Procedure

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

9.5 Substitute Arbitrators

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

9.6 Nationality and Qualifications of Arbitrators

The sole arbitrator or the third arbitrator appointed pursuant to paragraphs (a) through (c) of Clause 9.3 hereof shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Operator's home country or of Egypt. For the purposes of this Clause, "home country" means any of:

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

9.7 Miscellaneous

In any arbitration proceeding hereunder:

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

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written:

FOR AND ON BEHALF OF

UtilityCo
[Tendering Agency]

FOR AND ON BEHALF OF

[Operators]

Appendix A. Description of the Services

Note: The GOE retains the exclusive right to set tariffs, fees, and any other customer charges paid for the water and sewerage services provided.

The Government of Egypt (GOE) is seeking professional services of an Operator for the management of the potable water and sewerage systems currently operating in Egypt, in order to achieve the GOE's vision, mission, and strategic objectives for the water and sewerage sector in Egypt:

- *Vision:* An efficient, sustainable, and financially viable water and sewerage sector delivering a high quality of service to customers.

- *Mission:* To deliver safe, adequate, and affordable water and ensure safe sewerage systems for improved public health and sustainable economic development.

- *Strategic Objectives:*

    1. Provide water to customers at an adequate pressure and volume at all times so that customer demand is met and revenue targets can be achieved;

    2. Improved delivered water quality working to (e.g., Egypt National Standards Bureau) targets over time so that public health is improved and customer acceptability enhanced;

    3. Efficiently produce, treat, and distribute water to customers in order to contain costs and minimize the impact of tariffs on the poor;

    4. Make water services readily available to new customers in order to satisfy increasing demand and to reduce the impact of capital costs on tariffs, fees, and charges;

    5. Improve water supply services to the poor and to communities in Less-Developed Areas;

    6. Ensure the effective treatment and disposal of sewerage to support improved public health standards; and

    7. Achieve financial self-sufficiency so that long-term dependence on external funding is removed.

This section provides additional information describing the specific professional services to be provided by the Operator and to be addressed in the Bid. This scope of services applies to all water and sewerage facilities and systems under the auspices of UtilityCo in Egypt. The Operator will be required to reach specific performance targets that are included in Appendix G.

The Operator shall provide all personnel and associated wages, salaries, and benefits; and administrative facilities and services and other services necessary to oversee the management and direct the operations of the various water and sewerage systems including abstraction, treatment, pumping, and distribution systems, wastewater collection, pumping, treatment, and disposal in order to complete the following Scope of Work:

(a) To improve the efficiency and operation of the water and sewerage systems the Operator will:

i. Examine each of the wells and identify and carry out the work and obtain parts, supervise and direct the required wellhead protection measures;

ii. Examine existing chlorination equipment, obtain needed spare parts, direct and supervise repairs, prepare operational procedures and manuals, and direct subsequent maintenance;

iii. Supply sufficient chlorine to ensure chlorine residuals throughout the distribution system;

iv. Develop and implement a water-quality monitoring program;

v. Identify non-compliance with water and wastewater quality standards, prepare regular reports, and recommend and implement improvement measures;

vi. Develop, direct, and supervise a leak-detection program, including repair of leaks, replacement of pipe, and collection, compilation and analysis of repair statistics;

vii. Develop, direct, and supervise an operational and customer-meter installation, calibration, repair, and replacement program, starting with the master meters at the wellheads and including all distribution meters;

viii. Map the water and sewerage network showing all operational facilities, pipes, manholes, valves, and hydrants, including schematic zone plans and elevation drawings; and develop and test a hydraulic model and train UtilityCo staff in its use. Provide any hardware and/or software for this model to UtilityCo;

ix. Install pressure monitors at critical locations within the water distribution network, monitor and report levels of service, and develop and implement improvement proposals;

x. Using the hydraulic model and levels of service information, identify and implement a program of system strengthening to improve operational efficiency, secure supplies, and improve customer service and reduce hydraulic losses;

xi. Study the water production, conveyance, and distribution systems and establish a water balance (audit), identifying the various components of supply and demand, quantifying losses from the system and other elements of unaccounted for water. Repeat the water balance exercise at six-month intervals and identify changes and the effects of improvement strategies;

xii. Review existing procedures for providing new water and wastewater connections including new connections to existing water mains and sewers; procedures for bringing new customers into the charging system; and methods of financing the cost of providing mains and sewers required to service new developments. Implement revised procedures as necessary to improve levels of customer service and financial performance;

xiii. Identify the immediate needs for equipment repair; obtain parts and tools, direct and supervise the repairs and maintenance, including, but not limited to, all wells, storage tanks, pumps, generators, controls, water and sewage treatment equipment; and auxiliary equipment included in the water and sewerage systems;

xiv. Identify the need for support facilities and equipment and administrative support; e.g., transportation, including specialized vehicles; communication systems, including telephones, two-way radios; facilities including office space, warehouse space, workshops, repair space, and repair tools; and equipment, meter testing, and repair space and equipment;

xv. Develop and establish a preventive-maintenance program, including task definition, skill level, manning level, frequency and task duration, and train the operators;

xvi. Develop and maintain a job-planning and control system for planned and emergency works;

xvii. Develop and establish a computerized materials and maintenance management system, obtain the hardware and software, and train the employees;

xviii. Examine the existing inventory of spare parts, materials, and equipment and the computerized inventory-management system for storage and replacement; obtain any needed parts, materials, and equipment; and identify and carry out needed enhancement to the computerized system;

xix. Assist the Employer in the implementation of donor-funded investment and technical-assistance programs;

xx. Set up operational and safety procedures and manuals;

(b) To improve service to Less-Developed Areas the Operator will:

i. Examine current local and international programs and best practices for improving service to poor areas and develop and implement a strategy for improving such services;

ii. Support the establishment of a Less-Developed Areas Unit within UtilityCo, and support said Unit in carrying out a needs assessment of water and sewerage services in the Less-Developed Areas;

iii. Develop, supervise, and direct a service-improvement program for the water and sewerage services in the Less-Developed Areas;

iv. Develop and establish systems, procedures, and practices that support a participatory approach to service-provision in the Less-Developed Areas;

(c) To improve the efficiency of revenue collection and implement the cost-recovery policies of the GOE the Operator will:

i. Develop, supervise, and direct a program to identify illegal connections and convert these connections to legal service connections;

ii. Develop and implement a strategy to introduce universal metering for domestic and non-domestic customers;

iii. Develop, supervise, and direct a program to update the database of connections and to classify the use in accordance with current tariff definitions;

iv. Develop, supervise, and direct the improvement or enhancement of computerized administrative systems for billing, collection, and to enforce collection of overdue accounts. If necessary, provide hardware and software and train the employees in its use;

v. Examine existing financial accounts for water and sewerage and identify and carry out required improvements, based on international best practices relating to standard utility cost accounting systems;

(d) To improve the efficiency of the customer-service and public-relations functions the Operator will:

i. Develop a customer-service system and train employees involved in responding to customer complaints, inquiries, and any other communication with the customer;

ii. Analyze customer complaints by type (no water, poor pressure, taste, odor, blocked sewers, flooding, *et cetera*) and geographical location and prepare reports and recommend and implement improvement measures;

iii. Develop a public-information program to educate the public as to:

1. The importance of water supply and sewage collection and treatment to the population, public health, and the economy;

2. The problems existing in the sector, including contamination of source water, illegal connections, and excessive leakage;

3. The programs underway to improve service;

4. The costs of operating the systems and the methods of recovering the costs, including the provisions of needed amounts for domestic use at minimum cost and the concept of everyone paying his "fair share;"

(e) To improve the effectiveness of the management of the water and sewerage systems the Operator will:

i. Develop and implement a management-training program consisting at a minimum of the elements of management, personnel management, financial management, supervision, budgeting, planning, and controlling;

ii. Develop and implement a training program to provide technical operations and maintenance training to all water-system operators and maintenance workers;

iii. Develop computerized administrative systems, obtain the hardware and software, and train the employees;

iv. Develop a comprehensive occupational safety program and provide safety training;

v. Develop an emergency operations plan, train the water/sewerage-system employees, and conduct mock drills as training for the implementation of the emergency actions;

(f) To improve the long-range performance of the water and sewerage system the Operator will support the UtilityCo Board of Directors in:

i. Identifying major problem areas;

ii. Updating the findings and recommendations of the (e.g.) Cairo Water and Sewerage Master Plan;

iii. Developing a prioritized capital-improvement and rehabilitation plan;

iv. Developing long-term strategic plans;

(g) To assist in implementing the investment component that will be carried out in parallel and financed by other donors, the Operator will:

i. Prepare tender documents for the procurement of the different activities included in donor-funded programs, administer the bidding processes, and prepare bid-evaluation reports to be submitted to the Employer and to donors;

ii. Identify rehabilitation and extension sub-projects;

iii. Supervise the construction of sub-projects and prepare requests for disbursement to be submitted to the Employer and to donors.

To provide for administrative control of the above Scope of Work, the Operator will:

(a) Compile and maintain comprehensive monthly records and report to the appropriate authorities for facilities and systems operations, regulatory matters, laboratory analyses, maintenance plans and activities, related financial matters, permit and compliance results, equipment status, and other relevant information in accordance with applicable laws, regulations, permits, and guidelines.

(b) At least monthly, or as necessary, meet with the UtilityCo Board of Directors to review operations, reports, ongoing cost information, and key upcoming projects and/or operations which may affect service-delivery to the public. Conduct annual comprehensive plant and system inspections with the UtilityCo Board of Directors' designated representative, to evaluate and document conditions, safety, or other concerns.

In managing the above operations, the Operator will be guided by the various standards, requirements, and guidance documents including, but not limited to, the following:

(a) Industry best practices as identified by recognized international standards;

(b) (e.g., Egypt National Standards Bureau) guidelines;

(c) Design criteria and performance specifications for the various components and equipment throughout the utility as identified by manufacturers' information; and

(d) Asset-maintenance-performance standards as identified by manufacturers' information.

The Workplan and Staffing Plan that are proposed by the successful Bidder will be binding, and will be included in this Appendix as the implementation of the Scope of Work.

Management Staff Expertise

For the information of Bidders, the Employer estimates that the following fields of expertise will be required of the proposed Staff in order to ensure that the above tasks in the Scope of Work are completed in an accurate and timely manner:

Field of Expertise *[Not individuals]*	**Examples of Task Coverage** *[Examples only, not an exhaustive list]*
General Management	Overall management of the project Reporting and coordination with the UtilityCo Board of Directors
General Accounting/ Finance	Balance sheet Profit and loss statements Financial reporting
Cost Accounting/ Budgeting	Profit and cost centers Variable and fixed costs Cost allocation Plan vs. Actual variance analysis Fixed assets register
Economic Analysis	Expansion and replacement analysis Cost savings and revenue improvement programs
Participatory Development	Develop and implement participatory approach to services in the Less-Developed Areas Support Needs Assessment for such Areas
Water Engineering	Operations Supply/demand management and control Pressure management leakage control and loss reduction Connections and mains for new development Development and application of regular and emergency operation plan Maintenance plans Organization of complaints system Reduction of illegal water supply connections Supply concepts
Wastewater Engineering	Operations Connections and sewers for new development Development and application of regular and emergency operation plan Maintenance plans Organization of complaints system Reduction of illegal sewerage dumping and storm water connections
Rural Water Supply	Support establishment and operationalization of Less-Developed Areas Unit

239

Field of Expertise *[Not individuals]*	Examples of Task Coverage *[Examples only, not an exhaustive list]*
	Support needs assessment for such areas Support implementation of Program for such areas
Capital Works Program	Identify improvement opportunities to be financed by capital investment Prepare outline proposals, budget estimates, and cost/benefit analyses Priorities schemes Contract Preparation and supervision of works
GIS and Systems Administration	Operation and systems administration of all systems Development and introduction of all needed software applications Extension of computer network
Database Management	Operation and systems administration of all existing database systems Development and introduction of all needed software applications Standardization of database systems
Customer Management	New connections Billing and revenue collection Customer billing queries Reduction of illegal water/wastewater connections
Public Information	Customer service Public relations Awareness-raising campaigns
Maintenance and Repair Management	Develop and apply future models for maintenance and repair management, identify and implement "best practices" Identification of needed rehabilitation and renewals
Mechanical Engineering	Development and introduction of preventative maintenance plans Rehabilitation of pumping stations and well-fields Energy use optimization
Electrical Engineering	Development and introduction of preventative maintenance plans Rehabilitation of pumping stations and well-fields Energy use optimization
Instrumentation	Development and introduction of preventive maintenance plans Introduction of appropriate monitoring and control systems
Water and Wastewater Quality Monitoring	Regular monitoring of quality Design of quality improvement program
Materials Management	Development and application of new procurement policy Procurement and inventory management
Human Resources Development	Development and implementation of on-the-job training program Change management / management of cultural integration General and specific training programs for computerization Occupational health and safety Pay, rewards, and incentives

Appendix B. Reporting Requirements

Operator shall file Annual Reports with the invoice when required in Clause 6.5(e) hereof, fully disclosing all progress toward and actions taken to meet all performance factors in Appendix IV (contained in Appendix G).

Operator shall file Interim Reports after the 6th, 18th, 30th, 42nd, and 54th month after the Starting Date disclosing all progress towards and actions taken to meet all performance factors in Appendix IV (contained in Appendix G.) within fifteen (15) days after the end of the month.

An Annual Strategic Plan pursuant to Clause 3.2.2 hereof shall be prepared and filed 6, 12, 24, 36, and 48 months after the Starting Date.

Appendix C. Key Personnel and Subcontractors

[List under:	*C-1*	*Titles [and names, if already available], detailed job descriptions and minimum qualifications of Key Foreign Personnel to be assigned to work in Egypt and staff-months for each.*
	C-2	*Same information as C-1 for Key Local Personnel.*
	C-3	*Same as C-1 for Key Personnel to be assigned work outside Egypt.*
	C-4	*List of approved Subcontractors [if already available]; same information with respect to their Personnel as in C-1 through C-4.]*

A. Operator's Representations Regarding Costs and Charges

We hereby confirm that (a) the basic salaries indicated below are taken from the firm's payroll records and reflect the current salaries of the staff members listed which have not been raised other than within the normal annual salary increase policy as applied to all the firm's staff; (b) attached are true copies of the latest salary slips of the staff members listed; (c) the field allowances indicated below are those that the Operator has agreed to pay for this assignment to the staff members listed; (d) the factors listed below for social charges and overhead are based on the firm's average cost experiences for the latest three years as represented by the firm's financial statements; and (e) said factors for overhead and social charges do not include any bonuses or other means of profit-sharing.

	1	2	3	4
Name Position	Basic Salary per Working Month/Day/Hour	Social Charges (___% of 1)	Overhead (___% of 1)	Overseas/Field Allowance (___% of 1)

---------- Expressed in *[name currency]* ----------

[Name of Operator]

By: _____ *[Authorized Representative]*
Name: _____
Title: _____
Date: _____

Operator: _____
Assignment: _____
Country: _____
Date: _____

241

B. Breakdown of Agreed Fixed Rates in Operator's Contract

We hereby confirm that we have agreed to pay to the staff members listed, who will be involved in this assignment, the basic salaries and field allowances (if applicable) indicated below.

Name	Position	Basic Salary Per Working Month/Day/Hr	Social Charges (___% of 1)	Overhead (___% of 1)	Subtotal	Fee (___% of 1)	Overseas/field Allowance (___% of 1)	Agreed Fixed Rate Per Working Month/Day/Hr	Agreed Fixed Rate (___% of 1)

---------- Expressed in *[name currency]* ----------

_____ *[Signature]* _____ *[Date]*

Name: _____
Title: _____

Appendix D. Hours of Work for Key Personnel

Note: Notwithstanding any provisions of the Contract to the contrary, Egyptian Labor Laws and Regulations shall govern hours of work and related issues for key personnel.

[List here the hours of work for Key Personnel; travel time to and from Egypt for foreign personnel; and entitlement, if any, to overtime pay, sick leave pay, vacation leave pay, et cetera]

Appendix E. Duties of the Employer

The Employer shall provide personnel and equipment reasonably available and that is reasonably required for the Operator in order for the Operator to perform the Services.

Appendix F. Cost Estimates in Foreign Currency

[List hereunder cost estimates in foreign currency:]

1. Monthly rates for:

   - Foreign Personnel (Key Personnel and other Personnel)
   - Local Personnel (Key Personnel and other Personnel) ***[Note: This should be added if local Personnel are also being paid in foreign currency.]***

2. Reimbursable expenditures:

   - Per diem allowances
   - Air transport for foreign Personnel
   - Air transport for dependents
   - Transport of personal effects
   - International communications
   - Printing of documents specified in Appendices A and B hereof
   - Acquisition of specified equipment and materials to be imported by the Operator and to be paid for by the Employer (including transportation to Egypt)
   - Other foreign-currency expenditures, like use of computers, foreign training of Employer's staff, various tests, *et cetera*

Appendix G. Incentive Payments

The maximum amount that can be paid as an Incentive Fee for meeting the specified targets over the duration of the Contract has been fixed at USD _____. The maximum amount of Incentive Fee that can be paid annually is equal to USD _____ (USD _____ divided into five equal parts). The actual amount of the Incentive Fee received by the Operator will depend on the extent of the achievement of performance targets specified in this Appendix and will be determined by the application of a performance factor (composite score) to the Maximum Annual Incentive Fee amount of USD _____. Details of the performance obligations to earn the Incentive Fee are included in this Appendix. Sample calculation of the performance factor (composite score) is included in Appendix V. The Incentive Fee scheduled based upon the Performance Factor (composite score) is included in Appendix VI.

Excellent performance, as defined by the level of targets included under column one of the Performance matrix, is expected from the Operator. Consequently, if the Operator does not meet the targets for Excellent performance for any performance criteria, for any year, the unmet target will be added to the succeeding year's target for Excellent performance and thus raising the Excellent target for the succeeding year.

Performance of the Operator will be measured against the specific Performance targets and a weighted score of achievement called Composite Score calculated each year. A Composite Score of 2.5 or greater will place the Operator on notice of possible termination. Performance of 3.5 or greater will be cause for termination of the Contract.

Performance Obligations of the Operator for the Duration of the Five-Year Management Contract

Performance Criterion	Units	Yearly Targets					Total Target for 5 Years
		Year 1	Year 2	Year 3	Year 4	Year 5	
Reduction in Unaccounted for Water[1]	% (volume of water sold / volume of water produced)						15%
Collection Efficiency[2]	% (value of bill payments collected divided by total value of customer billings)	70%	75%	80%	85%	90%	90%
Metering Coverage[3]	% (customers billed on metered basis divided by total customers)	29%	46%	59%	72%	85%	85%
Disposal Efficiency[4]	% (actual sewerage pumping hours / ideal hours)	75%	85%	95%	100%	100%	100%
Establishment of Less-Developed Areas Unit	Time	100%	–	–	–	–	100%
Completion of Needs Assessment for such Areas	Time	100%	–	–	–	–	100%

[1] *"Reduction in Unaccounted for Water" is calculated as m^3 of water billed divided by m^3 of water produced.*
[2] *"Collection Efficiency" is calculated as total collections (in local currency) divided by total billing (in local currency).*
[3] *"Metering Coverage" is calculated as the number of customers in the former service area billed on a metered basis divided by total customers in the former service area.*
[4] *"Disposal Efficiency" is calculated as the number of hours that pumps in sewerage pumping stations were in operation during the year divided by the number of hours that those pumps should have been in operation in normal conditions of the system.*

Performance Obligations of the Operator for the First Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Reduction of Unaccounted for Water	.25					
Collection Efficiency	.25	70%	68%	66%	64%	62%
Metering Coverage	.20	29%	27%	25%	23%	21%
Disposal Efficiency	.10	75%	73%	70%	68%	65%
Establishment of Less-Developed Areas Unit	.10	1 month	2 months	3 months	4 months	5 months
Completion of Needs Assessment for such Areas	.10	4 months	5 months	6 months	7 months	8 months

Performance Obligations of the Operator for the Second Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Reduction of Unaccounted for Water	.35					
Collection Efficiency	.35	75%	73%	71%	69%	67%
Metering Coverage	.15	46%	44%	42%	40%	38%
Disposal Efficiency	.15	85%	83%	80%	77%	75%

244

Performance Obligations of the Operator for the Third Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Reduction of Unaccounted for Water	.40					
Collection Efficiency	.40	80%	77%	75%	73%	70%
Metering Coverage	.15	59%	57%	55%	53%	51%
Disposal Efficiency	.15	95%	93%	90%	87%	85%

Performance Obligations of the Operator for the Fourth Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Reduction of Unaccounted for Water	.40					
Collection Efficiency	.40	85%	83%	80%	78%	76%
Metering Coverage	.15	72%	70%	68%	66%	64%
Disposal Efficiency	.15	100%	97%	95%	93%	90%

Performance Obligations of the Operator for the Fifth Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Reduction of Unaccounted for Water	.40					
Collection Efficiency	.40	90%	87%	85%	83%	80%
Metering Coverage	.15	85%	83%	81%	79%	77%
Disposal Efficiency	.15	100%	99%	98%	97%	96%

Brief Description of Calculation Procedure for Performance Factor (Composite Score)

The proposed performance evaluation system for the Management Contract will consist of the following four parts:

Part 1: Criterion Selection
Part 2: Criterion Weight Selection
Part 3: Criterion Value Selection
Part 4: Decision on the Scoring System: Calculation of Composite Score

The first three (3) parts are designed at the beginning of each year and the last part is executed at the end of the year.

Part 1: Selection of Performance Criteria

In this part, the criteria for evaluating performance of the Operator are specified. In order to select an appropriate set of criteria, one needs to ensure that they are fair to the Operator and fair to UtilityCo.

Part 2: Criterion Weight Selection

Whenever there is more than one indicator, we must decide what are the relative priorities so the Operator can allocate his time more effectively in achieving those priorities.

Part 3: Criterion Value Selection

The third part in the performance-evaluation system relates to criteria-value selection; i.e., the level of performance expected with respect to different indicators. One way to do so is to have a 5-point scale, where:

1 = Excellent
2 = Very Good
3 = Good
4 = Fair
5 = Poor

Part 4: Performance Evaluation at the End of the Year

The fourth and final step is taken at the end of the year, when we look at the achievements of the Operator and compare them with the criteria values and determine the composite score – reflecting overall performance of the Operator.

A hypothetical example of the above system, including the calculation of the composite score is given below:

Sample Management Contract Targets at the Beginning of the Year of Year x

Criterion	Units	Weight	Criterion Values				
			Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Reduction of unaccounted for water	%	.30	55	57	59	61	63
Collection efficiency	%	.40	35	37	39	41	43
Metering coverage	%	.30	30	28	26	24	22

The following table demonstrates the procedure for the calculation of the "Composite Performance Score," if at the end of the year the achievements of the Operator are as follows:

Reduction of unaccounted for water	57
Collection efficiency	36
Metering coverage	30

Calculation of Composite Performance Score

Criterion	Units	Weight	Achievement	Raw Score	Weighted Score
Reduction of unaccounted for water	%	.30	57	2	.6
Collection efficiency	%	.40	36	1.5	.6
Metering coverage	%	.30	30	1	.3
Composite Performance Score					1.5

The Method for Incentive Payments

The Operator will be paid an Incentive Fee based on the following formula:

Annual Incentive Payment	=	3.5 - Composite Score	X	Maximum Annual Incentive Fee
		2.5		

The method for calculating the Composite Score is given in Appendix V.

The maximum annual Incentive Fee is that fee that can be earned by the Operator by achieving all targets for "Excellent" performance specified in column one of the performance matrix included in Appendix IV.

Appendix H. Form of Bank Guarantee for Advance Payments

To:
_____ *[Name of Employer]*
_____ *[Address of Employer]*
_____ *[Name of Contract]*

Gentlemen:

In accordance with the provisions of Clause 6.5(a) of the above-mentioned Contract (hereinafter called "the Contract) _____ ***[name and address of Operator]*** (hereinafter called "the Operator") shall deposit with _____ *[name of Employer]* a bank guarantee to guarantee its proper and faithful performance under the said provisions of the Contract in an amount of _____ ***[twenty (20) percent of total fixed fee portion of contract]*** (_____) ***[in words]***.

We, the _____ ***[bank or financial institution]***, as instructed by the Operator, agree unconditionally and irrevocably to guarantee as primary obligor and not as Surety merely, the payment to _____ ***[name of Employer]*** on his first demand without whatsoever right of objection on our part and without his first claim to the Operator, in the amount not exceeding _____ ***[twenty (20) percent of total fixed fee portion of contract]*** (_____) ***[in words]***.

We further agree that no change or addition to or other modification of the terms of the Contract which may be made between _____ ***[name of Employer]*** and the Operator shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid and in full effect from the date of the advance payment under this Contract until _____ ***[name of Employer]*** has been set off by the Employer in accordance with Clause 6.5(a).

Yours truly,

Signature and Seal: _____

Name of Bank/Financial Institution: _____
Address: _____
Date: _____

Appendix I. Guarantee

Guarantee

This Guarantee is made as of the _____ day of _____, 2002, by _____, a _____ corporation ("Guarantor"), having its principal place of business in _____, to and for the benefit of UtilityCo._____

WITNESSETH:

WHEREAS_____, a _____ corporation, (the "Company") having an office at _____, has entered into a Performance-Based Management Contract for Water Supply and Sewerage Services in Egypt (the "Contract") with UtilityCo, dated _____, 2002.

WHEREAS, Guarantor is willing to guarantee, as set forth below, the performance of the Company under the Contract; and

WHEREAS, UtilityCo would not enter into the Contract unless the Guarantor provided this Guarantee;

NOW, THEREFORE, as an inducement to UtilityCo to enter into this Contract, Guarantor agrees as follows:

1. Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Company of all of the Company's obligations under the Contract in accordance with the terms and conditions therein.

2. This Guarantee shall be governed by the laws of Egypt exclusive of the choice-of-law rules thereof, and Guarantor hereby agrees to the service of process in Egypt for any claim or controversy arising out of this Guarantee or relating to any breach hereof.

3. This Guarantee shall be binding upon and enforceable against the Guarantor, its successors, assigns, and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the properties of Guarantor), whether or not such obligations are expressly assumed by such successor, assignee, or transferee, and is for the benefit of UtilityCo and any permitted successors and assigns under the Contract.

4. This Guarantee may be enforced by UtilityCo without first resorting to any action against the Company or exhausting any other remedies that UtilityCo may have.

5. Each and every Event of Default under the Contract shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by UtilityCo as each cause of action arises. Guarantor waives presentation to, demand of performance from, and protest to UtilityCo of the obligations of the Company under the Contract.

6. No failure or delay by UtilityCo in exercising any right, power, or privilege hereunder or under the Contract shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other right, power, or privilege. No waiver, amendment, release, or modification of this Guarantee shall be established by conduct, custom, or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release, or modification is sought to be enforced.

7. Guarantor may not assign its obligations hereunder, except to a successor by merger or consolidation or to any transferee of all or substantially all of the property of Guarantor. Notice of any such assignment shall be given in writing to UtilityCo within thirty (30) days of the effective date of any such merger, consolidation, or transfer.

8. The respective obligations of Guarantor to UtilityCo set forth in this Guarantee shall be absolute and unconditional, shall not be subject to any requirement that UtilityCo first enforce any remedies it may have against the Company or any other Person, or any requirement to seek to recover from Company hereunder before proceeding against Guarantor hereunder, and shall not be subject to any claim of Guarantor against any other Person (including Persons in Egypt), other than a claim that the matter giving rise to UtilityCo's claim is the subject of dispute-resolution in good faith under the Contract or in the courts.

9. This Guarantee may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The invalidity or unenforceability of one or more provisions of this Guarantee shall not affect the validity or enforceability of the remaining portions of this Guarantee. This Guarantee is entered into by Guarantor solely and exclusively for the benefit of UtilityCo, and may be enforced against Guarantor by UtilityCo.

10. Any term used but not otherwise defined herein and defined in the Contract shall have the meaning attributed to it in the Contract.

11. Notices to be given pursuant to this Guarantee, unless otherwise stated, shall be in writing and shall be served personally or sent by certified mail, return receipt requested to:

Guarantor at: _____ *[Name]*
If by Mail: _____ *[Address]*
If by Hand: _____ *[Address]*

UtilityCo at: _____

Or to such other address as shall be designated by such party in a written notice to the other party hereto. Any notice given pursuant to this Section if transmitted by certified mail shall be effective immediately upon receipt and, if delivered by hand, upon delivery.

IN WITNESS WHEREOF, Guarantor has executed this instrument the day and year first above written.

ATTEST: _____
ACCEPTED BY: _____

Appendix J. Procurement Procedures

The Operator must adhere to the following procurement guidelines for procurement of goods and services.

Model Forms and Procedures

1. Bid Forms and Price Schedules

Technical Bid Form

Date: _____
Grant/Credit N°: _____
IFB N°: _____

[Name of Contract]
To: *[Name and address of Employer]*

Ladies and/or Gentlemen,

Having examined the Bid Documents, including Addendum/Addenda No(s). *[number(s)]*, the receipt of which is hereby acknowledged, we, the undersigned, offer to provide the Services under the above-named Contract in full conformity with the said Bid Documents. We are hereby submitting our Bid, which includes this Technical Bid (including our Staffing Plan and Workplan), and a Price Bid sealed under a separate envelope.

We undertake, if our Bid is accepted, to commence work and to complete the work within the respective times stated in the Bid Documents.

If our Bid is accepted, we undertake to provide an advance payment security and a performance security in the form, in the amounts, and within the times specified, in the Bid Documents.

If negotiations are held during the period of validity of the Bid (i.e., before *[date]*), we undertake to negotiate on the basis of the proposed staff. Our Bid is binding upon us and subject to the modifications resulting from Contract negotiations.

We understand you are not bound to accept any Bid you receive.

Dated this _____ day of, 20_____

_____ *[Signature]* In the capacity of: _____ *[Position]*

Duly authorized to sign this Bid for and on behalf of: _____ *[Name of Bidder]*

Attachments: Attachment 1 - Bid Security
Attachment 2 - Power of Attorney
Attachment 3 – Bidder's Eligibility and Qualifications
Attachment 4 – Subcontracts Proposed by the Bidder

Part A: Staffing Plan[1]

The Bidder shall include a detailed staffing plan (the "Staffing Plan") setting out the Bidder's proposed staffing arrangements (the Bidder's own staff only) for carrying out the Services, divided into the following sections:

1. Staffing Chart
2. Summary of Staff Qualifications
3. Curricula Vitae

The required format for these sections is provided below and on the following pages.

Staffing Chart

The Staffing Chart should list all proposed staff, the role of each staff member, the duration of the involvement of each staff member, and the location of each staff member during their periods of assignment to carry out the Services. The Chart should cover all five years of the Management Contract (due to space constraints, this may be presented as five separate Charts).

Staffing Chart

			Months (in the Form of a Bar Chart)[2]												
Name	Position	Role	1	2	3	4	5	6	7	8	9	10	11	12	Number of Months
															Subtotal (1)
															Subtotal (2)
															Subtotal (3)
															Subtotal (4)

Full-time: _____ Part-time: _____

Signature: _____ Full Name: _____ *[Authorized Representative]*

[1] See Bid Data Sheet, ITB 27, for more information.
[2] Staff inputs in these columns should be distinctly marked as either in Egypt or in the Operator's home country.

251

Summary of Staff Qualifications

The Summary of Staff Qualifications shall consist of a summary table setting out the names of each proposed staff member and their qualifications, years of experience, and areas of expertise, as follows:

Summary of Staff Qualifications

Name	Qualifications	Years of Experience	Areas of Expertise

Curricula Vitae

This Section shall contains the signed curricula vitae of all proposed staff members, in the following format:

Proposed Position: _____
Name of Firm: _____
Name of Staff: _____
Profession: _____
Date of Birth: _____
Years with Firm/Entity: _____ Nationality: _____
Membership in Professional Societies: _____
Detailed Tasks Assigned: _____

Key Qualifications

[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations. Use about half a page.]

Education

[Summarize college/university and other specialized education of staff member, giving names of schools, dates attended, and degrees obtained. Include any professional certifications. Use about one quarter of a page.]

Employment Record

[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of assignments. For experience in last ten years, also give types of activities performed and client references, where appropriate.]

Languages

[Indicate proficiency in English and native tongue, if other than English: excellent, good, fair, or poor in speaking, reading, and writing.]

Certification

I, the undersigned, certify that to the best of my knowledge and belief, these data correctly describe my qualifications, my experience, and me.

_____ Date_____

[Signature of staff member and authorized representative of the firm]

Full name of staff member: _____

Full name of authorized representative: _____

Part B: Workplan[3]

In this Section, the Bidder shall include a detailed strategy and workplan (the "Workplan") setting out the manner in which the Bidder proposes to carry out the services as defined in the Scope of Work in Appendix A of the Contract Model (Section IV of the Bid Documents), meet the performance standards, and achieve ratings of "Excellent" in accordance with the Incentive Compensation Appendix (Appendix G of the Contract Model). The Workplan shall be divided into the following sections:

Information Requested	Bidder's Response
Strategy for Improving the Efficiency and Operation of the Water and Sewerage Systems	
Strategy for Improving Service to Less-Developed Areas	
Strategy for Improving the Efficiency of Revenue Collection and Implementing the Cost Recovery Policies of the Government of Egypt	
Strategy for Improving the Efficiency of the Customer Service and Public Relations Functions	
Strategy for Improving the Effectiveness of the Management of the Water and Sewerage Systems	
Strategy for Improving the Long Range Performance of the Water and Sewerage Systems	
Strategy for Assisting in Implementing the Investment Component that will be Carried Out in Parallel and Financed by other Donors	
Support for Ongoing Integration of Utilities Plan	

[3] See Bid Data Sheet, ITB 27, for more information.

Price Bid Form

Date: _____
Grant/Credit N°: _____
IFB N°: _____

[Name of Contract]
To: *[Name and address of Employer]*

Ladies and/or Gentlemen,

Having examined the Bid Documents, including Addendum/Addenda No(s). ***[number(s)]***, the receipt of which is hereby acknowledged, we, the undersigned, offer to provide the Services under the above-named Contract in full conformity with the said Bid Documents and our Technical Bid for a Total Management Fixed Fee[4] of: ***[amount of foreign currency in words], [amount in figures]***. This amount is exclusive of local taxes, which we estimate at: ***[amount of local currency in words], [amount in figures]***. The above amounts are in accordance with the Price Schedules attached herewith and are made part of this bid.

We agree to abide by this Price Bid, which consists of this letter and Attachments 1 through 4 hereto, for a period of ***[number]*** days from the date fixed for submission of Bids as stipulated in the Bid Documents, and, together with the above written undertakings, it shall remain binding on us subject to modifications resulting from Contract negotiations.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

Name and address of agent	Amount and currency	Purpose of commission or gratuity
		[if none, state "none"]

We understand that you are not bound to accept the lowest or any Bid you may receive.

Dated this _____ day of, 19_____

_____ *[Signature]*

In the capacity of _____ *[Position]*

Duly authorized to sign this Bid for and on behalf of _____ *[Name of Bidder]*

Attachments: Schedule 1. Remuneration for the Personnel
Schedule 2. Reimbursable Expenditures
Schedule 3. Incentive Compensation
Schedule 4. Summary – Total Management Fixed Fee

[4] Insert amount calculated as Item 4.3 of Commercial Bid Schedule 4 (Summary – Total Management Fixed Fee).

Price Bid - Price Schedules

PREAMBLE

General

1. The Price Schedules are divided into separate Schedules as follows:

   - Schedule 1. Remuneration for the Personnel
   - Schedule 2. Reimbursable Expenditures
   - Schedule 3. Incentive Compensation
   - Schedule 4. Summary – Total Management Fixed Fee

2. The Schedules do not include a full description of the services to be performed. Bidders shall be deemed to have read the Bid Documents to ascertain the full scope of services prior to filling in the rates and prices. The entered rates and prices shall be deemed to apply to the full scope as aforesaid, including overheads and profit.

3. If Bidders are unclear or uncertain as to the scope of any item, they may seek clarification in accordance with the Instructions to Bidders in the Bid Documents prior to submitting their Bids.

Pricing

4. Prices shall be filled in indelible ink, and any alterations necessary due to errors, *et cetera*, shall be initialed by the Bidder.

   - As specified in the Bid Data Sheet, prices shall be fixed and firm for the duration of the Contract.

5. Bid prices shall be quoted in the manner indicated and in the currencies specified in the Instructions to Bidders in the Bid Documents.

   - For each item, Bidders shall complete each appropriate column in the respective Schedules, giving the price breakdown as indicated in the Schedules.
   - Prices given shall be in accordance with the provisions of Clause 6.3 of the Contract Model (Section IV of the Bid Documents).

6. In the event that the Bidder is selected as the Apparent Successful Bidder, and as such enters into negotiations with the Employer, the prices given in Schedule 1 (Remuneration for the Personnel) shall be substantiated by the following forms, which shall be completed and signed by the Bidder's Authorized Representative:

   - Operator's Representations Regarding Costs and Charges
   - Breakdown of Agreed Fixed Rates in Operator's Contract

   provided in Appendix C of the Contract Model (in the Bid Documents), and this form shall be provided by the Bidder to the Employer at the time of negotiations.

7. In completing Schedules 1 (Remuneration for the Personnel) and 2 (Reimbursable Expenditures), the Bidder shall indicate the portion of the Total that is attributable to the services to be provided for the Less-Developed Areas Program (Task (b), Subtasks (i) through (iv), of the Scope of Work in Appendix A – included in the Bid Documents). The purpose of presenting the price for services in this manner is to enable the Employer to evaluate the impact of the services required under the Less-Developed Areas Program on the total cost of the Contract. The Employer may, at its sole discretion, remove the Less-Developed Areas Program from the scope of services following opening of Bidders' Price Bids. In this case, the portion of the Bidder's fixed fee attributable to such Program will be deducted from the Total Management Fixed Fee to arrive at an amended Total Management Fixed Fee.

8. Where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly.

   - Where there are errors between the total of the amounts of Schedules 1 to 3 and the amount given in Schedule 5 (Summary – Total Management Fixed Fee), the former shall prevail and the latter will be corrected accordingly.
   - Where there are discrepancies between amounts stated in figures and amounts stated in words, the amounts stated in words shall prevail.

9. Payments will be made to the Operator in the currency or currencies indicated under each respective item.

10. Items left blank will be deemed to have been included in other items. The TOTAL for each Schedule and the TOTAL of the Summary shall be deemed to be the total price for providing the services in complete accordance with the Contract, whether or not each individual item has been priced.

11. When requested by the Employer for the purposes of making payments or part payments, valuing variations or evaluating claims, or for such other purposes as the Employer may reasonably require, the Operator shall provide the Employer with a breakdown of any composite or lump sum items included in the Schedules.

Schedules of Rates and Prices

The following schedules are included:

- Schedule 1. Remuneration for the Personnel
- Schedule 2. Reimbursable Expenditures
- Schedule 3. Incentive Compensation
- Schedule 4. Summary – Total Management Fixed Fee

Schedule 1. Remuneration for the Personnel[5]

Item	Description	Unit	Unit Price (specify currency)	Quantity	Total Price
			(1)	*(2)*	*(1 x 2)*
1.1	Remuneration				
	[Personnel No. 1]				
	[Personnel No. 2]				
	[Personnel No. 3]				
1.2	TOTAL (to Schedule 4. Summary – Total Management Fixed Fee)				
1.3	Portion of TOTAL (1.2) attributable to Less-Developed Areas Program[6]				
			Name of Bidder		
			Signature of Bidder		

Schedule 2. Reimbursable Expenditures[7]

Item	Description	Unit	Unit Price (specify currency)	Quantity	Total Price
			(1)	*(2)*	*(1 x 2)*
2.1	Per Diem Allowance	Day			
	[Personnel No. 1]				
	[Personnel No. 2]				
	[Personnel No. 3]				
	Subtotal – Per Diem Allowances				
2.2	Transportation				
	Subtotal - Transportation				
2.3	Communications				
	Subtotal - Communications				
2.4	TOTAL (to Schedule 4. Summary – Total Management Fixed Fee)				
2.5	Portion of TOTAL (2.4) attributable to the Less-Developed Areas Program[8]				
			Name of Bidder		
			Signature of Bidder		

[5] To be completed per Sub-Clause 6.3(b) of the Contract Model (Section IV of the Bid Documents).
[6] The Less-Developed Areas Program is described by Task (b) , Subtasks (i) through (iv), of the Scope of Work (Appendix A of the Contract Model, includes as Section IV of the Bid Documents).
[7] To be completed as per Sub-Clause 6.3(c) of the Contract Model (Section IV of the Bid Documents).
[8] The Less-Developed Areas Program is described by Task (b) , Subtasks (i) through (iv), of the Scope of Work (Appendix A of the Contract Model, included as Section IV of the Bid Documents).

Schedule 3. Incentive Compensation[9]

The total *[five-year]* ceiling for Incentive Compensation is *[specify currency]* _____ *[amount in figures], [amount in words]*						
3.1	TOTAL (to Schedule 4. Summary – Total Management Fixed Fee)					
			Name of Bidder		_____	
			Signature of Bidder		_____	

Schedule 4. Summary – Total Management Fixed Fee (TMFF)

Item	Description	Total Price	
		Foreign	LE
4.1	Fixed Fee Component		
	Total Schedule 1. Remuneration for the Personnel (1.1)		
	Total Schedule 2. Reimbursable Expenditures (2.4)		
	Subtotal – Fixed Fee		
4.2	Incentive Compensation Component		
	Total Schedule 3. Incentive Compensation (3.1)		
	Subtotal – Incentive Compensation		
4.3	TOTAL (to Bid Form)		
4.4	Total Portion of Fixed Fee Attributable to Less-Developed Areas Program *(1.3 + 2.5)*		
		Name of Bidder	_____
		Signature of Bidder	_____

[9] The actual amount of Incentive Compensation to be paid to the Operator shall be calculated pursuant to Appendix H of the Contract Model (Section IV of the Bid Documents).

Bid Security Form

Date: _____
Grant/Credit N°: _____
IFB N°: _____

[Name of Contract]
To: *[Name and address of Employer]*

WHEREAS, *[name of Bidder]* (hereinafter called "the Bidder") has submitted its Bid dated *[date of Bid]* for the performance of the above-named Contract (hereinafter called "the Bid");

KNOW ALL PERSONS by these present that We *[name of bank]* of *[address of bank]* (hereinafter called "the Bank"), are bound unto *[e.g., UtilityCo]* (hereinafter called "the Employer") in the sum of *[e.g., US$ 50,000.00 (fifty thousand United States dollars)]*, for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents.

Sealed with the Common Seal of the said Bank this _____ day of _____ 20____.

THE CONDITIONS of this obligation are the following:

1. If the Bidder withdraws its Bid during the period of bid validity specified by the Bidder in the Bid Form, or

2. If the Bidder, having been notified of the acceptance of its Bid by the Employer during the period of bid validity:

   - fails or refuses to sign the Contract Agreement when required or

   - fails or refuses to issue the performance security in accordance with the Bid Documents,

We undertake to pay to the Employer up to the above amount upon receipt of its first written demand, without the Employer having to substantiate its demand, provided that in its demand the Employer will note that the amount claimed by it is due it, owing to the occurrence of one or both of the two above-named conditions, and specifying the occurred condition or conditions.

This guarantee will remain in full force up to and including *[date thirty (30) days after the period of bid validity]*, and any demand in respect thereof must reach the Bank not later than the above date.

For and on behalf of the Bank

_____ *[Signature]*

In the capacity of

_____ *[Position]*

Common Seal of the Bank

Performance Security Form
(Letter of Guarantee)

Date: _____
Grant/Credit N°: _____
IFB N°: _____

[Name of Contract]
To: *[Name and address of Employer]*

Dear Ladies and/or Gentlemen,

We refer to the Contract Agreement ("the Contract") signed on *[date]* between you and *[name of Operator]* ("the Operator") concerning the Performance-Based Management Contract for Water Supply and Wastewater Services in Egypt. The Operator is required, pursuant to the Contract, to give *[e.g., UtilityCo]* a guarantee by a recognized bank or financial institution in the sum of *[e.g., US$ 250,000.00 (two hundred and fifty thousand United States dollars)]*.

By this letter we, the undersigned, *[name of Bank]*, a Bank (or company) organized under the laws of *[country of Bank]* and having its registered/principal office at *[address of Bank]*, do hereby jointly and severally with the Operator irrevocably guarantee payment owed to you by the Operator, pursuant to the Contract, up to the sum of *[e.g., US$ 250,000.00 (two hundred and fifty thousand United States dollars)]* under the terms set out in this guarantee.

GUARANTEE

We guarantee and will be responsible to *[e.g., UtilityCo]* for all amounts owed to it by the Operator from time to time up to a total aggregate amount of *[e.g., US$ 250,000.00 (two hundred and fifty thousand United States dollars)]*. Amounts payable under this guarantee will be paid in United States dollars.

We undertake to make payment under this Letter of Guarantee upon receipt by us of your first written demand signed by your duly authorized officer declaring the Operator to be in default under the Contract and without cavil or argument any sum or sums within the above-named limits, without your need to prove or show grounds or reasons for your demand and without the right of the Operator to dispute or question such demand.

Our liability under this Letter of Guarantee shall be to pay to you whichever is the lesser of the sum so requested or the amount then guaranteed hereunder in respect of any demand duly made hereunder prior to expiry of this Letter of Guarantee, without being entitled to inquire whether or not this payment is lawfully demanded.

We waive any requirement that *[e.g., UtilityCo]* demand any debt or payment from the Operator before presenting us with a demand under this guarantee.

We agree that no change, addition to, or other modifications of the terms of the Contract or to any documents that have or may be made between *[e.g., UtilityCo]* and the Operator will in any way release us from any liability under this guarantee, and we waive any requirement for notice of any such change, addition, or modification.

This Letter of Guarantee shall be valid from the date of issue. This guarantee and our obligations under it will terminate on the date sixty (60) days after the first to occur of:

- the Expiry Date (as defined in the Contract); and
- the earlier termination of the Contract,

each as advised to us in writing by *[e.g., UtilityCo]*.

Except for the documents herein specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation.

Our liability under this Letter of Guarantee shall become null and void immediately upon its expiry, whether it is returned or not, and no claim may be made hereunder after such expiry or after the aggregate of the sums paid by us to you shall equal the sums guaranteed hereunder, whichever is the earlier.

All notices to be given hereunder shall be given by registered (airmail) post to the addressee at the address herein set out or as otherwise advised by and between the parties hereto.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released, or discharged by mutual agreement between you and the Operator, and this security may be exchanged or surrendered without in any way impairing or affecting our liabilities hereunder without notice to us and without the necessity for any additional endorsement, consent, or guarantee by us; provided, however, that the sum guaranteed shall not be increased or decreased.

No action, event, or condition which by any applicable law should operate to discharge us from liability hereunder shall have any effect, and we hereby waive any right that we may have to apply such law, so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

The laws of Egypt govern this guarantee.

This guarantee is binding on our successors and permitted assignees.

Yours truly,
[Name of the Bank]

_____ *[Authorized Signature]*

Bank Guarantee Form for Advance Payment

See Appendix H of the Contract Model (in the Bid Documents).

F. Data Room

F1. Data Room Procedures and Operating Rules

The Data Room will be open for use by prequalified bidders Sundays through Thursdays, from 9:00 a.m. to 5:00 p.m. (closed from 12:00 p.m. to 2:00 p.m. for lunch), from *[dates]*, excluding public holidays.

The Data Room is located at:

[Address]

The following are the phone and fax numbers for the Data Room:

Telephone:
Facsimile:

The Employer has appointed *[name]* as Data Room Supervisor. The Data Room Supervisor can be reached at the telephone and facsimile numbers listed above. A Data Room Clerk will administer the daily operations of the Data Room.

The Data Room will contain hard (paper) copies of all documents listed in the Data Room Index, as well as electronic copies (on diskette or CD ROM) of selected consultants' reports. The Data Room Index will be periodically updated as new documents are received in the Data Room, and a list of new documents will be sent to all prequalified bidders.

F1a. Rules Governing Use of the Data Room

Prequalified bidders should adhere to the following rules and procedures related to their use of the Data Room:

1. Prequalified bidders must sign a Confidentiality Agreement with the Employer before they will be permitted to enter the Data Room. A copy of this Agreement is attached.

2. Prequalified bidders must designate an individual to be responsible for identifying the members of their Due Diligence Team who shall be authorized to use the Data Room.

3. All authorized representatives of the prequalified bidders must register with the Data Room Clerk at the beginning and end of each visit to the Data Room.

4. There will be one copy of each document listed in the Data Room Index available in the Data Room. Bidders will be permitted to review all information contained in the Data Room in the presence of the Data Room Clerk, or may request from the Data Room Clerk photocopies of any documents that are not designated as sensitive by the Data Room Supervisor or the Employer. Bidders are encouraged to provide the Data Room Supervisor with a list, by fax, of all documents of which they will require photocopies in advance of their scheduled visit to the Data Room. Upon receipt of this list, the Data Room Supervisor will endeavor to

ensure that the photocopies of these documents are completed prior to the arrival of the Due Diligence Teams for their scheduled visits.

5. Bidders will be charged ***[amount in Egyptian pounds]*** per page for all photocopies made on their behalf. Bidders should avoid excessive photocopying of documents.

6. Bidders will be given an invoice for all photocopies and any other expenses incurred on their behalf at the conclusion of their scheduled use of the Data Room. The invoices shall be payable to the Employer in Egyptian pounds upon receipt.

7. Bidders may take notes on any documents that they are studying in the Data Room; however, no documents may be removed from the room. Bidders are also prohibited from marking, altering, modifying or changing (including changing the sequence or order of information or documents), harming, destroying, or in any other form or manner mutilating the documents in the Data Room.

8. Bidders should submit, in writing, any requests for information or data, or any questions on, or clarifications of, the data contained in the Data Room, to the Data Room Clerk at the end of each day. The Data Room Clerk will confer with the Data Room Supervisor and will endeavor to respond to these requests as soon as possible. However, the Data Room Clerk and Supervisor, and the Employer, are under no obligation to respond to any request or questions. All bidders will be notified of any additions to the Data Room.

9. Bidders are prohibited from obtaining documents or other written materials from ***[name of Employer]*** or any personnel thereof.

10. No more than six (6) representatives of each bidder, including translators, will be permitted to enter the Data Room at any given time.

11. There will be a telephone available at no charge for bidders to use for local communications only. Bidders must make their own arrangements for international calls and for local and international faxing.

12. The members of the Due Diligence Teams shall be responsible, each day upon checking out of the Data Room, for returning all information borrowed that day. The Data Room Clerk will have the right to inspect all briefcases, handbags, or other packages to ensure that no unauthorized information or documents are accidentally being removed from the Data Room.

F1b. Scheduling Visits to the Data Room

Prequalified bidders that wish to visit the Data Room should send a fax to the Data Room Supervisor at the fax number listed above no later than ***[date]***, indicating the preferred and possible alternative dates for their initial visit to the Data Room. Each prequalified bidder will be allowed a maximum of two (2) days for this initial visit. Visits will be scheduled according to the order in which the requests are received. The Data Room Supervisor will endeavor to schedule visits on the dates requested; however, the Data Room Supervisor and

the Employer are under no obligation to guarantee that Due Diligence Teams will be scheduled to visit the Data Room on any specific date(s).

All Due Diligence Teams will be guaranteed a minimum of two (2) days initial use of the Data Room. The Data Room will only be made available to one Due Diligence Team at any given time; therefore, once each bidder has had an opportunity to complete its initial due diligence, all bidders will be given the opportunity to request additional days in the Data Room. The Data Room Supervisor will notify bidders in writing when they are permitted to submit their requests for additional days.

F1c. Questions and Requests for Information

All prequalified bidders may submit questions, in writing, to be answered by representatives of the Employer. Such requests must be submitted by fax to the Data Room Supervisor, or in person to the Data Room Clerk, during scheduled usage of the Data Room. The Data Room Supervisor will coordinate, at his/her discretion, the responses of the Employer. Copies of all questions and responses shall be distributed in writing to all prequalified bidders, and will be made available in the Data Room. The Data Room Supervisor will not accept any questions or requests for information after ***[date]***.

F1d. Disqualification

All prequalified bidders are encouraged to carefully read the above instructions, as non-compliance with any of these rules or procedures shall be considered grounds for disqualification of that bidder from the bidding process and forfeiture of any bid bond or guarantee that has been established.

F2. Sample Data Room Index

I. General

I.1 Economic Data (19__-20__)
- I.1.a Gross Domestic Product (per capita)
- I.1.b Inflation Index
- I.1.c Wholesale Price Index
- I.1.d Real and Nominal Interest Rates
- I.1.e Census or Population Data and Growth Rates

I.2 Institutional
- I.2.a ***[Employer]*** Annual Reports (19__ – 20__)
- I.2.b ***[Employer]*** Annual Reports (19__ – 20__)
- I.2.c Donor and Consultants' Reports

I.3 Geographical
- I.3.a Map of Egypt
- I.3.b Maps of Service Area

II. Legislation and Regulations

II.1 National
- II.1.a Constitution of the Government of Egypt
- II.1.b Civil Law Act
- II.1.c Public Health Ordinance
- II.1.d Food and Drug Act
- II.1.e Planning Act
- II.1.f State Lands Act

II.2 Water Resources Management
- II.2.a Hydro-Electric Power Act
- II.2.b Environmental Protection Act

II.3 Corporate/Commercial
- II.3.a Summary Jurisdiction (Petty Debt) Act
- II.3.b National Insurance Act
- II.3.c Factories Act
- II.3.d Holidays with Pay Act
- II.3.e Companies Act
- II.3.f Income Tax Act

II.4 ***[Employer]***
- II.4.a Articles of Incorporation
- II.4.b Other constitutive documents

III. Commercial Contracts

III.1 Outsourcing Agreements

IV. Human Resources

IV.1 Staff Breakdown Chart by Region and Function
IV.2 Current Staff Salary Levels
IV.3 Collective Bargaining Agreements

V. Engineering and Technical Documents

V.1 Operations and Maintenance
V.2 Investment Programs
V.3 Demand
V.4 Fixed Assets and Technical Audits
V.5 System Files and Drawings
V.6 Other

VI. Financial[10]

VI.1 Financial Statements
VI.2 Budgets
VI.3 Debt
- VI.3.a Profile of Loans/Grants
- VI.3.b Loan Disbursements, Repayments and Interest

VI.4 Commercial
- VI.4.a Billings
- VI.4.b Collections
- VI.4.c Breakdown of Consumers by Category

VI.5 Tariffs
- VI.5.a Approved Tariff Structure
- VI.5.b Tariff Adjustment Proposals

[10] For the Employer for the last 5 years.

F3. Sample Confidentiality Agreement

Confidentiality Agreement

THIS AGREEMENT, dated the _____ day of _____, 20__, is BETWEEN ***[Employer name]***, a company incorporated under the laws of Egypt (hereinafter called "The Employer"), of the first part, AND ***[name of Bidder]*** (hereinafter referred to as "the Recipient"), of the second part. (Both parties are sometimes collectively referred to herein as "the Parties").

RECITALS

(a) The Employer and related persons carry on Business that the Recipient wishes to evaluate to determine whether to enter into a Permitted Transaction.

(b) The Recipient has agreed to keep confidential all confidential information disclosed to it by the Disclosing Party.

(c) The Disclosing Party has agreed, on the terms and conditions of this agreement, to disclose information to the Recipient for the Recipient's evaluation.

AGREEMENT

1. Definitions and Interpretation

1.1 Definitions

In this agreement, unless the contrary intention appears:

"Authorized Persons" means:

(a) the officers and employees of the Recipient;
(b) the financial or other advisers of the Recipient; and
(c) the respective officers and employees of those financial or other advisers:

"Business" means the business carried on by the Employer and Related Persons.

"Confidential Information" means the following, whether or not in material form:

(a) the terms of any negotiations or agreements between the Employer, Disclosing Party, any Related Person, and the Recipient or any Authorized Persons;

(b) all information of, related to, or connected with, the business of the Employer or a Related Person or their transactions, operations, and affairs (including, without limitation, all past, current, and prospective financial, accounting, trading, marketing, technical and business information, trade secrets and know-how) directly or indirectly disclosed by or on behalf of the Disclosing Party to the Recipient or any Authorized Person, whether before or after execution of this agreement and whether through any officers, employees, agents, or advisers of the Disclosing Party;

(c) all other information of a confidential or proprietary nature directly or indirectly disclosed by or on behalf of the Employer to the Recipient or any Authorized Person;

(d) that part of all notes and other records prepared by the Recipient or any Authorized Person based on or incorporating the information referred to in paragraphs (a) to (c) inclusive; and

(e) all copies of the information and those parts of the notes and other records referred to in any of paragraphs (a) to (d) inclusive.

"Disclosing Party" means the Employer.

"Permitted Transactions" means bidding for the ***[name of contract]***.

"Recipient" means the prequalified Bidder receiving Confidential Information.

"Related Person" means a person or corporation that is related to the Employer in any way, by virtue of its operations, or one in relation to whom information has been made available in the Data Room.

1.2 Interpretation:

In this agreement, unless the contrary intention appears.

(a) headings are for ease of reference only and do not affect the meaning of this agreement;
(b) the singular includes the plural and vice versa, and words importing a gender include other genders;
(c) other grammatical forms or defined words or expressions have corresponding meanings;
(d) a reference to a document or agreement, including this agreement, includes a reference to that document or agreement as novated, altered, or replaced from time to time;
(e) a reference to a party includes the party's executors, administrators, successors, substitutes, and assigns; and
(f) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments, and governmental and local authorities and agencies.

2. Use and Disclosure of Confidential Information

2.1 Use of Confidential Information

In consideration of the Disclosing Party disclosing Confidential Information to the Recipient, the Recipient agrees to:

(a) use all Confidential Information solely for the purpose of determining whether the Recipient wishes to enter into a Permitted Transaction;
(b) keep confidential all Confidential Information (subject to disclosure permitted under clause 2.2 (Disclosure of Confidential Information); and
(c) comply with the provisions of this agreement.

2.2 Disclosure of Confidential Information

The Recipients may disclose confidential information only to:

(a) those of its officers and employees who:

i. have a need to know for the purpose of determining whether the Recipient wishes to enter into a Permitted Transaction;
ii. are aware that Confidential Information must be kept confidential; and
iii. have agreed to comply with the terms of this agreement; and

(b) its financial or other advisers and their respective employees and officers who:

i. have a need to know for the purpose of the adviser providing its professional advice to the Recipient for the purpose of the Recipient determining whether the Recipient wishes to enter into a Permitted Transaction;
ii. are aware that the Confidential Information must be kept confidential and
iii. have agreed to comply with the terms of this agreement.

2.3 Recipient's Obligation

The Recipient:

(a) must, at its expense, ensure at all times, that each Authorized Person to whom Confidential Information is disclosed, keeps confidential the Confidential Information; and
(b) must ensure that each Authorized Person to whom Confidential Information is disclosed must, at its or their respective expense:

i. notify the Disclosing Party immediately if it becomes aware of any suspected or actual unauthorized use, copying, or disclosure of Confidential Information; and
ii. Immediately take all steps to prevent or stop the suspected or actual unauthorized use, copying, or disclosure of Confidential Information.

3. Security and Control

3.1 Security

The Recipient must, and must ensure that each Authorized Person to whom Confidential Information is disclosed must, at its or their respective expense:

(a) establish and maintain effective security measures to safeguard Confidential Information from access or use not authorized by this agreement; and
(b) keep Confidential Information under the Recipient's control.

3.2 Assistance in Proceedings

The Recipient must provide, and must ensure that each Authorized Person provides, assistance reasonably requested by the Employer or any Related Person in relation to any

proceedings the Employer or a Related Person may take against any person for unauthorized use, copying, or disclosure of Confidential Information.

4. Copying

The Recipient must ensure that all copies of Confidential Information made by the Recipient or any Authorized Person are prominently marked "CONFIDENTIAL".

5. Acknowledgment and Indemnity

5.1 Acknowledgment

The Recipient acknowledges for itself and for each of its Authorized Persons that:

(a) it is aware that any breach of this agreement will result in the Employer and the Related Persons suffering damage, for which damages may not be an adequate remedy; and
(b) in the event of a breach of this agreement or any obligation of confidentiality under this agreement, the Employer is entitled to seek injunctive relief.

5.2 Indemnity

The Recipient agrees to indemnify the Employer and each Related Person against all losses, damages, expenses, and legal costs that the Employer or a Related Person may reasonably sustain or incur as a result of a direct or indirect breach by the Recipient or any Authorized Person of this agreement or the obligations of confidentiality hereunder.

6. Exclusions

The obligations of confidentiality under this agreement do not extend to information which (whether before or after this agreement is executed):

(a) is rightfully known to or in the possession or control of the Recipient or an Authorized Person and not subject to an obligation of confidentiality on the Recipient or that Authorized Person;

(b) is public knowledge (otherwise than as a result of a breach of this agreement or the obligations of confidentiality under this agreement); or

(c) the Recipient or an Authorized Person is required by law to disclose.

7. Employer's Representative

7.1 Service on Single Disclosing Party

Any notice, request, or other communication or document contemplated by this agreement given to or served on the Disclosing Party is deemed to have been given to or served on the Employer.

8. Assignment and Termination

(a) No party may assign or otherwise transfer any of its rights arising under this agreement without the written consent of the other Parties.

(b) The Parties acknowledge that this agreement does not convey any interest of a proprietary nature, and in particular, but without limitation, does not transfer any interest in any intellectual property.

(c) The Disclosing Party may terminate this agreement at any time with immediate effect by giving written notice to the Recipient.

(d) On termination of this agreement the Recipient's right, and the right of all Authorized Parties, to use Confidential Information ceases, and the Recipient must procure that all Authorized Parties, as soon as practicable at the Disclosing Party's option:

i. return to the Disclosing Party;
ii. destroy and certify in writing to the Disclosing Party the destruction of; or
iii. destroy and permit a representative of the Disclosing Party to witness the destruction of,

all Confidential Information in the Recipient's and each Authorized Person's possession or control.

(e) Termination of this agreement does not affect any accrued rights or remedies of a party.

(f) The obligations of confidentiality under this agreement continue to apply after assignment or termination of this agreement.

9. General

9.1 Counterparts

This agreement may be executed in counterparts.

9.2 Alterations

This agreement may be altered only in writing signed by each party.

9.3 Costs

Each party must bear its own costs of negotiating, preparing, and executing this agreement.

9.4 Governing Law

This agreement is governed by the laws of Egypt and each party unconditionally and irrevocably submits to the non-exclusive jurisdiction of the courts of Egypt.

9.5 Waiver

The failure of the Disclosing Party at any time to insist on performance of any provision of this agreement is not a waiver of its rights at any later time to insist on performance of that or any other provision of this agreement.

9.6 Entire Agreement

This agreement:

(a) constitutes the entire agreement between the Parties as to its subject matter and supersedes all their representations and agreements in connection with that subject matter; and
(b) may only be altered in writing signed by the Parties.

IN WITNESS WHEREFORE, the Parties hereto have set their hands and seal the day and year first above written.

SIGNED, SEALED, AND DELIVERED

on behalf of the within named ***[name of Employer]***

by _____

in the presence of: _____

Name: _____
Occupation: _____
Signature: _____

SIGNED, SEALED, AND DELIVERED

on behalf of the within named Recipient

by _____

in the presence of: _____

Name: _____
Occupation: _____
Signature: _____

F4. Sample Data Room Visitors Log

Data Room Visitors Log

Date: _____

Due Diligence Team Member Sign-In:

1)

2)

3)

4)

5)

6)

_____ *[Clerk's Signature]*

F5. Terms of Reference: Data Room Supervisor

- Overall responsibility for and day-to-day management of the Data Room, supervision of the work performed by the Data Room Clerk, and assurance of the functioning of the Data Room during the prescribed hours, from Sunday to Thursday from 9:00 a.m. to 5:00 p.m. from ***[dates]***, excluding Egyptian public holidays.

- Implementation of Data Room procedures and design, organization, and prescribed usage of all required supporting forms in accordance with the Procedures Memorandum to be issued to Prequalified Bidders (e.g., forms to sign Due Diligence Team members in and out at the moment of their respective entry and exit to the Data Room; forms to sign out documents for use in the Data Room; *et cetera*).

- Organization, scheduling and implementation of the following due diligence activities for the prequalified bidders: (1) initial Data Room visits for all prequalified bidders, and (2) follow-up visits to the Data Room.

- Approving invoices for photocopies made by members of the Due Diligence Teams, and supervision of the photocopy-control performed by the Data Room Clerk.

- Supervising the completion and maintenance of all schedules and records about Data Room visits, documents taken out, documents copies, *et cetera*, or all prequalified bidders.

- Handling of all communication and correspondence with prequalified bidders related to the organization and scheduling of visits to the Data Room. Such communication shall be handled in ***[English or Arabic is recommended]***.

- Contact and liaison with prequalified bidders during their visit(s) to the Data Room and during their stay in Egypt related with visits to the Data Room.

- Receiving, handling, and discussing with the Data Room Clerk any requests received from prequalified bidders for documents and information that are not available in the Data Room. If warranted, obtain the requested documents for the Data Room.

- Management of the Data Room Index, containing all documents and computer files that are available in the Data Room; periodic update of the Data Room Index; and distribution of the updated Data Room Index to all prequalified bidders.

- Managing the preparation of and approving invoices to Due Diligence Teams and ensuring payment of those invoices.

- Any other tasks that may be required for the organization of the due-diligence activities and for the appropriate management of the Data Room.

- Any other related tasks that may be requested from time to time by the Employer.

F6. Terms of Reference: Data Room Clerk

- Day-to-day functioning of the Data Room during the prescribed hours, from Sunday to Thursday from 9:00 a.m. to 5:00 p.m., *[dates]*, excluding public holidays.

- Implementation of Data Room procedures and prescribed usage of all required supporting forms in accordance with the Procedures Memorandum to be issued to prequalified bidders (e.g., forms to sign Due Diligence Team members in and out at the moment of their respective entry and exit to the Data Room; forms to sign out documents for use in the Data Room; *et cetera*).

- Operating the photocopy machine upon the request of the members of a Due Diligence Team and upon prior approval by the Data Room Supervisor. Upon completing the photocopy operation, assuring that the original documents are appropriately re-filed and noting down the number of photocopies that have been made for each Due Diligence Team.

- Implementing the schedule of the initial and follow up Data Room visits for all prequalified bidders.

- Filling out and maintaining, as requested by the Data Room Supervisor, all schedules and records about Data Room visits, documents taken out, documents copies, *et cetera*, for all Due Diligence Teams.

- Maintaining a list of all members of the Due Diligence Teams permitted to enter the Data Room, and verifying each day all members of the teams upon entry to the Data Room against the list of the representatives of the prequalified bidder that are authorized to access the Data Room.

- Verification of the Data Room Index against actual documents and computer files that are available in the Data Room. Report any discrepancies to the Data Room Supervisor.

- Permanent supervision of the Due Diligence Teams during their stay in the Data Room and availability to answer/note any questions that might be raised.

- Delivering questions and requests for information or documents from prequalified bidders to the Data Room Supervisor and assisting in distributing responses to questions and in the collection of documents or information, as requested by the Data Room Supervisor.

- Updating the Data Room Index any time that new information or documents are introduced to the room by the Data Room Supervisor.

- Verifying each day, as requested by the Data Room Supervisor, and for any Due Diligence Team leaving the Data Room, that (a) all documents that have been taken out have been returned to their original locations; (b) no documents have been taken out of the Data Room; and (c) no documents have been marked, altered, modified, varied in sequence, or otherwise damaged or destroyed.

276

- Preparation, as requested by the Data Room Supervisor, of invoices to bidders for (a) photocopies made at their request at a charge of ***[amount in Egyptian pounds]*** per copy, and (b) all other expenses incurred on their behalf.

- Any other tasks that may be required for the organization of the due-diligence activities and for the appropriate management of the Data Room.

- Any other related tasks that may be requested from time-to-time by the Data Room Supervisor or the Employer.

Standard Bid Evaluation Form

Important Note on Standard Bid-Evaluation Form

The Standard Bid-Evaluation Form ("Form") incorporates international standards and best practices. To some extent, certain provisions of the Form differ from Egyptian law and practice. This Note identifies those differences.

The editors have left the Form intact so that it may provide a guide to the GOE should it decide to amend the Egyptian law and regulations on such forms to fully comply with international standards and best practices.

Users of the Form are advised to amend or delete provisions that differ from Egyptian law and substitute provisions that are consistent therewith.

General Comment

Tendering and tendering procedure: Tendering and tendering procedures for concessions, management contracts, and other types of major contracts are governed by Law 89/1998 (Tenders Law) and its regulations, which are found in Ministerial Decree 1367/1998 (Executive Statutes).

Specific Comments

Annex A. Evaluation Guide

Paragraph 3 (Bid Validity): The Tenders Law and Executive Statutes (regulations) provide for a two-envelope tender procedure, one for the technical bid and one for the price (financial) bid. Article 18 of the Executive Statutes provides that bids delivered after the opening of the technical bid are not rejected but are accepted and recorded on a "late tenders" list. Article 63 of the Executive Statutes provides that, while no tender or modification received after the bid deadline should be considered, this does not apply to modification of the lowest price bid, which was submitted on time and acceptance of which is in the interest of the Employer.

Paragraphs 5(d) (Preliminary Examination of Bids); 6(e) (Additions); and 6(g) (Price Deviations): Article 55 of the Executive Statutes provides that in respect of contracts for the supply of goods, the failure to list a price for an item is to be considered as if the tenderer [bidder] had not bid for that item. In respect of contracts for works, the Employer may either reject the bid or insert the highest competitive bid price in place of the missing figure. Under Article 64 of the Executive Statutes, the Employer has the right to make "material" corrections.

Paragraph 7(a) (Determination of Award): Article 16 of the Tenders Law provides for a statutory 15 percent domestic preference in respect of the supply of locally manufactured goods, services, and contracting works.

Paragraph 7(b) (Qualification): The procedures for pre- and post-qualification evaluation do not comply with the bid-opening and evaluation procedures of the Tenders Law and Executive Statutes, unless it is considered that the first-stage technical-bid evaluation serves the purpose of pre- or post-qualification.

Paragraph 7(c), subpara. 2 (Proposed Award):The tender-cancellation provisions do not comply with the Tenders Law, Article 15, of which sets forth the events permitting such cancellation:

- If only one tender [bid] was submitted or, following evaluation, only one tender [bid] remains, unless the work [tender documents] does not allow for re-announcement [re-tendering] or it is considered that there will be no benefit in re-announcement [re-tendering], and the sole tender conforms to the conditions and is suitable in terms of price; or
- If all or a majority of tenders [bids] are subject to conditions; or
- If the value of the lowest tender [bid] exceeds the estimated tender value [project price].

In addition, the Employer may also cancel the tender "if public interest and welfare require this."

A. Introduction

This Standard Bid-Evaluation Form has been prepared by the GOE CDPSP for use in PSP projects by utility managers in the evaluation of Bids in accordance with the provisions of the CDPSP's *"Toolkit" for PSP and Utility Managers* (Toolkit).

This document is intended specifically for assisting in the evaluation of Bids procured through International Competitive Bidding (ICB). It should also prove useful, with

appropriate modifications, for evaluation under National Competitive Bidding (NCB) procedures.

Upon notification of contract award to the successful Bidder by the Employer, the CDPSP is authorized to publish a description of the contract, the name and nationality of the contract awardee, and the contract price.

All users are invited to submit comments on their experience with this document to the CDPSP

B. How to Use These Forms

1. The evaluation forms and guide contained in this Section provide step-by-step procedures for evaluating Bids solicited through ICB. In all instances, the Bidding and evaluation procedures described in the Instructions to Bidders (ITB) of the actual Bid Documents used should be followed.

2. ICB is conducted using the Standard Bid Documents (SBDs) issued by the CDPSP and required for use by Employers (the tendering utility). The following SBD is currently available in the Toolkit: Performance-Based Management Contracts.

3. Although Bid Documents may differ, their ITBs are very similar. The following standard forms and guide are based on the ITBs, as well as on the Bid Data Sheets (BDSs), which follow the ITB and provide contract-specific information.

4. The forms should invariably accompany the evaluation report, but they may be adapted to suit specific requirements of the Bid Documents. The report should include a number of attachments to explain details of Bid evaluation or to show specific controversial wording or numbers in a Bid. Cross-referencing should be used extensively, as well as references to pertinent clauses in the Bid Documents.

5. Employers should study these evaluation forms and guides during project preparation, in order to properly assess the managerial and administrative conditions needed for Bid evaluation. CDPSP staff are available to explain the procedures, including any modifications necessary for evaluation using Bid Documents other than the SBDs presently available in the Toolkit. The CDPSP encourages the employment of experienced consultants to help in evaluations for complex contracts (see Toolkit for Model Terms of Reference for Advisors).

6. In the Bid-Evaluation Forms, all bold, italicized text within brackets ("[ ]") is not part of the model SPD; the bold, italicized, bracketed text contains guidance and instructions for the agency preparing and issuing the document and should not be incorporated in the final customized version.

C. Model Standard Bid-Evaluation Forms

C1. Model Cover Page

Bid-Evaluation Report
and
Recommendation for Award of Contract

Name of Project: _____

Contract Name: _____

Identification Number: _____

Date of Submission: _____

C2. Model Letter of Transmittal

[If the contract is subject to prior review, the Bid-Evaluation Report should be attached with a Letter of Transmittal from the Employer or its representative responsible for communications with the CDPSP. The letter should highlight conclusions and offer any additional information that would help to expedite review by the CDPSP. In addition, any unresolved, or potentially contentious issues, should be highlighted.]

C3. Model Required Tables

Table 1. Identification

1.1	Name of Employer	_____
1.2	Address of Employer	_____
1.3	Date of effectiveness	_____
1.4	Closing date	
	(a) Original	_____
	(b) Revised	_____
1.5	Name of project	_____
1.6	Contract Name	_____
1.7	Contract number (identification)	_____
1.8	Contract description	_____
1.9	Estimated Value[1]	_____
1.10	Method of procurement (check one)	ICB ___ NCB ___ Other ___
1.11	Prior review required[2]	Yes ___ No ___
1.12	Domestic preference allowed	Yes ___ No ___
1.13	Type of contract	BOT ___ Concession ___ Lease ___ Mgmt Contract ___ Svc Contract ___ Other ___
1.14	Cofinancing, if any:	
	(a) agency name	_____
	(b) percent financed by agency	_____

[1] *Cite title and date of feasibility study or other report.*
[2] *If response is "no," items 2.2(b), 2.4(b), and 2.6(b) in Table 2. may be left blank, unless the CDPSP's prior review was specifically requested.*

Table 2. Bidding Process

2.1	General Procurement Notice	
	(a) First issue date	_____
	(b) Latest update	_____
2.2	Pre-qualification, if required	
	(a) Number of firms pre-qualified	_____
	(b) Date of CDPSP's no-objection	_____
2.3	Specific procurement notice	
	(a) Name of Egyptian newspaper	_____
	(b) Issue date	_____
	(c) Name of international publication	_____
	(d) Issue date	_____
	(e) Number of firms notified	_____
2.4	Standard Bid Document	
	(a) Title, publication date	_____
	(b) Date of CDPSP's no-objection	_____
	(c) Date of issue to Bidders	_____
2.5	Number of firms issued Documents	_____
2.6	Amendments to Documents, if any	
	(a) List all issue dates	1. _____ 2. _____ 3. _____
	(b) Date(s) of CDPSP's no-objection	1. _____ 2. _____ 3. _____
2.7	Date of Pre-Bid Conference, if any	_____
2.8	Date minutes of conference sent to Bidders and CDPSP	_____

Table 3. Bid Submission and Opening

3.1	Bid-submission deadline	
	(a) Original date, time	_____
	(b) Extensions, if any	_____
3.2	Bid-opening date, time	_____
3.3	Record of Bid-opening	_____
3.4	Number of Bids submitted	_____
3.5	Bid validity period (days or weeks)	
	(a) Originally specified	_____
	(b) Extensions, if any	_____
	(c) Date of CDPSP's no-objection, if required[1]	_____

Note: Contracts under two-stage Bidding will require the information requested for each stage to be filled out.
[1] See para. 3, Annex A.

Table 4. Bid Prices *[as Read Out]*

Bidder Identification			Read-out Bid Price(s)[1]		
Name	City/State or Province	Country	Currency(ies)	Amount(s) or %	Comments[2]
(a)	*(b)*	*(c)*	*(d)*	*(e)*	*(f)*

[1] For single currency option (see Annex A, paragraph 6(d)(ii)); secondary currencies are expressed in column e as a percentage of the total Bid Price.
[2] Note the absence of any required Bid Security or other critical items. See also paragraph 2, Annex A.

Table 5. Preliminary Examination

Bidder	Verification	Eligibility	Bid Security	Completeness of Bid	Substantial Responsiveness	Acceptance for Detailed Examination
(a)	*(b)*	*(c)*	*(d)*	*(e)*	*(f)*	*(g)*
etc.						

Note: For explanations of headings, see paragraph.5, Annex A. Additional columns may be needed, such as for responsiveness to technical conditions.

280

Table 6. Corrections and Unconditional Discounts

Bidder	Read-out Bid Price(s)		Corrections		Corrected Bid Price(s)
	Currency(ies)	Amount(s)	Computational Errors[1]	Provisional Sums	
(a)	*(b)*	*(c)*	*(d)*	*(e)*	*(f) = (c) + (d) - (e)*
etc.					

Note: Only Bids accepted for preliminary examination (Table 5., column g) should be included in this and subsequent tables. Columns a, b, and c are from Table 4. (columns a, d, and e, respectively).
[1] Corrections in column d may be positive or negative.

Table 7. Exchange Rates

Currency Used for Bid Evaluation: _____

Effective Date of Exchange Rate: _____

Authority or Publication Specified for Exchange Rate: _____

Note: Attach copy of exchange rates provided by specified authority or publication.

Table 8. Currency Conversion (Multiple Currencies)

[Specify Evaluation Currency]

Bidder	Currency(ies) of Bid	Corrected	Applicable	Evaluation Currency	
		Bid Price(s)	Exchange Rate(s)[1]	Bid Price(s)	Total Bid Price[2]
(a)	*(b)*	*(c)*	*(d)*	*(e) = (c) x (d)*	*(f)*
etc.					

Note: Columns a, b, and c are from Table 6., columns a, b, and i.
[1] Column d is from Table 7.
[2] Column f is the sum of Bid prices in column e for each Bidder.

Table 9. Currency Conversion (Single Currency)

[Specify Evaluation Currency]

Bidder	Corrected	Payment Composition[1]			Exchange	Amounts in	Exchange	Evaluation Currency	
	Bid Price (in specified currency)	Currency of Payment	Percent of Total Bid	Amount in Evaluation Currency	Rate Used by Bidder[1]	Currency of Payment	Rate for Evaluation[2]	Bid Prices	Total[3]
(a)	*(b)*	*(c)*	*(d)*	*(e) = (b) x (d)*	*(f)*	*(g) = (e) x (f)*	*(h)*	*(i) = (g) x (h)*	*(j)*
etc.									

Note: Columns a and b are from Table 6., columns a and i.
[1] Columns c, d, and f are provided in the SBD Appendix to Bid and in the (Form of) Contractor's Bid in the SBD.
[2] Column h is from Table 7.
[3] Column j is the sum of Bid prices in column i for each Bidder.

Table 10. Additions, Adjustments, and Priced Deviations

[Specify Evaluation Currency]

Bidder	Corrected Bid Price[1]	Additions[2]	Adjustments[2]	Priced Deviations[2]	Total Price
(a)	*(b)*	*(c)*	*(d)*	*(e)*	*(f) = (b) + (c) + (d) + (e)*
etc.					

[1] Column b is from either Table 8., column f or Table 9., column j.
[2] Each insertion in columns c, d, or e should be footnoted and explained in adequate detail, accompanied by calculations. See, respectively, paras. 6(e), 6(f), and 6(g), Annex A.

Table 11. Domestic Preference for Goods

[Specify Evaluation Currency]

Bidder	Domestic Preference Group[1]	Total Price[2]	Exclusions for Preference[3]	Revised Total	Prevailing Tariff (%)[4]	Domestic Preference (%)[5]	Preference Price[6]	Total Comparison Price
(a)	*(b)*	*(c)*	*(d)*	*(e) = (c) – (d)*	*(f)*	*(g)*	*(h)*	*(i) = (c) + (h)*
etc.								

[1] Column b refers to Groups A, B, or C, as indicated by Bidder, subject to verification by the Employer.
[2] Column c is from Table 10., column f. If the lowest total price is from a Group A or Group B Bidder, it is the lowest evaluated Bidder, and the remainder of the table need not be filled out. Columns d through h need to be filled out only for Group C Bids.
[3] Column d is the sum of costs in columns d and e from Table 10., plus other costs incurred within Egypt. Footnotes should be provided to explain the significant components of column d.
[4] Column f is the sum of duties and import taxes on the particular items, or group of similar items, as a percentage of the CIF or CIP price. See para. 7(a), Annex A.
[5] Column g will be the smaller of 15 percent or the prevailing tariff in column f.
[6] Column h for Group A Bidders is zero. Group B Bids at this stage should no longer be compared. For Group C Bidders, column h is the product of columns e and g.

282

Table 12. Domestic Preference for Services and/or Works

[Specify Evaluation Currency]

Bidder	Domestic Preference Group[1]	Total Price[2]	Exclusions for Preference[3]	Revised Total	Preference[4]	Total Comparison Price
(a)	*(b)*	*(c)*	*(d)*	*(e) = (c) – (d)*	*(f)*	*(g) = (c) + (f)*

[1] Column b refers to Group A (eligible domestic Bidders) or Group B (others), as indicated by Bidder, subject to verification by the Employer.
[2] Column c is from Table 10., column f. If the lowest priced Bid is from a Group A Bidder, it is the lowest evaluated Bidder, and the remainder of the table need not be filled out.
[3] Column d is the sum of costs in columns d and e from Table 10. An attachment should be provided to explain the significant components of column d. Columns d and e may be left blank for Group A Bidders.
[4] Column f for Group A Bidders is zero. For Group B Bidders, column f is 7.5 percent of column e.

Table 13. Proposed Contract Award

1. Lowest evaluated responsive Bidder (proposed for contract award). (a) Name (b) Address 2. If Bid from joint venture, list all partners, nationalities, and estimated shares of contract. 3. Principle country(ies) of origin of firms. 4. Estimated date (month, year) of contract signing. 5. Estimated start date of contract.		
	Currency(ies)	Amount(s) or %
6. Bid Price(s) (Read-out)[1] 7. Corrections for Errors[2] 8. Other Adjustments[3] 9. Proposed Award[4]		

[1] From Table 6, columns b and c.
[2] From Table 6, column d.
[3] All adjustments should be explained in detail.
[4] Sum of the prices in Items 7-10. For single-currency Bids, express secondary-currency amounts as percentages.

Evaluation Guide

1. Identification, Bidding Process, and Bid Submission	Tables 1., 2., and 3. provide for the filing of basic information on the procurement process. This information is necessary to monitor compliance with the CDPSP procedures.
2. Bid Opening[1]	All Bidders or their representatives are invited to attend the Bid opening, where Bids are read out and recorded, along with a list of attendees. The record is prepared for prompt transmittal to the CDPSP. Copies should be sent to all Bidders. Bid-opening procedures are described in the ITB. To assist in carrying out the opening and preparing of the record, a checklist is provided in Annex B. The checklist should preferably be filled out for each Bid during the actual reading out at the meeting. The reading should be from the original version of each Bid, and the actual amounts and other key details read out should be circled for later verification. If Bids are expressed in a single currency, other currency needs expressed as a percentage should be recorded. It may also be desirable to read out exchange rates used by Bidders (see paragraph 6(d)(ii) in this Annex A). Any envelopes containing substitutions, modifications, or withdrawals must be subject to the same level of scrutiny, including the reading out of critical details, such as price changes. Failure to read out such information and include it in the written record may result in denial of its inclusion in Bid evaluation. If a Bid has been withdrawn by cable, it should nonetheless be read out and should not be returned to the Bidder until the authenticity of the withdrawal notice has been confirmed. As stated in the ITBs, no Bids should be rejected at the Bid opening except those received after the deadline for receipt of Bids. Such Bids shall be returned unopened to the Bidder. A summary of the read-out Bid prices should be provided in Table 4.
3. Bid Validity	The duration of the validity of each Bid should be the one specified in the ITB and should be confirmed in the signed (form of) Bid. If exceptional circumstances occur in which award cannot be made within the validity period, extensions in writing should be requested of Bidders, in accordance with the ITB. Extensions to the validity of Bid security should also be requested of Bidders, if necessary.[2] Note any extensions in Table 3.
4. Principles of Evaluation	After the public opening of Bids, information relating to the examination, clarification, and evaluation of Bids shall not be disclosed to Bidders or other persons not officially concerned with this process until the successful Bidder is notified of the award of contract. The CDPSP recommends appointment by the Employer of an evaluation committee, consisting of a minimum of three qualified members who should work in a secure office where all Bid Documents can be kept. There may be a considerable advantage if the same members participated in the preparation of the Bid Documents. On occasion, the Employer may request clarifications of Bidders concerning ambiguities or inconsistencies in the Bid. As required in the ITBs, such requests shall be in writing, and no change in the price or scope of the originally offered services, goods, or works shall be sought or accepted, except for the correction of arithmetic error. The responses from Bidders shall also be in writing. No circumstances shall justify meetings or conversations between the Employer (or

[1] See *Toolkit*.

[2] Particular care must be taken in cases where the deadline for *submission* (or for opening) of Bids can be extended, as the duration of bid security is frequently provided in terms of an expiration date. In contrast, Bid validity is specified in terms of an interval after the deadline for receipt or the date of Bid opening.

[3] See *Toolkit* for an explanation of two-stage bidding. If used, evaluation of the second-stage bidding follows the procedures in this *Annex A. Evaluation Guide*.

[4] On occasion, Bidders approach the CDPSP with information. CDPSP policy is to acknowledge the correspondence and pass it on to the Employer for its consideration.

its consultants) and Bidders during the Bid evaluation process.[3]

Bidders frequently attempt to contact the Employer during Bid evaluation, directly or indirectly, to query progress of evaluation, to offer unsolicited clarifications, or to provide criticisms of their competition. Receipt of such information should be acknowledged as to receipt only.[4] Employers must evaluate Bids on the basis of the information provided in the respective Bids. However, additional information provided may be useful in improving the accuracy, speed, or fairness of the evaluation. Nonetheless, no changes in the Bid price or substance are allowed.

5. Preliminary Examination of Bids

The evaluation process should begin immediately after Bid opening. The purpose of preliminary examination is to identify and reject Bids that are incomplete, invalid, or substantially non-responsive to the Bid Documents and therefore are not to be considered further. The following checks should be applied:

(a) *Verification:* Attention should be directed toward deficiencies that, if accepted, would provide unfair advantages to the Bidder. Sound judgment must be used; for example, simple omissions or mistakes arguably occasioned by human error should not be grounds for rejection of the Bid. Rarely is a Bid perfect in all respects. However, the validity of the Bid itself, for example, its signatures, must not be in question. If the Bidder is a Joint Venture, the Joint Venture agreement must be submitted; if the Bidder is an agent, an authorization from the supplier or manufacturer must be provided in addition to any documentation required of the supplier or manufacturer itself. All copies of the Bid should be compared with the original, and corrected accordingly, if necessary. Thereafter, the original should be kept in a safe location, and only copies should be used in evaluation.

(b) *Eligibility:* The Bidder must be a national or a juridic entity from an eligible source country as defined by the CDPSP.[5] All partners to a Joint Venture shall be from an eligible source country, and the Joint Venture shall be registered in an eligible source country. All goods and services shall originate from eligible source countries. In the case of construction works, this eligibility test is applied only to the finished product offered in the Bid and to its major and clearly identifiable components. If pre-qualification has taken place, only Bids from pre-qualified Bidders can be considered.[6] The Bidder (including all members of a Joint Venture and subcontractors) may be disqualified if affiliated with a firm that has provided related consulting services on the project, or if the Bidder is a publicly owned enterprise from Egypt lacking legal and financial autonomy. (See the ITB for details.)

(c) *Bid Security:* The Bid Documents may require submission of a Bid security. If so, the Bid security must conform to the requirements of the ITB, and it must accompany the Bid. If the Bid security is issued as a bank guarantee, it must be consistent with the wording of the Bid-security form provided in the Bid Documents. Submission of a copy of the security or submission of a counter-guarantee naming the Employer's bank instead of the Employer is unacceptable. Furthermore, securities for an amount smaller or for a period shorter than the one specified in the ITB are not acceptable. The security for a Bid submitted by a Joint Venture should be in the name of all of the partners of the Joint Venture.

(d) *Completeness of Bid:* Partial Bids, or Bids not offering all of the required services, should ordinarily be considered non-responsive. However, under contracts involving construction works, missing prices for occasional work items are considered to be included in prices for closely related items elsewhere. If any erasures, interlineations, additions, or other changes have been made, they should be initialed by the Bidder. They may be acceptable if they are corrective, editorial, or explanatory. If they are not, they should be treated as deviations and should be analyzed as per paragraph 5(e) below. Missing pages in the original copy of the Bid may be cause for rejection of the Bid, as may contradictions in model numbers or other designations of critical supply items.

(e) *Substantial Responsiveness:* Major deviations to the commercial requirements and technical specifications are a basis for the rejection of Bids. As a general rule, major deviations are those that, if accepted, would not fulfill the purposes for which the Bid is requested, or would prevent a fair

[5] A list of eligible source countries may be obtained from the CDPSP.

[6] The juridic entities of the pre-qualified Bidders may not be modified in the submission of Bids.

comparison with Bids that are properly compliant with the Bid Documents. Examples of major deviations include:

(i) Failing to respond to performance targets or specifications by offering instead a different target, design, or product that does not offer substantial equivalence in critical performance parameters or in other requirements;

(ii) Phasing of contract start-up, delivery, installation, or construction not conforming to required critical dates or progress markers;

(iii) Subcontracting in a substantially different amount or manner than that permitted;

(iv) Refusing to bear important responsibilities and liabilities allocated in the Bid Documents, such as performance guarantees and insurance coverage;

(v) Taking exception to critical provisions such as applicable law, taxes and duties, and dispute-resolution procedures; and

(vi) Those deviations that are specified in the ITB as requiring rejection of the Bid (such as, in the case of works, participating in the submission of another's Bid other than as a subcontractor).

Bids that offer deviations may be considered substantially responsive—at least as to the issue of fairness—if the deviations can be assigned a monetary value that would be added as a penalty during the detailed evaluation process and if such deviations would be acceptable in the eventual contract.

The results of preliminary examination should be presented in Table 5. If the Bid fails preliminary acceptance, the reasons must be clearly explained in footnotes or in an attachment, as necessary.

6. Detailed Examination of Bids

Only those Bids surviving preliminary examination need to be examined in this phase.

(a) *Corrections for Errors:* The methodology for correction of computational errors is described in the ITB. The read-out Bid prices and their corrections should be noted in Table 6., column *d*. The corrections are considered binding on the Bidder. Unusual or large corrections that could affect the comparative ranking of Bids should be explained in footnotes.

(b) *Corrections for Provisional Sums:* Bids may contain provisional sums set by the Employer for contingencies or for nominated subcontractors, *et cetera* As these sums are the same for all Bids, they should be subtracted from the read-out prices in Table 6., column *e*, to allow for a proper comparison of Bids in subsequent steps.

(c) *Modifications and Discounts:* In accordance with the ITB, Bidders are allowed to submit, prior to Bid opening, modifications to their original Bid. The impact of modifications should be fully reflected in the examination and evaluation of the Bids. These modifications may include either increases or decreases to the Bid amounts that reflect last-minute business decisions. Accordingly, the original Bid prices should be modified at this point in the evaluation. The effect of unconditional decreases (or alternatively, increases) should be shown as in Table 6. (columns *g* and *h*). Any decrease expressed in percent must be applied to the appropriate base specified in the Bid (i.e., check to see if it applies to any provisional sums).

(d) *Evaluation Currency:* The remaining Bids as corrected for computational errors and as adjusted for discounts should be converted to a common evaluation currency, as described in the ITB. The exchange rates to be used in the calculations are to be listed in Table 7. If multiple exchange rates exist for a particular currency (for commercial, government transactions, *et cetera*), indicate which applies, with reasons for the choice. Where exchange rates for a particular currency are not available from the specified authority or publication, identify the secondary source, as well as any necessary conversion calculations. There are two different currency options for Bidding/payment, each requiring a different conversion methodology:

(i) For Bids using the multiple currency option, in which the Bid price is expressed in a number of currencies. For this procurement, use Table 8.

(ii) For Bids using the single-currency option, in which the Bid price is expressed entirely in a specific currency, usually in Egyptian pounds, with other foreign currency requirements stated as percentages of the

Bid price, together with the exchange rates used by the Bidder to determine the percentages. For single-currency Bids, sections of the Services or Works may require payment in different currencies and proportions. In such instances, the impact of any corrections found will require a lengthier analysis for each Bid, based on the submitted Appendix to Bid. Table 9. is to be used for these calculations.

(e) *Additions:* Omissions to the Bid should be compensated for by adding the estimated costs for remedying the deficiency. Where items missing in some Bids are present in others, an average of quoted prices could be used to compare competitors' Bids. Alternatively, external sources, such as published price lists, freight tariff schedules, *et cetera*, may be appropriate. The cost determined should be expressed in the evaluation currency and shown in Table 10., column *c*.

(f) *Adjustments:* The ITB specifies which, if any, performance or service factors will be taken into account in the Bid evaluation. The methodology used in evaluation of these factors should be precisely described in the Bid-evaluation report and should be fully consistent with the ITB provisions. Bonuses or additional credits that reduce the evaluated Bid price will not be given in the Bid evaluation for features that exceed the requirements stated in the Bid Documents, unless specifically provided for in the ITB.[7] The value of adjustments will be expressed in terms of cost, for all services, works, and most goods contracts, and should be shown in Table 10., column *d*, and expressed in the evaluation currency.

(g) *Price Deviations:* As discussed under paragraph 5(e), Bids with minor deviations may be considered substantially responsive if their further consideration assigns a monetary cost or penalty to the Bid for the purpose of Bid comparison:

(i) Requests for deviations that are expressed by the Bidder in vague terms, such as "we would like an increase in the amount of mobilization advance" or "we wish to discuss changes in the completion schedule" should ordinarily be ignored in Bid evaluation. However, a categorical statement by the Bidders taking exception to a requirement in the Bid Documents should be treated as a deviation.

(ii) If a Bid requires a faster payment stream than specified in the Bid Documents, the penalty is based on the prospective benefit to the Bidder. This situation assumes use of a discounted cash flow using the prevailing commercial interest rates for the currencies of the Bid, unless the ITB foresees the eventuality and specifies a rate.

(iii) If a Bid provides for a delivery or completion that is beyond the date specified in the Bid Documents but that is nonetheless technically acceptable to the Employer, the time advantage given should be assessed a penalty specified in the ITB or, if one is not provided, based on the rate of liquidated damages specified in the Bid Documents.

The deviations should be priced in the evaluation currency in Table 10., column *e*.

7. Determination of Award

In the comparison of Bids for services, works, and for most goods, the corrected and discounted Bid prices, together with adjustments for omissions, deviations, and specified evaluation factors, have been noted in Table 10. The Bidder with the lowest total is the lowest evaluated cost Bidder at this stage, subject to:

- Application of domestic preference, if any is allowed; and
- Post-qualification evaluation, or, if pre-qualification has occurred, confirmation of pre-qualification information.

(a) *Domestic Preference:* If domestic preference is allowed in Bid evaluation, the ITB will so state and provide detailed procedures to be used in determining the eligibility for preference and the amounts.

(i) With respect to goods contracts, verification of the prevailing import duties and the related import taxes to a nonexempt importer must be made. If these duties and taxes are less than fifteen (15) percent of the

[7] Similarly, a Bid offering a choice of different product models is evaluated on the basis of the lowest price offered by the Bidder from among the models meeting the requirements of the Bid Documents.

CIF or CIP price,[8] they are to be used as to the amount of preference. Also, the eligibility of goods for domestic preference must be examined according to the criteria described in the ITB.

The calculations for determining the lowest evaluated Bidder are based on a two-step process. In the second step, if needed, the domestic preference is *added* (like a tariff) to the CIF or CIP Bid prices of the goods offered from abroad.[9] Care should be taken to separate these prices from the overall Bid prices, which may include the costs of internal transportation and related freight insurance, installation, training, and other costs incurred within Egypt. Such costs are not to be adjusted for the preference. The CIF or CIP Bid prices used will reflect corrections for errors and discounts and will be adjusted for omissions pertaining to the CIF or CIP prices (such as insufficient spare parts). They will *not* reflect adjustments for deviations or specified evaluation factors. The preference tariff calculated will then be added to the corrected, discounted, and adjusted total prices tabulated in Table 11.

All calculations involved in assessing domestic preference should be clearly shown in Table 11., together with accompanying explanations, as necessary. The lowest evaluated Bidder would be the Bidder with the lowest price total in column *i*, unless note 2 of Table 11. applies.

(ii) Any domestic preference eligibility allowed under contracts is dependent on ownership criteria and on the share of work to be undertaken. The domestic preference is provided by adding 7.5 percent to the corrected and discounted Bid prices of Bidders not eligible for domestic preference. The ITB excludes domestic preference application to any provisional sums, as well as to adjustments or priced deviations. The lowest evaluated Bidder is the Bidder with the lowest total in column *g* of Table 12.

(b) *Qualification:* If pre-qualification was conducted, the Bidder whose Bid is the lowest evaluated should receive the award, unless the Bidder's qualifications have since materially deteriorated or the Bidder has since received additional work that overstresses its capacity. The Employer should satisfy itself fully on both accounts.

Where pre-qualification has not occurred, the prospective awardee should be subjected to post-qualification, the procedures for which are described in the ITB.[10]

If the lowest evaluated Bidder fails post-qualification, its Bid should be rejected, and the next ranked Bidder should then be subject to post-qualification examination. If successful, this Bidder should receive the award. If not, the process continues.

The rejection of a Bid for reasons of qualification requires substantial justification, which should be clearly documented in attachments to the report. A history of poor performance may be considered a substantial justification.

(c) *Proposed Award:* The amount of the proposed award shall be the Bid price as submitted by the winning Bidder and adjusted as described in the ITB for corrections. Adjustments to the final price and scope of the contract to correct for acceptable omissions and quantity variations in the Bid may be negotiated with the lowest evaluated Bidder. Prior concurrence of the CDPSP with the proposed award is required before such negotiations may be entered into. Table 13. should be filled out to establish the actual amount of the contract award.

If (a) none of the Bids is found to be responsive, (b) Bids are unreasonably high in price compared with earlier estimates, or (c) none of the Bidders is qualified, the Employer may consider rejection of all Bids (prior CDPSP concurrence is required).

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[8] CIF is cost, insurance, and freight for maritime transportation. CIP is cost, carriage, and insurance in the case of multi-modular transportation. For further definitions, refer to *INCOTERMS 1990*. International Chamber of Commerce, 38 Cours Albert 1er, 75008 Paris, France.

[9] This occurs if the apparent low Bidder from the first step is importing the goods.

[10] The Annex in the Standard Pre-qualification Document is useful for post-qualification evaluations.

(d) *Report Submission*

(i) *Prior Review:* The Employer must submit the completed Bid-evaluation report containing the required summary to the CDPSP as soon as possible after Bid opening, preferably no later than three (3) weeks prior to the expiration of the Bid validity period.

Employers are encouraged to request assistance as needed from the CDPSP in explaining the evaluation procedures. However, the CDPSP will not participate in the evaluation itself.

(ii) *Post Review:* For contracts not subject to prior review, the Employer may award the contract upon completion of Bid evaluation. As stated therein, subsequent submission of the Bid-evaluation report to the CDPSP is required prior to delivery of a withdrawal application, or if a Special Account is used, prior to its first replenishment application. These provisions do not apply if Statements of Expenditures are used, whereby the evaluation and other Documents are kept by the Employer, subject to future review by the CDPSP.

(e) *Review by the CDPSP:* Upon receipt by the CDPSP, all contracts subject to prior review will be reviewed. Employers may be requested to provide additional information and justification for the recommendations. The CDPSP will not contact Bidders. However, it may request the Employer to do so for necessary clarifications. When the CDPSP is satisfied with the evaluation of Bids and recommendations of award, a "no-objection" written communication will be issued by the CDPSP official designated for such correspondence.

For contracts subject to post review, any doubts about the justification for award should be raised with the CDPSP prior to award signing. Employers should ensure that all correspondence received from Bidders concerning evaluation has been taken into account.

(f) *Award of Contract:* Bid securities of unsuccessful Bidders should be returned promptly after award has been made. However, if contract effectiveness is contingent on the receipt of a performance security or other condition, the Employer may consider seeking an appropriate extension of time for the Bid validity and the accompanying Bid security of the next two (2) lowest Bidders.

As mentioned in the Preface, upon confirmation by the Employer that the award has been made, the CDPSP is authorized to publish a description of the contract, the name and nationality of the contract awardee, and the contract price. Any further information on the Bids or on their evaluation, including the Bid-evaluation report, is held in confidence by the CDPSP. Unsuccessful Bidders are allowed to seek a debriefing with the Employer, and, additionally, with the CDPSP. In anticipation of this and/or any post reviews by the CDPSP, the Employer should ensure that Bid Documents and evaluations are securely stored.

Bid-Opening and Bid-Evaluation Summary Checklists

A. Bid-Opening Checklist

To be filled out for each Bid as it is read out.

Contract Reference: _____

Bid-Opening Date: _____ Time: _____

Name of Bidder: _____

1. Is outer envelope of Bid sealed?
2. Is Bid form completed and signed?
3. Expiration date of Bid: _____
4. Is documentary authority for signing enclosed?
5. Amount of Bid security *[if required]*: _____ *[list currency]*
6. Describe any "Substitution," "Withdrawal," or "Modification" submitted: ____
   _____
7. Describe any alternative Bid made: _____
   _____
8. Describe any discounts or modifications offered: _____
   _____
9. Additional comments: _____
   _____
10. Name of Bidder or representative present: _____
    _____
11. Total Bid price: _____ *[list currencies and amounts or percentages]*

Signature of responsible official: _____ Date: _____

Sample - Preliminary Examination

Bidder	Verification	Eligibility	Bid Security	Completeness of Bid	Substantial Responsiveness	Acceptance for Detailed Examination
Bidder A	Yes	Yes[1]	Yes	Yes	Yes	Yes
Bidder B	No[2]	Yes	Yes	Yes	Yes[3]	No
Bidder C	Yes[4]	Yes	Yes	Yes	Yes	Yes
Bidder D	Yes	Yes	No[5]	No[6]	Yes	No
Bidder E	Yes	No[7]	No[8]	Yes	Yes	No
Bidder F	Yes	Yes	Yes	Yes	Yes	Yes
Bidder G	Yes	Yes	Yes	Yes	Yes[9]	Yes

[1] *Bidder is partly owned (25 percent) by GOE. It operates under commercial law and is financially and managerially independent of government.*
[2] *Joint venture agreement missing.*
[3] *Requires 25 percent mobilization advance; Bid Documents state maximum of 15 percent. Deviation is minor and can be quantified.*
[4] *Bidder pre-qualified as local agent; Bid is joint obligation with parent company. Bid deemed acceptable because increase in financial backing results.*
[5] *Bid security not in freely convertible currency.*
[6] *Does not include cost for required disposal of hazardous wastes found at the site.*
[7] *Source of plant from non-eligible country.*
[8] *Required validity period of security not met (8 weeks instead of 12 weeks).*
[9] *Contains several initialed changes substituting ISO standards in the specifications with DIN standards. This is acceptable to the Engineer-in-Charge.*

2. Bid-Evaluation Summary Checklist

1. Attach Bid-opening record, if not previously submitted.

2. Explain any inconsistencies between prices and modifications to prices read out at Bid opening (and written into the record) and presented in Table 4.

3. Provide details on eliminating any Bids during preliminary examination (Table 5.). Copy select pages from Bids, as desirable, to show examples of objectionable features.

4. If provisional sums in Table 6. vary among Bidders, explain. Explain any substantial corrections for computational errors that may affect the ranking of Bidders.

5. Provide a copy of the rates requested for Table 7. and used in Tables 8. or 9.

6. The additions, adjustments, and priced deviations in Table 10. require detailed explanations where they may affect the ranking of Bidders.

7. Eligibility for domestic preference as indicated in Tables 11. or 12. must be verified if the ranking of Bids is affected. Provide details in an attachment.

Exclusions to the calculations for preference should be explained if similarly significant.

8. Provide detailed reasons for refusing to award a contract to a party other than the lowest evaluated Bidder (see paragraph 7(c), Annex A).

9. If an alternative Bid is accepted, provide a detailed explanation of the reasons for its acceptance, addressing issues of timeliness, performance, and cost implications (see paragraph 7(d), Annex A).

10. An attachment to Table 13. should explain adjustments to the price provided on line 10. Explain any changes to scope of Bid and contract conditions.

11. Provide evidence of alternative insurance.

12. Attach copies of any correspondence from Bidders that raise objections to the Bidding and evaluation process, together with detailed responses.

13. Attach copies of any letters to Bidders requesting clarifications. Provide copies of responses.

14. Submit Bid evaluation with separate evaluation report from consultant, if one was commissioned.

15. Ensure that the Bid-evaluation report is double-checked, paginated, and complete, and includes a Letter of Transmittal. The CDPSP will only review reports that are sent to it by the proper authorities.

16. Send by courier or by other swift means.

VOLUME III (2)

Model Contracts

TABLE OF CONTENTS

Volume III (2): Model Contracts

SECTION I CONCESSION AGREEMENT

A. Model Concession Agreement I-3

1. Interpretation I-4
2. Description of the Project; Term I-10
3. *Conditions Precedent to Implementation Date* I-11
4. Existing Facilities I-12
5. Coordination with Other Grantor Projects I-14
6. Construction I-14
7. Additional Works; Development Obligations I-16
8. Operations and Maintenance I-19
9. Performance Standards I-22
10. Reporting Requirements I-25
11. Cooperation Agreement Implementation Supervision Committee I-27
12. Working Committee I-27
13. Management of Project Company I-27
14. Supply of Bulk Water I-29
15. *Sale of Treated Water* I-30
16. Financial Reports; Audits I-31
17. Finance I-32
18. Insurance I-33
19. Personnel I-34
20. Research and Development I-36
21. Representations and Warranties I-37
22. *Certain Obligations of Grantor* I-38
23. Certain Obligations of the Private Party I-39
24. Certain Obligations of the Project Company I-40
25. Events of Default and Termination I-44
26. Dispute Resolution I-47
27. *Force Majeure* I-49
28. Assignment and Delegation I-49
29. General I-49

SECTION II PERFORMANCE-BASED MANAGEMENT CONTRACT

A. Model Performance-Based Management Contract II-2

1. General Conditions II-5
2. Commencement, Completion, Modification, Renewal, and Termination of Contract II-9
3. Obligations of the Operator II-14
4. Operator's Personnel II-19
5. Obligations of the Employer II-21
6. Payments to the Operator II-24
7. Control II-28
8. Fairness and Good Faith II-29
9. Settlement of Disputes II-29

Appendix A. *Description of the Services* II-32
Appendix B. Reporting Requirements II-39
Appendix C. Key Personnel and Subcontractors II-39
Appendix D. Hours of Work for Key Personnel II-41
Appendix E. Duties of the Employer II-41
Appendix F. Cost Estimates in Foreign Currency II-42
Appendix G. Incentive Payments II-42
Appendix H. *Form of Bank Guarantee for Advance Payments* II-46

	Appendix I. Guarantee	II-47
	Appendix J. Procurement Procedures	II-49
SECTION III	SERVICE CONTRACT	
	A. Model Service Contract	III-1
	Article I: Purpose	III-1
	Article II: Scope of Services	III-1
	Article III: Responsibilities of the Utility	III-7
	Article IV: Term and Termination	III-7
	Article V: Compensation – Option 1	III-8
	Article VI: Compensation – Option 2	III-9
	Article VII: Risk Management	III-10
	Article VIII: Miscellaneous	III-11
	Appendix A. Facilities	III-12
	Appendix B. Request for Proposal (RFP)	III-12
SECTION IV	LEASE	
	A. Model Cover Page	IV-1
	B. Model Table of Contents	IV-2
	C. Model Lease	IV-5
	1. Definitions and Interpretation	IV-5
	2. Conditions Precedent	IV-17
	3. The Lease	IV-19
	4. General Representations and Warranties	IV-23
	5. Transitional Arrangements	IV-25
	6. Material Documents	IV-26
	7. Lessor Transferring Employees	IV-27
	8. Use of Land and the System	IV-29
	9. Obligations	IV-29
	10. Works	IV-33
	11. Operation and Maintenance	IV-36
	12. Record Keeping	IV-40
	13. Environmental Compliance	IV-41
	14. Monitoring	IV-43
	15. Billing, Collection, and Payment	IV-43
	16. Insurance	IV-46
	17. *Force Majeure*	IV-47
	18. Egyptian Political Events	IV-49
	19. Change In Law	IV-52
	20. Events of Default	IV-54
	21. Term and Termination	IV-57
	22. Liability and Indemnity	IV-58
	23. Assignments and Charges	IV-60
	24. Dispute Resolution	IV-61
	25. Confidentiality	IV-64
	26. Miscellaneous Provisions	IV-66
SECTION V	BOT/BOOT CONCEPT	
	A. What Is BOT? What Is BOOT?	V-1
	B. Legal Documents and Project Finance	V-2
	C. Advantages and Complexities of BOT/BOOT	V-2
	D. Characteristics of a BOT/BOOT Project	V-3
SECTION VI	PERFORMANCE TARGET INDEX	
	A. Performance-Based Contracting	VI-1
	B. Sample Calculation Procedure for Incentive Compensation	VI-3

SECTION I

Concession Agreement

Important Note on Model Concession Agreement

The Model Concession Agreement incorporates international standards and best practices. To some extent, certain provisions of the Agreement differ from Egyptian law and practice. This Note identifies those differences.

Users of the Agreement are advised to amend or delete the provisions of the Agreement that differ from Egyptian law and to substitute provisions that are consistent therewith.

General Comments

1. *Nature and Form of Contract:* The grant of a concession for public utilities must be in the form of a Presidential Decree, except in the water sector, where the grant of a concession can be made by Ministerial Decree, provided that the concession's duration (term) does not exceed five (5) years. This is because the grant of a concession for public utilities is a sovereign act, delegating sovereign powers. *It is not a private contract; it is an administrative contract.*

   Therefore, if the Ministry of Housing, Utilities, and Urban Communities (MHUUC) are the grantor of a concession, it must not exceed five (5) years. If the concession exceeds five (5) years, it must be granted pursuant to a Presidential Decree; the GOE would be a party to the contract as the grantor and the MHUUC would have to be designated either as a separate party to the contract or as the GOE's representative.

   To the extent that restrictions contained in legislation described below might apply, the GOE's recent (1998-2002) approach to legislation for the privatization of public utilities has been to adopt sector-specific enabling and empowering legislation, permitting the grant of such concessions and including provisions within the enabling legislation for the specific derogation or exemption from Law 129/1947, Law 61/1958, and all other laws which may be contrary to the provisions of the enabling legislation and the delegation of contracting authority to a governmental unit.

   At present (January 2002) there is no general water-privatization law. Therefore, the following are the current laws and decrees governing public-utilities concessions, in particular in respect of the water and wastewater sector, and enabling legislation. These laws govern the grant of concessions in the Egyptian water and wastewater sectors and will determine the basic validity of such concession agreements as the Model Concession Agreement.

   1.1 *The Constitution*: The Egyptian Constitution permits the granting of concessions in respect of public utilities in accordance with the law. Under Article 123, "[t]he rules and procedures for granting concessions relating to investment of the sources of national wealth and of public utilities shall be determined by law."

   1.2 *The Civil Code*: The legitimacy of private-sector investment in public services is bolstered by Articles 668 through 673, which, in a sub-section entitled "Concessions of Public Utility Services," defines and regulates concession contracts. Article 668 defines a concession of a public utility service as a contract between the administrative authority having charge of organizing such facilities and a company or individual which is appointed to exploit the facility for a certain period of time, and having as its object the control of a public utility service.

   The Civil Code ensures that (i) the concessionaire is bound to provide the agreed-upon public utility services (Article 669); (ii) in the case of either a *de jure* or *de facto* monopoly, the consumers must be treated with strict equality (Article 670); (iii) the rates established by the Government will have the force of law with regard to contracts between the concessionaire and consumers; and (iv) consumers must accept the short interruptions or irregularities of water services to which providers of such services are normally subject (for maintenance, for example) (Article 673).

   1.3 *Public Utilities Law and Amendments*: In respect of legislation specific to concessions for public-utility services, there are two seminal laws: Law 129/1947 (as amended by Laws 660/1953, 53/1954, 288/1956, 185/1958, and 61/1958), and Law 61/1958. Law 29/1947 provides that such utility concessions may not exceed thirty (30) years and that the concessionaire's share of annual profits shall not exceed ten (10) percent of the project company's authorized capital.

   Law 29/1947 also provides that the concession grantor shall retain the unilateral right to modify the organizational elements of the utility's concession or the provisions respecting the concession's exploitation (in particular, tariffs and prices), subject to the concessionaire's right to compensation for resulting losses. The grantor also retains the right to control the operations of the utility's concession as well as its technical, administrative, and financial progress. To this end, the grantor may appoint delegates to the conceded facilities, including auditors and technical committees.

1.4 *Specialized Legislation*: With the exception of Article 1 of Law 61/1958, cited above, there is no specialized legislation regarding public utility concessions in the water sector.

1.5 *The Effect of Administrative Law*: Beyond the Constitution and general and specific enabling legislation, natural resources concessions are governed by administrative law. As a grant or delegation of sovereign powers, administrative law applies to the contract. This concept expands the rights of the GOE as a contracting and controlling party and affects the performance obligations of the private party. An administrative contract is one in which there is a correlation between the contract and a public service, such as water and wastewater services, or in which the GOE exercises powers which are not normally found in private contracts, such as the use of its sovereign powers to grant special rights as a government and not merely as a private party.

2. *Certain rules apply to all administrative contracts*, including the retention by the GOE of certain sovereign (non-private) powers, irrespective of contractual limitations. One of these powers is the right to unilaterally amend or terminate an agreement when the public interest so requires, with compensation to the private party (see paragraph 4, below). Another rule that differs from private law is that a party to an administrative contract cannot refuse performance when the GOE itself fails to perform, on the theory that the public interest in the venture prevails over the contractor's private defenses.

   A second concept that could affect any agreement with the GOE involving public utilities is that of "public service" – that in entering into such a contract, the GOE is charged with the protection of the community's assets. Following from this, certain rules governing contracts related to "public service" have evolved in Egypt, among them, for example:

   - All controversies related to such agreements must be litigated before special administrative courts, such as those established under Article 172 of the Constitution, which are controlled by the Council of State. The Arbitration Law (1994), based on the UNCITRAL (UN Commission on International Trade Law) model, allows arbitration between the GOE and private parties where the GOE has agreed to submit to such arbitration. See paragraph 5, below.
   - Title to such public services may not be alienated. See paragraph 3, below.
   - The GOE may permit only the temporary grant of a "delegation" of its authority to operate public services.

Specific Comments

3. *Section 24.7 of the Model Concession Agreement*: Because title to public services may not be alienated, in respect of existing facilities owned by the MHUUC, the Project Company would hold no alienable or mortgageable rights thereto. Therefore, the text should provide for an Exclusion of Existing Facilities.

4. *Section 25 of the Model Concession Agreement (Events of Default and Termination)*: This clause seeks information regarding waiver of "any specific provisions of Egyptian law governing termination of companies that might conflict with the provisions of this Agreement." As discussed above, as a grantor of a concession for public utilities, the GOE has certain sovereign rights, including termination or amendment of the concession, not only in the event of default, but where the public interest so requires, with compensation to the private party. Consider a provision for liquidated damages in the event of unilateral termination or amendment by the GOE.

5. *Section 26 of the Model Concession Agreement*: As mentioned above, the forum of first recourse for settling disputes between the GOE and private parties is the administrative court. However, as an exception to this, the Egyptian Arbitration Law provides that the GOE may submit to arbitration with the express approval of the Minister. As a part of the contract documents, a separate agreement to arbitrate, signed by the Minister of the MHUUC, should be included. Normally, where the GOE agree to submit to arbitration, it selects the Cairo Regional Centre for International Commercial Arbitration, which applies modified UNCITRAL rules. The concession agreement should also provide that the third (or presiding) arbitrator should not be a national of Egypt or the country of the private party.

A. Model Concession Agreement

A1. Model Cover Page

Concession Agreement

Between

[Grantor]

and

[Private Party]

and

[Project Company]

Dated_____

A2. Model Appendices

[Note: The following Appendices are listed for illustrative purposes only. They are referenced in this Model Concession Agreement, but because the details of individual projects vary so widely, the Appendices themselves do not constitute part of this Model Concession Agreement.]

Appendices

Appendix A	-	Bulk Water Supply Agreement
Appendix B	-	Existing Facilities
Appendix C	-	Existing Projects
Appendix D	-	Implementation Program
Appendix E	-	Licenses
Appendix F	-	Performance Indicators and Performance Targets
Appendix G	-	Private Party Performance Guarantee
Appendix H	-	Description of Sites
Appendix I	-	Description of Territory
Appendix J	-	Legal Opinions
Appendix K	-	Non-Revenue Water Reduction Targets
Appendix L	-	Management and Operations Plan
Appendix M	-	Insurance
Appendix N	-	Human Resource Standards
Appendix O	-	Customer Tariff

A3. Model Concession Agreement

Concession Agreement

THIS CONCESSION AGREEMENT is made this _____ day of _____, _____, by and among:

I. The *[Tendering Agency]* (hereafter called "Grantor"), *[e.g., an agency of the Government of Egypt, organized and existing under the laws of the Arab Republic of Egypt, and domiciled in Cairo, or other appropriate language]*

II. *[Legal name of Private Party]* (hereinafter called the "Private Party"), a corporation organized and existing under the laws of _____, domiciled in _____, _____, with its principal place of business at *[address of the Private Party's principal place of business]*.

III. *[Legal name of Project Company]* (hereinafter called the "Project Company"), a corporation organized and existing under the laws of Egypt, domiciled in *[Cairo]*, Egypt, with its principal place of business at *[address of the Project Company's principal place of business in Egypt]*.

RECITALS

WHEREAS, *[description of the Grantor]*.

WHEREAS, *[description of the Private Party]*.

WHEREAS, *[description of the Project Company]*.

WHEREAS, *[description of the Project]*.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

"Additional Project Company Employees" shall mean the employees and consultants, including the President, employed to work in the Project Company in accordance with Section 19.3.

"Additional Works" shall mean the rehabilitation or expansion of the system and design, engineering, and construction of any water treatment or distribution facilities other than the performance by the Project Company of its obligations specifically contemplated by the provisions of this agreement or the Construction Agreement and, in each case, up until such

additional works have been completed and incorporated into the system in accordance with Section 7.2.

"Additional Works Agreement" shall have the meaning ascribed thereto in Section 7.2(d).

"Affiliate" of any person shall mean any party, which controls, is controlled by, or is under common control of such person, whether directly or indirectly. For this purpose the term *control* means the ownership of at least fifty-one (51) percent of the voting interests in the subject person and/or the ability to control in fact the business and affairs of the subject person.

"Agreement" shall mean this Agreement and all appendices attached hereto, as amended, restated or supplemented from time to time in accordance with the terms hereof.

"Assets" shall mean all fixed and tangible assets located in the territory and used in connection with the treatment or distribution of water within the territory including, plant, pipes, equipment, machinery, vehicles, stock, tools, materials, spares, chemicals, perishables, and other consumables whether underground or not, but excluding land, land rights, cash, and account receivables.

"Asset-Condition Survey" shall have the meaning ascribed thereto in Section 7.1.

"Auditors" shall mean the independent auditors of the Project Company appointed in accordance with Section 13.3.

"Bulk Water" shall mean the water supplied in bulk by the bulk water supplier to the facilities pursuant to the terms and conditions of the Bulk Water Supply Agreement

"Bulk Water Supplier" shall mean the party to the Bulk Water Supply Agreement who will supply bulk water to the facilities pursuant to the terms and conditions of the Bulk Water Supply Agreement.

"Bulk Water Supply Agreement" shall mean the agreement between the Project Company and the bulk water supplier pursuant to which the bulk water supplier has agreed to supply the facilities with bulk water, the form of which is attached hereto as Appendix A, as may be amended, restated, or supplemented from time to time in accordance with the terms and conditions thereof.

"Business Day" shall mean a day, other than a Friday, Saturday, or official holiday in Egypt, on which commercial banks are open for business during normal business hours in Cairo.

"Commencement Date" shall mean the date of this agreement.

"Committee" shall have the meaning ascribed thereto in Section 11.

"Confidential Information" shall have the meaning ascribed thereto in Section 29.4.

"Construction Agreement" shall mean the agreement to be executed by the Project Company in respect of the engineering, supply, construction, erection, and testing of the new facilities

and all Appendices attached thereto, as may be amended, restated, or supplemented from time to time in accordance with the terms and conditions thereof.

"Construction Period" shall mean the period of time allocated to the Project Company to complete construction of the new facilities and the upgrading works which shall commence on the implementation date and terminate on the earlier of ***[appropriate time period]*** and the date on which the certificate evidencing the successful completion of the initial performance test is given to the Project Company in accordance with the Construction Agreement.

"Consumer Tariff" shall mean the tariff described in Appendix O.

"Customers" shall mean those persons in the territory who are from time to time connected to the distribution network.

"Customer Service Agreements" shall have the meaning described in Section 15.2.

"Distribution Network" shall mean the pipe network and supporting facilities.

"Dollars", "U.S. Dollars", or "US$" shall mean the lawful currency of the United States of America.

"Employees" shall mean the additional Project Company employees and the Grantor employees.

"Existing Facilities" shall mean Grantor's existing production facilities, distribution network, supporting facilities, and related assets located in the territory as described in Appendix B.

"Existing Projects" shall mean Grantor's on-going planned and committed construction projects in the territory as listed in Appendix C.

"Facilities" shall mean the new facilities and the existing facilities, if any, and related supporting facilities and other related assets.

"Five-Year Plan" shall have the meaning ascribed thereto in Section 7.2.

"Good Utility Practice" shall have the meaning described in Section 9.3.

"Government" shall mean the Government of the Arab Republic of Egypt.

"Government Authority" shall mean any government department, commission, board, bureau, agency, regulatory authority, instrumentality, fiscal, legislative, judicial or administrative body, domestic or foreign, provincial or local, having authority over the matter or matters in question.

"Government Authorization" shall mean any action, agreement, authorization, consent, approval, declaration, license, lease, ruling, permit, tariff, rate, certification, exemption, variance, filing or registration by or with any government authority, including any of the foregoing which is or may be deemed given or withheld by failure to act within a specified period of time.

"Grantor Employees" shall mean all the employees of Grantor who are assigned or are designated to be assigned to the Project Company.

"Implementation Date" shall mean the date upon which all the conditions precedent set forth in Section 3 shall have been satisfied.

"Implementation Program" shall mean the program set forth in Appendix D setting out the principal parts of the existing facilities and the dates on or by which (i) the Project Company will accept responsibility over each specific part of the existing facilities, and (ii) Grantor Employees will be transferred to the Project Company.

"Initial Performance Test" shall mean the initial performance test to be conducted by Grantor in respect of the integrated operation of the system in accordance with the Construction Agreement before the end of the construction period, as contemplated by Section 6.7.

"Initial Project Company Payment" shall mean the amount payable by the Project Company to Grantor pursuant to Section 3.1 (g).

"Interconnection Test" shall mean a technical acceptance test conducted by Grantor in respect of the new facilities, additional works, or an existing project pursuant to the Construction Agreement, as contemplated by Section 6.6 or an additional works agreement, as the case may be.

"Intervening Events" shall mean the events set forth in Section 9.7.

"Legal Requirements" shall mean all laws, statutes, orders, decrees, injunctions, licenses, permits, approvals, agreements, and regulations of any government authority having jurisdiction over the matter in question.

"Licenses" shall mean the approvals granted by the ***[name of government authority which grants the license to the Project Company permitting the Project Company to develop the Project]*** to the Project Company in respect of the project, a copy of each of which is attached hereto as Appendix E.

"Management and Operations Plan" shall mean the annual management and operations plan of the Project Company from time to time as approved pursuant to Section 13.5.

"Method Reports" shall have the meaning described in Section 10.1.

"Month" shall mean any period of thirty (30) consecutive calendar days.

"Monthly Certificate" shall have the meaning ascribed thereto in Section 15.3(b).

"New Facilities" shall mean the new ***[description of facilities being constructed]*** and all related supporting facilities, buildings, furnishings, computers and other equipment, systems and other assets and resources, including any upgrading works required to be provided or constructed by the Project Company in accordance with this agreement or the Construction Agreement or any additional works completed pursuant to Section 7.2.

"Non-Revenue Water" means treated water for which no price is charged or no revenue collected.

"Party" shall mean each of the Grantor, the Private Party, and the Project Company.

"Performance Indicators" shall mean the performance indicators for the system referred to in Appendix F or developed in accordance with this agreement.

"Performance Targets" shall mean the performance targets for the system referred to in Appendix F or developed in accordance with this agreement but does not include any financial performance targets referred to in Appendix F.

"Person" shall mean any individual, partnership, joint venture, company, corporation, trust, estate, juridical entity, association, statutory body, unincorporated organization, government or any political subdivision, instrumentality, agency, or authority thereof or therein.

"Pound" or "LE" shall mean the lawful currency of the Arab Republic of Egypt.

"Preparation Period" shall mean the period from the commencement date until the implementation date.

"President" shall mean the President of the Project Company appointed from time to time by the Private Party in accordance with Section 13.1, being the chief executive officer of the Project Company.

"Private Party" shall mean the company referred to in Paragraph II of the Concession Agreement.

"Private Party Performance Guarantee" shall mean the guarantee delivered by the Private Party to Grantor guaranteeing the performance of the obligations of the Project Company arising under this agreement, the form of which is set forth in Appendix G.

"Production Facilities" shall mean the water processing units located within the territory and which form a part of the facilities from time to time.

"Project" shall mean the planning, design, engineering, financing, and construction of the new facilities pursuant to the Construction Agreement, any upgrading works, additional works and the management, operation, repair, and maintenance of the system by the Project Company during the project period in accordance with this Agreement, the Management and Operations Plan, and all applicable law.

"Project Company" shall mean the ***[special purpose company]*** established for the purpose of developing the project during the project period in accordance with this agreement.

"Project documents" shall mean the Bulk Water Supply Agreement, and the Private Party Performance Guarantee, and the Construction Agreement.

"Project Period" shall mean the period beginning on the implementation date and concluding on the termination date.

"Senior Project Company Management" shall mean the top *[three (3)]* levels of the Project Company management (including the Board of Directors), as described in the Management and Operations Plan, all as appointed from time to time in accordance with Section 13.2

"Services" shall mean all services, tasks, and responsibilities to be provided and/or procured by the Project Company pursuant to this agreement for the proper management, operation, and maintenance of the system.

"Sites" shall mean those areas within the territory described in further detail in Appendix H upon which (i) the new facilities will be located, and (ii) the existing facilities (other than the distribution network) are currently located.

"Supporting Facilities" shall mean all assets, which are from time to time, ancillary to the Production Facilities and the Distribution Network including any depots, stores, electrical, mechanical, and chemical plant installations, apparatus, offices, and booster stations in the territory.

"System" shall mean the integrated system located in the territory for the treatment, production, and distribution of treated water in the territory, including the facilities, the distribution network, supporting facilities, and all other associated assets in the territory.

"Tax" shall mean any net income, alternative or add-on minimum tax, advance corporation, gross income, gross receipts, sales, use, transfer, gains, *ad valorem*, franchise, profits, license, value added, withholding, payroll, employment, excise, stamp, occupation, premium, property, environmental, windfall profit tax, documentary, registration, severance, custom duty, governmental fee, or other like assessment or charge of any kind whatsoever imposed pursuant to the laws of any federal, state, local, or foreign jurisdiction, or by any political subdivision or taxing authority thereof or therein, together with any interest or any penalty with respect thereto, and any liability for such amounts 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" shall mean the date upon which this Agreement is terminated pursuant to Section 3 or Section 25, or for any other reason.

"Territory" shall mean the operating area more particularly described in Appendix I attached hereto.

"Transfer Fee" shall have the meaning ascribed thereto in Section 4.4.

"Transfer Taxes" shall have the meaning ascribed thereto in Section 4.6(b).

"Treated Water" shall mean water, which has been processed through the production facilities operated by the Project Company in the territory.

"Trial Period" shall mean a period of *[six (6)]* months following the successful completion of the initial performance test.

"Upgrading Works" shall mean any replacements and non-maintenance related upgrades to the existing facilities including any buildings, furnishings, computer, and other equipment,

systems and other assets and resources required to be provided or constructed by the Project Company in accordance with this Agreement, the Construction Agreement, or in order to meet the performance targets established by this agreement for the system.

"Working Committee" shall mean the oversight sub-committee constituted by the Committee as contemplated by Section 12.

1.2 Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this agreement. The terms "this Agreement," "hereof," "hereunder," and similar expressions refer to this Agreement and not to any particular Article, Section, or other portion hereof, and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

1.3 Interpretation

In this Agreement words importing the singular number only shall include the plural and *vice versa*, words importing gender shall include all genders and words importing persons shall include individuals, sole proprietorships, partnerships, associations, trusts, joint ventures, unincorporated organizations, corporations, States, governments, and governmental entities.

2. Description of the Project Term

2.1 Project

The Project shall comprise the planning, design, engineering, financing, and construction of the new facilities pursuant to the Construction Agreement. Any upgrading works, additional works, and the management, operation, repair, maintenance, and metering ofthe system and the billing and collection of the Customer Tariff by the Project Company during the project period in accordance with this Agreement, the Management and Operations Plan, and all applicable law.

2.2 Term of the Agreement

This agreement shall have the term commencing on Commencement Date and expiring on the Termination Date.

2.3 Grantor's Interest in the Project Company

[It is possible that the Grantor may want to participate as an equity participant in the development of the Project in conjunction with the Private Party. If this structure is followed, an acknowledgement of Grantor's interests in the Project Company and a summary of the extent of the Grantor's involvement with the management of the Project Company should be set forth in this Section. The details of such involvement should be set forth in a shareholders or joint venture agreement executed among the shareholders of the Project Company.]

3. Conditions Precedent to Implementation Date

3.1 Conditions Precedent

The Implementation Date shall be the date on which all of the following conditions precedent shall have been fully satisfied and a notice to such effect shall have been signed by all parties:

(a) *Other Agreements and Documents*: Each of the project documents shall have been duly executed by all parties thereto, shall be in full force and effect, and all conditions precedent to the effectiveness of each project document shall have been satisfied.

(b) *Government Authorizations*: All government authorizations which are required to have been obtained in connection with the execution, delivery, and commencement of performance of this Agreement shall have been obtained and continue to be in full force and effect.

(c) *Representations and Warranties*: The representations and warranties of the Project Company, the Private Party, and Grantor, contained or incorporated by reference herein, shall be true and correct in all material respects on and as of the Implementation Date, with the same effect as though made on and as of the Implementation Date, and each Party shall have received on the Implementation Date a certificate to the foregoing effect signed by a duly authorized officer for the other Party.

(d) *Financing: **[The details of the financing for each project will vary from project to project. The text included in Subsection (d)(i), below, is included only as an example of language that may be included here. This Subsection should be appropriately revised to accommodate the particular financing approach taken in a particular project.]***

i. ***[All financial agreements and other documents as may be required by the Project Company and its lenders in respect of the Project in order to enable the Project Company to obtain the funds (whether in US Dollars or otherwise) that will be required by the Project Company in order to finance all of the actual or estimated costs of the completion by the Project Company of the New facilities (which shall be in an amount of not less than US$ [___] or the equivalent thereof) shall be in full force and effect and all conditions to their effectiveness shall have been satisfied.]***

ii. In the event that the Implementation Date shall not have occurred due to the failure of the condition precedent set forth in Section (d)(i), and this Agreement shall be terminated by either party pursuant to Section 3.2, below, the Private Party shall reimburse the Grantor within thirty (30) Business days of the termination of this Agreement for all costs and expenses (including, without limitation, legal expenses, fees in respect of financial advisors, and out-of-pocket expenses, including, without limitation, expenses incurred in respect of telecommunications, photocopying, and travel) incurred by the Grantor in connection with the negotiation of this Agreement and any other agreement related to the Project.

(e) *Legal Opinions:* The Project Company and the Private Party shall have received legal opinions substantially in the form set forth in Appendix J.

(f) *Site Acquisition:* The Project Company shall have obtained land-use rights in respect of the Sites in form and substance sufficient to complete the Project.

(g) *Initial Project Company Payment:* ***[The condition precedent included in Subsection (g)(i), below, is intended to cover situations where the Private Party is required to make payments to Grantor at the commencement of the Project. In many projects there may be no such initial payment made by the Private Party to Grantor. In such a case, Subsection 3.1(g) should be deleted in its entirety.]***

i. ***[The amount of [amount of Initial Project Company Payment] (the "Initial Project Company Payment") shall have been paid by the Project Company to Grantor not later than [number] of Business days after signing of this Agreement. This amount will be payable by the Project Company in [specify currency] by non-refundable direct transfer to such account or bank as Grantor may designate in writing prior to the date of payment. Grantor will acknowledge receipt of the Initial Project Company Payment by notice to the Project Company delivered in accordance with this Agreement.]***

ii. ***[Notwithstanding any other rights of Grantor provided for in this Agreement, in the event of any delay of receipt of the Initial Project Company Payment in Grantor's account, the Project Company shall pay to Grantor late charges of [___percent] of such payment for every day of the delay which amounts shall accrue and be payable immediately.]***

3.2 Failure to Satisfy Conditions Precedents

Any party may terminate this Agreement by giving written notice of such termination to the other parties if any condition to the Implementation Date has not been fulfilled by *[date]* or such later date as the parties may agree in writing, unless the fulfillment of such condition is within the control of such party. Upon the giving of a notice of termination under this Section 3.2, this Agreement shall terminate on the date specified for termination in such notice without liability of any party to the other parties but without prejudice to any rights and obligations which have arisen prior to termination and subject to the provisions of Sections 3.1(d)(ii) and 29.4.

4. Existing Facilities

[The provisions included in Section 4 only apply if facilities currently operated by Grantor will be transferred to the Project Company. In the event that Grantor will not transfer any Existing Facilities to the Project Company, Section 4 should be deleted in its entirety.]

4.1 Transfer of Control over Existing Facilities

The Project Company shall assume management and operations control over the Existing Facilities and the Grantor Employees in accordance with the Implementation Program set forth in Appendix D.

4.2 Operation of Existing Facilities by Grantor during the Preparation Period

During the preparation period, Grantor, in consultation with the Project Company, shall operate the Existing Facilities only in the ordinary course and shall take all action required to allocate the Existing Facilities and the Grantor Employees to the Project Company and segregate the management, financial, asset and accounting records, and procedures of the Existing Facilities from those of its other business operations. All material decisions by Grantor relating to the operation of the Existing Facilities during the preparation period shall be discussed with an authorized representative of the Project Company designated by the Project Company in writing or the President (once he is appointed) and the Project Company shall have the right to inspect the Existing Facilities and be given access to all reasonable information and data concerning the operation thereof. During such preparation period the Project Company and Grantor shall also take all action reasonably necessary to facilitate the management, operation, and financing of the Project Company and the operation of the facilities during the Project Period as provided for herein, including, without limitation, the appointment of the President, reviewing and where necessary updating the technical and construction plan under the Construction Agreement and the Management and Operations Plan, and issuing all required change orders under the Construction Agreement.

4.3 Protection of Grantor's Interest in Existing Facilities

The Project Company hereby expressly acknowledges and agrees that it shall have no right or interest in the system or any other assets of Grantor other than as expressly provided for in this Agreement. During the Project Period, the Project Company shall take all such action as may be necessary to protect and safeguard Grantor's right, title, and interest in the system and shall not sell, transfer, pledge, assign, or otherwise encumber all or any part ofthe system.

4.4 Payment upon Transfer of Existing Facilities

Not later than *[number]* of Business days following the transfer of the Existing Facilities in accordance with this Section 4, the Project Company shall pay to Grantor an amount of *[amount of payment]* (the "Transfer Fee"). This amount will be payable by the Project Company in *[specify currency]* by non-refundable direct transfer to such account or bank as Grantor may designate in writing prior to the date of payment. Grantor will acknowledge receipt of the Transfer Fee to the Project Company delivered in accordance with this Agreement.

4.5 Outstanding Debt

[In the event that there are loans outstanding in respect of Existing Facilities, provisions should be included here describing whether these loans will be retired or otherwise provided for by the Parties.]

4.6 Taxes

(a) Grantor shall pay when due any taxes in respect of the ownership, operation, and management of the Existing Facilities, which may have accrued prior to the implementation date.

(b) All stamp, transfer, documentary, sales, use, value added, registration, and other similar taxes and fees imposed by the Arab Republic of Egypt or by any political subdivision or taxing authority thereof or therein (including any penalties and interest) incurred in connection with the transfer of the Existing Facilities pursuant to this Agreement (collectively, the "Transfer Taxes") shall be borne by the Project Company. Each Party will, to the extent required by law, file on a timely basis all necessary tax returns and other documentation with respect to any Transfer Taxes.

5. Coordination with Other Grantor Projects

5.1 Review of Existing Projects

(a) Grantor shall, within *[thirty (30)]* Business days following the Commencement Date, provide the Project Company with copies of its contractual arrangements for any Existing Projects and all data and information relating thereto and shall, as soon as reasonably practical, advise the Project Company of any changes thereto.

(b) The Asset-Condition Survey shall be conducted pursuant to Section 7.1.

(c) The need and extent of any requirements for the Project Company to develop the system in accordance with Existing Projects and to provide funding for any such development shall be determined by mutual agreement.

(d) Any work, which the Parties may mutually agree that the Project Company is to provide in relation to any Existing Projects, shall, unless otherwise provided for in writing, constitute Additional Works.

6. Construction

[This Section is only necessary if the Project Company will be constructing significant New facilities. Furthermore, the provisions set forth in the Model Concession Agreement with respect to construction of New facilities contemplate that construction will begin shortly after execution of the Concession Agreement and that the form of the Construction Agreement will be available to be attached as an appendix to the Concession Agreement. In the event that construction of New facilities will not begin shortly after the Implementation Date or in the event that no New facilities will be constructed, this Section and other relevant provisions of the Model Concession Agreement will need to be revised or deleted, as appropriate.]

6.1 Responsibility of Project Company

In accordance with the Construction Agreement, during the construction period the Project Company shall:

(a) Undertake the planning, design, engineering, financing, and construction of the new facilities in accordance with the specifications and the technical and construction plan established pursuant to the Construction Agreement, so as to provide the new facilities in the territory.

(b) Ensure that the new facilities successfully pass interconnection tests prior to the end of the construction period.

(c) Ensure the integration of the new facilities and any existing facilities with the system such that the resulting integrated system successfully passes the initial performance test prior to the end of the construction period.

(d) Perform the upgrading work.

6.2 Work Program and Specifications

The new facilities shall be constructed in accordance with the specifications and the technical and construction plans approved in accordance with the Construction Agreement and shall incorporate only fully tested and stable technology. Any changes in or deviations from such specifications and technical and construction plans shall require the approval of Grantor. The Project Company shall consult with Grantor prior to utilizing any new technology in the system.

6.3 Compliance with Environmental Laws

The Project Company shall perform an environmental impact statement and carry out an environmental impact analysis in respect of the construction of the new facilities and any proposed Additional Works and shall comply with all applicable Egyptian environmental laws and regulations which may be in effect from time to time.

6.4 Ownership of New facilities

Until ownership is transferred to Grantor in accordance with this Agreement, thenew facilities shall be and remain the exclusive property of the Project Company and, without limiting the generality of the foregoing, Grantor shall not acquire any right or interest therein during the Project Period other than pursuant to this Agreement.

6.5 Drawings, Test Results, Etc.

The Project Company shall obtain and retain at the relevant Site:

(a) Copies of the specifications and operation manuals for all items of equipment incorporated into the system by the Project Company.

(b) Copies of all test results for tests performed in accordance with the Construction Agreement or otherwise on the facilities and all items of equipment incorporated into the facilities, to the extent that such items are normally retained in accordance with good utility practice.

(c) As-built drawings for the new facilities, including the civil and architectural works.

(d) All detailed technical documents related to the design, engineering, and construction of the Project, to the extent that such items are normally retained in accordance withgood utility practice. In the event that all or any part ofthe system should be transferred to Grantor, all of the foregoing information and any other similar information in the

possession of the Project Company pertaining to the system or such part thereof, including confidential information (subject to the provision of Section 29.4), shall be provided to Grantor.

6.6 Interconnection Testing

All parts of the new facilities shall be subject to Interconnection Tests in accordance with the Construction Agreement. Interconnection Tests shall be conducted in respect of appropriate portions of the new facilities upon completion of construction and prior to integration of such portion into the system.

6.7 Initial Performance Test

Following successful completion of Interconnection Tests in respect of all portions of the new facilities and the integration of the new facilities with Existing Facilities, the integrated System will be subject to the Initial Performance Test in accordance with the Construction Agreement.

6.8 Provisional Acceptance Certificate; Trial Period

Following successful completion of the Initial Performance Tests in respect of all portions of the new facilities in accordance with the Construction Agreement, the Project Company will issue a provisional acceptance certificate and the integrated System will be operated for a Trial Period in accordance with the Construction Agreement.

6.9 Commissioning; Acceptance Certificate

Following successful operation of the system during the Trial Period in accordance with the Construction Agreement, the Project Company will issue a final acceptance certificate and the integrated System shall thereafter be operated by the Project Company in accordance with the terms of this Agreement and the Management and Operations Plan.

7. Additional Works; Development Obligations

7.1 Asset-Condition Survey

(a) Within *[six (6)]* months after the Commencement Date the Project Company shall, at its cost, carry out an Asset-Condition Survey of the Existing Facilities to determine their condition (the "Asset-Condition Survey").

(b) The Asset-Condition Survey shall cover the level and adequacy of pressures in the Distribution Network, the arrangements for and quality of any interzonal water transfer, the requirements for major rehabilitation, refurbishment, renewal, replacement, and extension works required to eliminate service deficiencies and meet future needs.

(c) The Project Company shall, at its cost, carry out and update periodically a study of the projected water demand arising from agreed estimates of increases in the population of the Territories, the serving of areas in the Territories not presently supplied, increases in *per capita* consumption due to higher living standards and increased demand from industrial and commercial developments, in order to determine the phasing of any

Additional Works. Such initial water demand study will be discussed with Grantor and the future water supply demand profiles for the Territory will be agreed within *[six (6)]* months of the Commencement Date.

(d) Grantor shall make available to the Project Company, for the purpose of conducting the Asset-Condition Survey, all previous information and data including consulting engineers reports, together with such financial information relating to Customer water charges, operational earnings, and other income as may be relevant for such purpose.

7.2 Additional Works

(a) Within *[six (6)]* months of the completion of the Asset-Condition Survey the Project Company shall submit details of the Additional Works which the Project Company proposes to perform or procure the performance of over the next *[five (5)]* years (the "*[Five-]*Year Plan"), together with an outline proposal for further Additional Works for the next successive *[five (5)]* years.

(b) The Project Company shall, not later than *[two (2)]* years prior to the end of the then current *[Five-]*Year Plan, submit details of the Additional Works which the Project Company proposes to perform or procure the performance of over the *[five (5)]* years previously covered by the outline proposals together with an outline proposal for further Additional Works for the next successive *[five (5)]* years. The process of submitting detailed and outline proposals every *[five (5)]* years for the Additional Works shall continue until the Termination Date.

(c) Any detailed proposals submitted to Grantor for Additional Works pursuant to Sections 7.2 (a) and (b) shall include details of the scope of works (based on the agreed demand profiles), arrangements for the detailed design as determined by the Project Company, options for carrying out the construction works, options for financing, options for reimbursement of the Project Company, and the potential impact on the water tariffs levied on Customers.

(d) Grantor shall, within *[six (6)]* months of the receipt of the Project Company's detailed proposals for any Additional Works, notify the Project Company whether it wishes to pursue all or any portion of such proposals.

i. Grantor will then enter into discussions and negotiations with the Project Company to determine the scope and design of the Additional Works, the form of the arrangements for their construction, the criteria for determining when the Additional Works will be deemed completed, the arrangements for financing the Additional Works, and the form of reimbursement to the Project Company for such Additional Works.

ii. The agreed form of the arrangements and provisions for the construction, funding, and payment for any Additional Works will be incorporated into one or several agreement(s) (each an "Additional Works Agreement") in respect of the Additional Works which will be supplemental to this Agreement.

(e) The Additional Works will be completed when the criteria for completion as set out in the Additional Works Agreement have been fulfilled.

(f) Any additional works completed in accordance with this Section 7.2 shall be incorporated into and form part of the new facilities, and the Project Company shall operate and maintain such in accordance with this Agreement.

(g) The design and physical characteristics of any additional works that are agreed pursuant to this Section 7.2 shall have regard to mandatory standards applicable in Egypt, or in the absence thereof, such standards as the Parties may agree in writing and which are consistent with the requirements of this Agreement.

(h) The Project Company shall ensure that the design of any additional works is carried out by suitable and experienced consultants or experienced water treatment process plant contractors.

7.3 Development of the Distribution Network

Each *[Five-]*Year Plan shall include the Project Company's proposals to Grantor regarding the development of the existing Distribution Network, including proposals to:

(a) Develop and extend the Distribution Network and new connection installations having regard to any existing projects.

(b) Carry out booster-pump development appropriate for areas where the water pressure is low.

(c) Prepare, maintain, and update the Distribution Network database information with up-to-date systems and equipment, integrated with Grantor's systems and equipment

(d) Develop an information automation flow regulation system in the Distribution Network.

[The above draft provisions are intended to be illustrative only. The specific terms to be included should be tailored to the needs of each project.]

7.4 Development of Supporting Facilities

Each *[Five- (5)]* year plan shall include the Project Company's proposals to Grantor for the development of the existing supporting facilities, including:

(a) Water-meter repair and maintenance facilities and other equipment fulfilling technical requirements.

(b) Logistic and chemical storage buildings fulfilling technical requirements.

(c) Minimum stock for materials, chemical materials, and spare parts as required; which proposals shall, if agreed, be treated as additional works.

[The above draft provisions are intended to be illustrative only. The specific terms to be included should be tailored to the needs of each project.]

8. Operations and Maintenance

8.1 Development of Operation and Maintenance Procedures

(a) The Project Company shall develop operation and maintenance procedures for the system which are designed to satisfy all applicable standards and requirements with respect to the quality, quantity, and continuity of the production and distribution of Treated Water.

(b) The Project Company shall, within *[three (3)]* months after the Commencement Date, submit to Grantor and the Committee an outline of the operation and maintenance procedures for the system.

(c) The Project Company shall, within *[six (6)]* months after the handover of each specific part of the system in accordance with the implementation program or completion of construction or restoration of a specific part of the system, as the case may be, submit to Grantor and the Committee the operation and maintenance procedures for such part of the system.

8.2 General Operation and Maintenance Obligations

(a) The operation and maintenance procedures referred to in Section 8.1 will be incorporated into manuals of operating practices to be developed by the Project Company for the system. Such manuals shall form the basis for training of the Project Company Employees and shall contain:

i. Operator's Instructions.
ii. Manager's Operating Instructions.
iii. Maintenance Instructions.
iv. Manufacturers' Instructions (where applicable).
v. Health and Safety Instructions.

(b) The Project Company shall familiarize its employees with the duties and responsibilities required to be undertaken by the Project Company employees in the operation and management of the system.

(c) The Project Company shall, at its cost, after the implementation date and until the termination date:

i. Diligently perform the services so as to meet its obligations under this Agreement.

ii. Plan, organize, and carry out the operation and maintenance of the system so as to minimize any disruption to the production of treated water.

iii. Hold *[monthly]* technical coordination meetings with Grantor and endeavor to attend such other meetings as are reasonably necessary or incidental to the provision of the services which Grantor may, on reasonable notice, request.

iv. Make reports to Grantor concerning the management, operation, and maintenance of the system pursuant to Section 8.3.

v. Prepare annual technical plans and appropriate non-technical financial information for Grantor budget purposes and notify Grantor of any significant changes thereto.

vi. Observe Egyptian health and safety regulations (particularly in relation to hazardous locations, which include the locations of chlorination installations, high voltage and crane equipment, and pressure vessels and instrumentation) and provide safety and first aid equipment, all in accordance with the procedures to be developed pursuant to Section 8.1.

vii. As soon as reasonably practicable, report to Grantor on any matters having a significant impact on the availability and quality of water service to Customers.

[The above draft provisions are intended to be illustrative only. The specific terms to be included should be tailored to the needs of each project.]

8.3 Operation and Maintenance of Production Facilities and Related Supporting Facilities

(a) The Project Company shall, at its cost, after the handover of Production Facilities and related Supporting Facilities and until the Termination Date, perform the Services relating to the Production Facilities and related Supporting Facilities, including:

i. Using its reasonable efforts to ensure that the Production Facilities remain operating in the event of a disruption in the supply of Bulk Water to the Project Company.

ii. Not using any chemicals in the water-production process that are prohibited by Grantor, the Egyptian Department of Health, or other Government Authority.

iii. Inspecting mechanical and electrical instruments and other equipment, particularly where such equipment is highly sensitive, and repair or replace any damaged or malfunctioning equipment found as a result of such inspection.

iv. Carrying out maintenance on pre-sedimentation and sedimentation tanks, and washing sand filters and reservoirs, in accordance with the procedures to be developed under Section 8.1.

v. Controlling and/or inspecting the quality of the Bulk Water and Treated Water in accordance with Sections 9 and 14.2 and the requirements of the Bulk Water Supply Agreement.

[The above draft provisions are intended to be illustrative only. The specific terms to be included should be tailored to the needs of each project.]

8.4 Operation and Maintenance of Distribution Network

(a) The Project Company shall, at its cost, after the handover of the whole Distribution Network and until the Termination Date, perform the Services relating to the Distribution Network, including:

i. Flow and pressure regulation (including water pressure monitoring and the operation of existing booster pumps) in the Distribution Network with the aim of evenly distributing water pressure throughout the Distribution Network.

ii. Taking measures to minimize disruption to the continuity of water flow to the customers.

iii. Periodic flushing of the Distribution Network.

iv. Investigation, monitoring, reduction, and control of Non-Revenue Water, including water leakage, in accordance with systems to be developed by the Project Company, in order to achieve the technical targets specified in Section 8.5.

v. Development of operational procedures to deal with abnormal or emergency situations.

vi. Control and inspection of treated water quality in the Distribution Network and at customer connections.

vii. Re-direction of treated water supplies from the territory to bordering territories in the event of the occurrence of a water-supply disturbance in those bordering territories if and to the extent reasonably requested by Grantor; *provided, however,* that, such re-direction does not prejudice the supply of treated water to the customers or result, directly or indirectly, in the Project Company being in breach of the agreement or additional works agreements.

8.5 Non-Revenue Water

(a) The Project Company shall develop, install, operate, maintain, and manage anon-revenue water reduction and control program for the system and shall:

i. Extend as necessary the coverage of water districts in the territory.
ii. Reduce the level of non-revenue water in accordance with the provisions of this Section 8.5 and Appendix K.

(b) The non-revenue water program shall include measures to deal with the following:

i. Long-term leakage from mains and service pipes.
ii. Reduction of process water at production facilities.
iii. Overflows at distribution centers.
iv. Mains and service pipe bursts.
v. Un-metered firefighting and other social uses.
vi. Theft through illegal connections.
vii. Under-recording or malfunction of customer meters.
viii. Vandalism of customer meters.
ix. Meter-reading irregularities.
x. Collection deficiencies.
xi. Billing deficiencies.
xii. Customer debt levels.
xiii. Illegal connections.

(c) The Project Company shall during the Project Period:

i. Reduce the level of non-revenue water in stages in order to achieve the targets specified in Appendix K.

ii. Develop new programs and systems which have regard to the arrangements under any existing projects and extend as necessary the coverage of waste districts in the territory.

iii. Establish, as matter of priority, a non-revenue water program for progressively meeting the target reductions for specified groups of waste zones within the waste districts.

iv. Determine the economic viability of repair, replacement, and up-grading of customer meters.

v. Provide all operational equipment and instrumentation required for the maintenance and control of the non-revenue water programs.

vi. Provide operational data from the non-revenue water system to Grantor for monitoring purposes.

[The above draft provisions are intended to be illustrative only. The specific terms to be included should be tailored to the needs of each project.]

(d) Each year Grantor and the Project Company shall review and determine the target reduction of non-revenue water for the following year on the basis of economic viability and the future availability of supplies of bulk water.

(e) The consideration to be paid by Grantor for the reduction and control of non-revenue water shall be performance-related. The payments shall relate to the achievement of the target reduction of non-revenue water for each of the specified group of zones within the districts, and shall be based on the reduction in non-revenue water achieved from baseline non-revenue water as measured by the Project Company and Grantor and the value of the additional volume of water made available for customers (as calculated quarterly in accordance with Appendix K).

[The reduction of Non-Revenue Water by the Project Company likely will be a significant source of profits for the Project Company and, therefore, terms relating to the reduction of Non-Revenue Water and the compensation, therefore, likely will be considered critical by the Project Company. The above draft provision is intended to be illustrative only. The specific terms to be included should be tailored to the needs of each project.]

9. Performance Standards

9.1 Performance Indicators and Targets

Performance of the system shall be measured according to those indicators ("Performance Indicators") specified in Appendix F, or developed as described herein. Performance

Indicators shall be measured in relation to certain targets (the "Performance Targets") also specified in Appendix F, or developed as described herein, which define the minimum level of acceptable performance for the system and the Project Company. Commencing on ***[date and year of first report]*** and thereafter on ***[date of yearly report]*** in every year of the Project Period measurement of Performance Indicators shall be reported in writing to the Grantor in accordance with Section 10.

9.2 Quality Control and Management

(a) The Project Company shall within ***[twelve (12)]*** months of the implementation date develop, at its cost, proposals for the introduction of appropriate quality control and management systems for the Services. These shall include management information systems for monitoring the operation and maintenance of the facilities, asset management plans, maintenance programs, geographical information systems, and job planning and management.

(b) The Project Company shall within ***[twelve (12)]*** months of the implementation date prepare, at its cost, and submit to Grantor proposals for customer service performance criteria as generally described in Appendix F. These criteria shall be structured in order to enable Grantor to assess accurately the Project Company's performance against the operational standards set out in Appendix F and for the customers to be informed of the level of service to which they are entitled.

(c) The Project Company shall ensure that material and equipment to be installed and used in the system and the construction practices employed are consistent with good utility practice and extend the life and operation of the system at optimum cost.

9.3 Good Utility Practice

(a) The Project Company shall, at its cost, operate and maintain the system (and all parts thereof) and provide the services in accordance with the standards, practices, methods, and procedures conforming, at the relevant time, to then applicable Egyptian laws and regulations and that degree of skill, diligence, economy, prudence, and foresight which at the relevant time would be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances, and develop operations and maintenance practices based on the information contained in the operating practice manuals to be compiled by the Project Company under Section 8.2.

(b) The Project Company will review its operation and maintenance methods and procedures annually and will inform Grantor if it makes any significant changes to those methods and procedures.

9.4 Performance during Construction Period

(a) During the construction period the Project Company shall ensure that the system, then comprised of any existing facilities and such portions or sub-systems forming part of the new facilities as may pass interconnection tests, are managed, operated, repaired, and maintained by the Project Company so that performance of the system, measured by the performance indicators in accordance with Section 10, meets or exceeds the applicable performance targets set forth in Appendix F.

(b) If, in any calendar quarter during the Construction Period, the performance ofthe system reported pursuant to Section 10 is below the Performance Targets specified in Appendix F ***[description of consequences of failure to meet Performance Targets]***.

(c) In measuring performance for the purposes of this Section 9.4, periods where an Intervening Event shall excuse the Project Company's compliance with the requirements of Sections 9.4(a) and (b) pursuant to the provisions of Section 9.7, below, shall be omitted in respect of those areas of the system to the extent directly affected by such Intervening Event.

9.5 Performance during Trial Period

(a) The Project Company shall ensure that at all times during the Trial Period the system is managed, operated, repaired, and maintained by the Project Company so that performance of the system measured by the Performance Indicators in accordance with Section 10, meets or exceeds the applicable Performance Targets set forth in Appendix F.

(b) If in any calendar quarter during the Trial Period, the performance of the systemreported pursuant to Section 10 is below the Performance Targets specified in Appendix F ***[description of consequences of failure to meet Performance Targets]***.

(c) In measuring performance for the purposes of this Section 9.5, periods where an Intervening Event shall excuse the Project Company's compliance with the requirements of Sections 9.5 (a) and (b) pursuant to the provisions of Section 9.7 below, shall be omitted in respect of those areas of the system to the extent directly affected by such Intervening Event.

9.6 Performance following Trial Period

(a) The Project Company shall ensure that at all times following the conclusion of the Trial Period the system is managed, operated, repaired, and maintained by the Project Company so that performance of the system measured by the Performance Indicators in accordance with Section 10, meets or exceeds the applicable Performance Targets set forth in Appendix F.

(b) If in any calendar quarter following the conclusion of the Trial Period, the performance of the system reported pursuant to Section 10 is below the Performance Targets specified in Appendix F ***[description of consequences of failure to meet Performance Targets]***.

(c) In measuring performance for the purposes of this Section 9.6, periods where an Intervening Event shall excuse the Project Company's compliance with the requirements of Sections 9.6(a) and (b) pursuant to the provisions of Section 9.7 below, shall be omitted in respect of those areas of the system to the extent directly affected by such Intervening Event.

9.7 Intervening Events

The Project Company shall not be in breach of any of its obligations under this Agreement (including any obligation to comply with a time requirement) in respect of the performance of the system under Sections 9.4, 9.5, and 9.6 in the following circumstances:

(a) Force Majeure.

(b) Prolonged breakdown or disruption of the electrical supply not attributable to the negligence of the Project Company.

(c) A failure of the bulk water supplier to supply bulk water in accordance with the terms and conditions of the Bulk Water Supply Agreement.

(d) By reason of any defect or deficiency which existed as at the date of taking over of the existing facilities but which could not, by the relevant date, have been corrected by the exercise of good utility practice.

(e) Non-performance by the Project Company of any obligation which will or may, if performed, breach, any applicable Egyptian Law or regulation.

(f) Any material default, act or omission by Grantor.

[The types of events described in this Section 9.7 are examples of the types of issues to be carefully considered in evaluating the proper allocation of risks for a given project. The draft provisions are illustrative only and the specific terms to be included should be tailored to the needs of each particular project.]

9.8 Cooperation among Network Operators to Achieve Performance Objectives

The Project Company shall at all times cooperate with Grantor and other water treatment facility operators in Egypt to ensure that there is an adequate and timely flow of information between them such that appropriate network planning and provisioning can occur and below-target or otherwise unacceptable performance of the system or the systems operated by such other operators is not due to inadequate or untimely provision of such information.

10. Reporting Requirements

10.1 Methods Report

(a) The Project Company shall be responsible for establishing appropriate systems to obtain data and perform calculations in order to measure the performance indicators and to prepare reports describing performance of the system. Prior to implementing any such system, the Project Company shall report in writing (a "Methods Report") to Grantor describing in detail the performance indicator to which such system relates, the methodology for calculating the performance indicator, the system to be implemented to obtain data and perform calculations in order to measure the performance indicator, and the format of the reports to be prepared for submission to Grantor. A revised Methods Report shall also be prepared and submitted to Grantor prior to implementing any change to the methodology, routine system, or report applicable to a performance indicator. The

initial Methods Reports shall be delivered to Grantor within *[six (6)]* months after the implementation date. Method Reports shall be prepared in Arabic.

(b) Within *[two (2)]* months of receipt of a Methods Report or a revised Methods Report, (i) if a Methods Report or revised Methods Report is acceptable to it, Grantor shall so certify in writing to the Project Company or, (ii) if, following Grantor's review of a methods report submitted to it by the Project Company, Grantor requires changes in the methodology, systems, or reports described in the methods report or revised methods reports, Grantor shall advise the Project Company, and the Project Company shall promptly implement the changes so required and shall submit a revised methods report to Grantor for review and approval.

10.2 Measurement Reports

In accordance with applicable methods reports, performance indicators shall be measured and calculated by the Project Company on a daily basis for the system and each reporting area identified in Appendix I and submitted in quarterly reports to Grantor. Reports shall be prepared in Arabic and shall be submitted within *[thirty (30)]* Business days after the calendar quarter to which they apply. Source data applicable to a report shall be retained by the Project Company for a period of at least *[thirty-six (36)]* months after the report is submitted and shall be furnished to Grantor upon demand.

10.3 Content of Reports

Where a quarterly report discloses a Performance Indicator for the system or any component thereof or a reporting area that is below the applicable Performance Target during any relevant period, the Project Company shall include in the report a full explanation for the below-target performance, the steps that it has taken and will be taking to ensure that performance is improved, and the time frame for their implementation. Where the cause of the below-target performance is not entirely the responsibility of the Project Company, the Project Company shall include in its report a full explanation of the problem and its recommended solution, the steps it has taken to help bring about a solution and the results achieved or expected to be achieved.

10.4 Supplemental Reports

Upon the request by Grantor, the Project Company shall prepare and submit supplemental reports related to below-target performance of a performance indicator, or any other category of performance related to the system, or any component thereof, or any area of the territory under its control. The supplemental reports shall measure and report such components as Grantor shall specify, shall be submitted with such frequency as Grantor shall designate, and shall continue for so long as Grantor shall require. Any such supplemental reports shall be prepared in Arabic.

10.5 Special Audit

Grantor shall have the right at any time, and from time to time, to audit the collection of data and the calculation of performance indicators or other categories of performance related to the system. The Project Company shall provide full access to the system, any facilities under

the control of the Project Company in the territory and its premises and records, and shall cooperate fully with Grantor in connection with any such audit.

11. Cooperation Agreement Implementation Supervision Committee

11.1 Regulatory and Monitoring Functions

(a) The Parties acknowledge that pursuant to *[appropriate law or decree]*, a Cooperation Agreement Implementation Supervision Committee (the "Committee") shall perform regulatory and monitoring functions with respect to the Project Company.

(b) The Parties further acknowledge that the Committee will review programs of work and other plans with respect to the design, construction, and financing of the Project and will review changes to the procedure or method of reports made by the Project Company regarding compliance with performance standards under Section 9.

12. Working Committee

12.1 Creation of Working Committee

The Parties agree that a Working Committee will be created as a subcommittee of the Committee on or before the implementation date, which will operate during the project period.

12.2 Function

The Parties contemplate that the Working Committee will fulfill the specific responsibilities assigned to it by the Committee, including reviewing Management and Operations Plans and changes to Method Reports and the review of the transfer of Grantor Employees pursuant to Section 19.2. The Working Committee will also be the initial forum for consultation, coordination, and the resolution of disputes between the Private Party and Grantor regarding the Project Company and the Project, including matters relating to the construction of the new facilities pursuant to the Construction Agreement, the overall management and operation of the Project Company, and all financial and accounting matters relating to the Project Company, including the appointment of the auditors.

12.3 Membership

The Parties contemplate that the Working Committee will be composed of *[number]* members and that the Committee will have the right to appoint *[number]* members with full rights of substitution at any time and the Project Company will have the right to appoint *[number]* members with full rights of substitution at any time.

13. Management of Project Company

13.1 President

The Project Company shall be headed by a President appointed by the Private Party in accordance with Section 13.2. Except as provided for herein, the President shall have full and complete day-to-day management, financial, and operational control and responsibility for

the Project Company. Without limiting the generality of the foregoing and subject always to the terms of this Agreement, the President shall be responsible for the implementation of Management and Operations Plans and, subject to Section 13.2, for the implementation of the appointment, replacement, and determination of the terms of employment of the Senior Project Company Management and all Project Company Employees and subcontractors, including the Grantor Employees.

13.2 Appointment of President and Senior Management of Project Company

(a) The Private Party may from time to time by notice to Grantor propose candidates for Senior Project Company Management and shall set out in such notice the relevant background, experience, and qualifications of the candidate.

(b) Grantor shall have ***[thirty (30)]*** calendar days from the date of receipt of such notice to give notice to the Private Party either approving or deferring the appointment of the candidate proposed by the Private Party. If Grantor fails to give such notice to the Private Party within such ***[30-day]*** period it shall be deemed to have approved the appointment of a proposed candidate.

(c) If Grantor gives a notice deferring the appointment of the candidate it shall set out in such notice the reasons why it has done so and the Private Party shall in good faith reconsider the appointment of such candidate. The Private Party may thereafter either nominate another candidate, in which case the provisions of this Section 13.2 shall apply to such nomination, or confirm the nomination of the same candidate, in which case the matter will be referred to the Working Committee for further consideration.

13.3 Auditors of the Project Company

The auditors of the Project Company (the "Auditors") shall be a reputable ***[international/Egyptian]*** firm of auditors appointed by the Working Committee. The Auditors shall audit and report on the annual financial statements of the Project Company and perform such other services as may be provided for in this Agreement or in theConstruction Agreement or as may be requested from time to time by the President or the Working Committee. The reasonable fees and expenses of the Auditors incurred in respect of the Project Company shall be paid by the Project Company. Unless otherwise directed by the Working Committee or required by this Agreement or applicable law, the Auditors shall perform all audits and other tasks using reasonable commercial assumptions and Egyptian generally accepted accounting principles, consistently applied.

13.4 Transactions with Affiliates of the Private Party

Any contract or other transaction entered into by the Project Company with an Affiliate of the Private Party in connection with the operation of the system or the construction of the new facilities, whether for the purchase of goods or services or otherwise, shall be made on terms no more favorable to such affiliate than the commercial terms which would reasonably be expected to apply in the open market between contracting parties which are notaffiliates. Without limiting the generality of the foregoing, in no event shall the Project Company, directly or indirectly, pay more than fair market value for goods or services supplied to it by affiliates of the Private Party. The auditors shall verify compliance with this Section 13.4 and shall promptly report any non-compliance to Grantor.

13.5 Management and Operations Plan

(a) The Project Company shall be operated at all times in accordance with a Management and Operations Plan approved annually under this Section 13.5. The Management and Operations Plan attached hereto as Appendix L is hereby approved as the plan for the first year of Project Company operations following the Implementation Date. Not later than ***[date when Management and Operations Plan will be submitted each year]*** of each year, the President shall prepare and submit to the members of the Committee for their review and approval a draft Management and Operations Plan, including Performance Targets as set out in Appendix F, with respect to the next succeeding year. Following discussion and consultation in good faith with the Committee, the President shall make changes, if any, to such plan as the Committee deems advisable and shall thereafter resubmit the draft Management and Operations Plan to the Committee for their review and approval. A copy of all Management and Operations Plans approved pursuant to this Section 13.5 shall be delivered forthwith by the President to all members of the Committee and to each of the Parties.

(b) An approved Management and Operations Plan may be changed from time to time with the approval of the Committee. Notice of all approved changes to a Management and Operations Plan, including a copy of the revised plan, shall be delivered forthwith by the President to all members of the Committee and to each of the Parties.

(c) The Management and Operations Plan shall contain plans for the management and operation of the Project Company and the system to a world-class standard and shall include at a minimum: a detailed work program, business plan, personnel plan, and financial performance targets for the relevant year and plans relating thereto for the subsequent five years; detailed information in respect of the organizational and management structure of the Project Company; the job descriptions and qualifications for the Senior Project Company Management; the identity, terms of engagement, and scope of work to be performed by any third party contractors; the specific steps to be taken with a view to achieving all applicable performance targets; plans for the maintenance and repair of the system, including performance measurement methodologies; and the human resource and research-and-development plans to be pursued with a view to meeting the obligations set out in Sections 19 and 20.

14. Supply of Bulk Water

14.1 Bulk Water Supply Agreement

The Parties acknowledge that bulk water shall be supplied by the bulk water supplier pursuant to the terms and conditions of the Bulk Water Supply Agreement, the form of which is attached hereto as Appendix A.

14.2 Bulk Water Quality and Quantity

[This provision is only appropriate in the event that Grantor is not the Bulk Water Supplier.]

(a) [Grantor shall, from the implementation date, work together with the Bulk Water Supplier to ensure that the quality and quantity of bulk water is in accordance with the requirements set forth in the Bulk Water Supply Agreement.]

(b) [The Project Company shall, during the Project Period, inform Grantor as soon as reasonably practicable after it becomes aware of any failure of the Bulk Water Supplier to meet the requirements in respect of quantity and/or quality set forth in the Bulk Water Supply Agreement which cannot be dealt with by the treatment processes installed at the facilities. In this event, Grantor and the Project Company shall work together to find a solution to remedy the situation.]

15. Sale of Treated Water

15.1 Service to Customers

(a) Subject to this Agreement, the Project Company shall be entitled to levy from customers the Customer Tariff, as adjusted from time to time, in accordance with this Agreement.

(b) Adjustments to the Customer Tariff shall be effective only after all necessary approvals have been obtained for such adjustments, including approvals required by *[the appropriate regulatory agency and/or Grantor].*

15.2 Customer Service Agreements

(a) The Project Company shall enter into individual agreements (the "Customer Service Agreements") with consumers which shall contain, *inter alia*, the following:

i. An obligation on the Project Company to provide an uninterrupted supply of treated water no later than *[seven (7)]* calendar days after execution of a Customer Service Agreement with exceptions only for intervening events or other genuine emergency affecting the consumer's premises.
ii. Provisions for full maintenance and repair by the Project Company of meters, pipes, and connections at no cost to the consumer (except for vandalism, theft, or misuse by the consumer).
iii. Provisions regarding free or nominal charges for meters and regular testing and replacement of meters.
iv. Annual subscription renewals and monthly billing cycles.
v. Provisions regarding complaint and emergency response procedure.

(b) Grantor may enter into water-purchase agreements, on terms to be mutually agreed, with the Project Company as a consumer of treated water required for public purposes within the territory; *provided, however,* that the Project Company shall not be entitled to charge for the provision of *[description of any services which will be provided to the public or to certain organizations at no charge or at a reduced charge (e.g., fire hydrants)]* The costs of installation and maintenance of such service will be included in the overall costs of the services provided by the Project Company under this Agreement.

(c) The Project Company shall undertake all procedures for billing and collecting payment from all customers in accordance with a billing and collection procedures manual which

shall be developed by the Project Company with the assistance of Grantor within *[six (6) months]* of the Implementation Date.

(d) The Project Company shall implement procedures requiring payment by consumers within reasonable periods, and shall not take steps to cut off water supply earlier than *[sixty (60)]* calendar days following the date of an invoice.

(e) All invoices sent to consumers must be in Arabic and be readily comprehensible, and shall separate each of the relevant elements of the charges included in the invoice.

15.3 Metering

(a) The flow meters used to measure the Treated Water produced at the outlets at the Production Facilities shall be of a type approved by Grantor and shall be tested by the Project Company as to their accuracy in accordance with the manufacturer's recommendations. If the meters are found to be defective or inaccurate they shall be adjusted, calibrated, repaired, or replaced by the Project Company at its cost and the quantity of the Treated Water produced by each of the Production Facilities during any period when the meters are defective or inaccurate will be calculated by deducting the quantity of water lost in the water treatment process (as based on historical data and information) from the quantity of Bulk Water received at the Production Facilities.

(b) The Project Company and Grantor shall, on the last working day of each calendar month during the Project Period, jointly carry out a reading of all the flow meters at the outlets to the Production Facilities and jointly issue a certificate (the "Monthly Certificate") to certify the record of such reading. If Grantor fails to have a representative present, the Project Company nevertheless may issue the Monthly Certificate which shall be final and binding upon Grantor unless objected to in writing by Grantor within fourteen (14) Business days after receiving such Monthly Certificate.

16. Financial Reports; Audits

16.1 Fiscal Year

The Project Company shall have a fiscal year ending *[December 31]* in each year.

16.2 Quarterly Financial Reports

The Project Company shall prepare quarterly financial statements for the Project Company in accordance with Egyptian generally accepted accounting principles, consistently applied. Such quarterly financial statements shall be reviewed by the Auditors. The unaudited quarterly financial statement shall be submitted to Grantor and the Committee within *[thirty (30)]* Business days after the closing of the books of each quarter during the Project Period. Within *[sixty (60)]* Business days after the closing of the books for that quarter, the President shall prepare and submit to Grantor and the Committee quarterly reports on the management, operations, and finance of the Project Company, including copies of the quarterly financial statements (audited, if required by law) and any notes and comments by the Auditors thereon, all calculations required to be set out therein for purposes of this Agreement, progress reports made with reference to the Management and Operations Plans, and reports on any other

matters which the President may deem relevant or which may reasonably be requested by Grantor or the Committee.

16.3 Annual Audit and Financial Report

The management of the Project Company shall prepare annual financial statements for the Project Company in accordance with Egyptian generally accepted accounting principles, consistently applied. Such annual financial statements shall be audited by the Auditors. Within ***[ninety (90)]*** calendar days after the end of each year during the Project Period, the President shall prepare and submit to Grantor and the Committee an annual report on the management, operations, and finance of the Project Company during the preceding year, including copies of the audited financial statements with the Auditors' notes and comments thereon, all calculations required to be set out therein for purposes of this Agreement, progress reports made with reference to the Management and Operations Plan for the preceding year, and reports on any other matters which the President may deem relevant or which may reasonably be requested by Grantor or the Committee. In addition to the foregoing, the Project Company shall provide to Grantor on a timely basis all financial information in respect of Project Company operations reasonably required to permit Grantor to satisfy its financial reporting requirements.

16.4 Government Audit

At the request of the Government, the Project Company shall be subject to an annual audit by ***[relevant Egyptian auditing agency, if any]*** in accordance with Egyptian generally accepted accounting principles, consistently applied. The Project Company shall provide to such auditor all such financial and other information in respect of its operations and all such access to its management personnel as may reasonably be requested by such auditor for purposes of such audit. The Project Company shall take or refrain from taking all action within its control as may be necessary to ensure that such annual audit reports are unqualified.

17. Finance

17.1 Source of Funds

(a) The Project Company shall be operated on a stand-alone, self-financing basis, and Grantor shall not be required to contribute funds to finance its operations.

(b) All financing required in connection with the construction of the new facilities pursuant to the Construction Agreement or any additional works pursuant to any Additional Works Agreements shall be provided or arranged for by the Project Company without recourse of any kind to Grantor.

(c) Grantor shall not be required to guarantee any of the obligations of the Project Company in connection with the system or the construction of the new facilities, or any additional works, and shall not have any liability whatsoever, whether directly or indirectly, to the Project Company (except as expressly provided for herein, in the Construction Agreement, or in any relevant Additional Works Agreement) or their respective creditors, lenders, or other financial backers, contractors, or suppliers in relation to the Private Party's or the Project Company's investment under this Agreement ***[or the Construction Agreement]***.

(d) If at any time the revenues of the Project Company are insufficient to meet Project Company Operating Expenses and the other liabilities of the Project Company as they fall due or the contribution of funds to the Project Company is necessary to preserve or safeguard the assets or employees of the Project Company or to prevent the insolvency of the Project Company, the Private Party shall immediately contribute funds to the Project Company in an aggregate amount sufficient to cover all such operating expenses and other liabilities or to prevent the occurrence of the other events as aforesaid.

17.2 Escrow Arrangements

[Depending on the revenue and profit-sharing structure that is agreed between the parties with respect to a particular project, it may be desirable to include provisions relating to the establishment of an escrow account into which amounts payable to the Project Company are deposited.]

18. Insurance

18.1 Insurance Policies

The Project Company, at its sole cost and expense, shall obtain and maintain the policies of insurance described herein and in Appendix M hereto in the amounts and on the terms set forth herein and therein and during the periods mentioned therein, as such amounts and terms may be modified from time to time with the prior written consent of Grantor. Nothing shall prevent the Private Party or the Project Company, at its sole cost and expense, from procuring insurance coverage in addition to those specified herein or in Appendix M.

18.2 Endorsements

(a) The Project Company shall cause its insurers to provide the following endorsement items in its comprehensive or commercial general liability insurance policies and, if applicable, umbrella or excess liability policies relating to the ownership, construction, operation, and maintenance of the system:

i. Grantor and its employees shall be additional insured parties under such policies.
ii. The insurance shall be primary with respect to the interest of Grantor and its employees and any other insurance maintained by them is excess and not contributory with such policies.
iii. Notwithstanding any provision of the policies, the policies may not be cancelled, non-renewed, or materially changed by the insurer without giving thirty (30) business days' written notice or, in the case of cancellation for non-payment of premium, ten (10) business days' written notice to Grantor.

(b) The Project Company shall cause its insurers to provide the endorsement referred to in Section 18.2(a) in its construction, erection, all-risks, and all-risks property/boiler machinery insurance policies covering the project.

(c) Each Grantor and the Project Company shall cause its insurers to waive all rights of subrogation against the other Party and against the other Party's employees and contractors in respect of a claim arising under its insurance policies, unless such claim

arises from willful misconduct or gross negligence of the other Party or the other Party's employees or contractors.

18.3 Insurance Certificates

The Project Company shall cause its insurers or agents to provide Grantor with certificates of insurance evidencing the policies and terms specified in this Section 18 and in Appendix M hereto. Failure by the Project Company to obtain the insurance coverage or certificates of insurance required by this Section 18 or Appendix M shall not relieve the Project Company of the insurance requirements set forth herein or therein or in any way relieve or limit the Project Company's obligations and liabilities under any other provision of this Agreement. If the Project Company shall fail to procure or maintain any insurance required pursuant to this Section 18 or Appendix M, then Grantor shall have the right to procure such insurance at the Project Company's expense, provided Grantor shall have given ***[thirty (30)]*** business days' prior written notice to the Project Company of its intention to exercise such right, unless such intention arises from the Project Company's non-payment of premiums for existing insurance, in which case Grantor shall have given at least ***[five (5)]*** business days' written notice of such intention.

19. Personnel

19.1 Employees of the Project Company

Employees of the Project Company shall consist of Grantor employees and the additional Project Company employees. All employment and labor policies of the Project Company shall be in accordance with applicable law in Egypt.

19.2 Grantor Employees

(a) Grantor Employees seconded by Grantor to the Project Company shall remain employees of Grantor but shall be subject to all applicable employment rules and policies of the Project Company in force from time to time. The compensation and other benefits payable to the Grantor Employees during the Project Period shall be as determined by the management of the Project Company from time to time; *provided, however*, that any dismissal or transfer of a Grantor Employee or any reduction in employment, security compensation, or benefits of Grantor Employees below levels in effect on the implementation date shall be made in accordance with applicable rules and policies of Grantor and must be approved in advance in writing by Grantor, such approval not to be unreasonably withheld or delayed.

(b) Grantor may on ***[three (3)]*** months prior written notice to the President transfer any Grantor employee out of the Project Company. All such transfers shall be made in a manner that avoids any undue disruption in the operation of the Project Company. All transfers of Grantor employees will be reviewed by the Working Committee, which shall meet no less often than once every ***[three (3)]*** months for such purpose, and shall be coordinated with the requirements of Grantor. Notwithstanding the foregoing, if the President, acting reasonably, believes that any proposed transfer of Grantor Employees will cause undue disruption to the operations of the Project Company, the transfer shall be deferred pending review by the Working Committee of the proposed transfer.

(c) The President shall consult with the Working Committee prior to making any change in the organizational structure of the Project Company and shall consider the qualifications, experience, and previous position of Grantor Employees in assigning them responsibilities in the Project Company. The Project Company shall not employ or otherwise retain the services of any of the Grantor Employees for any purpose except as contemplated by this Agreement, the Construction Agreement, or an Additional Works Agreement.

19.3 Additional Project Company Employees

In the event Grantor is unable to fulfil the requirement for employees in accordance with the criteria set by the President, subject to the terms ofthis Section 19, the Private Party may hire additional project company employees to work for the Project Company. Such additional Project Company employees shall be seconded by the Private Party or employed directly by the Project Company to work exclusively in the Project Company but shall not be employees of Grantor. All costs incurred by the Project Company in connection with the hiring of such additional employees and all remuneration and other benefits paid to them shall be borne by the Project Company. The President shall fix the terms of employment for all such additional Project Company employees, provided that no additional Project Company employees except for consultants and experts shall receive remuneration or benefits greater than those paid to Grantor employees with equivalent qualifications performing similar work under similar conditions.

19.4 Egyptian Nationals

Wherever, possible Egyptian nationals shall be employed at all levels of the Project Company. Any expatriate employees or consultants employed in the Project Company shall be replaced in accordance with applicable law with qualified Egyptian nationals as soon as reasonably practicable. A majority of the senior Project Company management shall be Egyptian nationals at all times during the project period.

19.5 Human Resource Standards Applicable to Grantor Employees

The provisions of Appendix N will apply to the Grantor Employees.

19.6 Status of Project Company Employees upon Termination of Agreement

Upon termination of this Agreement the Grantor Employees shall remain employees of Grantor. Unless Grantor agrees to the contrary in writing, at the end of the project period, Grantor shall have no obligation to continue the employment or contract of any additional Project Company employees. All costs and expenses associated with the termination of the employment or contracts of any additional Project Company employees which Grantor does not agree to assume after the end of the project period shall be borne by the Project Company.

19.7 Education and Training

(a) During the project period, the Project Company shall implement education and training programs designed to upgrade the skills of the Grantor Employees assigned to the Project Company with a view to bringing the skill levels of such employees up to the level required to operate and manage all aspects of the system to world class standards. In each

fiscal year during the project period, the Project Company shall devote a minimum of *[___%]* of the Project Company's revenue to such programs.

(b) The Project Company shall prepare and send to Grantor within *[fourteen (14)]* business days after the end of each fiscal year of the Project Company an annual report describing in detail the education and training programs and such other activities as may have been undertaken in respect of the training of the Grantor Employees employed in the operation of the Project Company or in the construction work carried out pursuant to the Construction Agreement, the expenditures incurred in connection with such programs or other activities, the number, names, and categories of employees that participated in such programs or other activities, and the results achieved.

(c) At the end of each fiscal year of the Project Company the Auditors shall determine the amount of money spent by the Project Company in the preceding year of training and education programs for Grantor Employees. If such actual expenditures in a given year are less than the commitment for that year fixed in Section 19.7(a), an amount equal to the difference between the amount of the commitment for that year and such actual expenditures, as determined by the Auditors, shall be deducted from subsequent payments which may be payable to the Project Company from time to time by Grantor until the full amount of such shortfall has been deducted. The amount so deducted shall be used by Grantor to retain a third party to conduct education and training programs.

(d) All training manuals and other materials prepared in connection with education and training programs conducted by the Project Company pursuant to Section 19.7(a) shall be provided to Grantor by the Project Company upon transfer of the system to Grantor.

20. Research and Development

20.1 Objective

The Project Company shall conduct or support research and development within Egypt in areas related to water treatment and distribution and with a view to improving the nation's water treatment and distribution system and increasing its international role in the development of water treatment and distribution in Egypt. In each fiscal year the Project Company shall devote a minimum of *[___%]* of its revenue to research and development activities in Egypt in accordance with this Section 20.1. All such research and development projects shall be approved by and coordinated with Grantor.

20.2 Report

The Project Company shall prepare and send to Grantor within *[forty-five (45)]* business days of the end of each of its fiscal years an annual report describing in detail the research and development activities undertaken or supported by the Project Company and the expenditures incurred in that regard.

20.3 Shortfall

At the end of each fiscal year of the Project Company, the Auditors shall determine the amount of money spent by the Project Company on research and development programs in the preceding year. If such actual expenditures in a given year are less than the commitment

for that year fixed in Section 20.2, an amount equal to the difference between the amount of the commitment for that year and such actual expenditures, as determined by the Auditors, shall be deducted from subsequent payments which may be payable to the Project Company from time to time by Grantor until the full amount of such shortfall has been deducted. The amounts so deducted shall be paid to an institution selected by Grantor and to support research and development programs in accordance with Section 20.1.

21. Representations and Warranties

21.1 Representations and Warranties of the Private Party

The Private Party hereby represents and warrants to Grantor as follows:

(a) The Private Party is a ***[description of the type of the company; e.g., limited liability]*** company established and operating under the laws of ***[name of the country in which the company is incorporated]*** with the legal status, power, and capacity to enter into this Agreement and the project documents to which it is a party and to perform its obligations hereunder and thereunder.

(b) This Agreement and the Project documents to which it is a Party constitute legally valid and binding obligations of the Private Party enforceable against the Private Party in accordance with their respective terms, and the person or persons signing this Agreement and the project documents to which it is a party on behalf of the Private Party are duly empowered to do so.

(c) The following is a complete and accurate list of all persons having a direct or indirect legal or beneficial ownership interest in the Private Party and correctly states the number of shares held and the respective percentage share ownership: ***[Provide description of share ownership].***

21.2 Representations and Warranties of the Project Company

The Project Company hereby represents and warrants to Grantor as follows:

(a) The Project Company is a ***[description of the type of the company; e.g., limited liability]*** company established and operating under the laws of Egypt with the legal status, power, and capacity to enter into this Agreement and the project documents to which it is a party and to perform its obligations hereunder and thereunder.

(b) This Agreement and the project documents to which it is a party constitute legally valid and binding obligations of the Project Company enforceable against the Project Company in accordance with their respective terms, and the person or persons signing this Agreement and the project documents to which it is a party on behalf of the Project Company are duly empowered to do so.

(c) The following is a complete and accurate list of all persons having a direct or indirect legal or beneficial ownership interest in the Project Company and correctly states the number of shares held and the respective percentage share ownership: ***[Provide description of share ownership].***

21.3 Representations and Warranties of Grantor

Grantor hereby represents and warrants to the Private Party and the Project Company that it has the requisite legal status power and capacity to enter into this Agreement and the project documents to which it is a party and to perform its obligations hereunder and thereunder, and that this Agreement and the project documents to which it is a party constitute legally valid and binding obligations enforceable against Grantor in accordance with their respective terms, and the person or persons signing such agreements on behalf of Grantor are duly empowered to do so.

22. Certain Obligations of Grantor

22.1 Good Faith

Grantor shall perform its obligations under this Agreement and the project documents to which it is a party promptly, diligently, in good faith, and in a cooperative spirit in accordance with all applicable law, and shall promptly take all action within its power to cause the Project Company, the Grantor Employees, and members of the Working Committee appointed by it to comply with and perform this Agreement and the project documents to which it is a party.

22.2 Access to Information

Grantor shall, on written request, without charge and within a reasonable time, grant the Project Company access to all pertinent information in its possession and relevant to the operation of the system or the construction of the new facilities and which is not subject to an obligation of confidentiality.

22.3 Access to Facilities

Grantor shall, without charge, provide the Project Company, its employees, and subcontractors access to and use of its sites, locations, facilities,and other assets as may be reasonably required for purposes of the operation of the system and the construction of the new facilities pursuant to this Agreement and the Construction Agreement.

22.4 Cooperation

Grantor shall not knowingly take or omit to take any action which could interfere with or interrupt the normal functioning of the system in the territory except in accordance with applicable law or with reasonable cause relating to the safe and proper operation of the Egyptian water treatment and distribution network.

22.5 Indemnity

Grantor shall indemnify and hold harmless the Project Company or Private Party, as the case may be, in respect of all damages, losses, or costs incurred by the Project Company or the Private Party, as the case may be, as the result of any material breach by Grantor or any of its employees or subcontractors of any term, representation, warranty, covenant, or other obligation in this Agreement, any Additional Works Agreement, or any project document to which it is a party. Grantor shall further indemnify and hold harmless the Project Company or

the Private Party, as the case may be, in respect of all damages, losses, or costs incurred by the Project Company or the Private Party, as the case may be, as a result of any action, suit, proceeding, or claim made by third parties who have suffered loss, injury, or damage as a result of the gross negligence or willful misconduct of Grantor in connection with the project, this Agreement, or any project document to which it is a party. The indemnification provided for in this Section 22.5 shall survive the termination of this Agreement. In no case shall the Project Company or the Private Party be entitled to its indirect or consequential losses or damages, whether or not such losses or damages are subject to this indemnity.

23. Certain Obligations of the Private Party

23.1 Good Faith

The Private Party shall perform each of its obligations under this Agreement and the project documents to which it is a party promptly, diligently, in good faith, and in a cooperative spirit in accordance with all applicable law and shall promptly take all action within its power to cause the Project Company, the Employees, the President, and all subcontractors engaged by it to comply with and perform this Agreement and the project documents to which it is a party.

23.2 Compliance with Applicable Laws and Regulations

The Private Party shall comply with all applicable legal requirements and shall comply in all material respects with and shall keep in full force and effect all government authorizations required to be in its name for the performance of its obligations under this Agreement or any project document to which it is a party.

23.3 Conduct of the Private Party

At all times during the Project Period the Private Party shall exercise complete control over its personnel and subcontractors connected with the Project, including any employees seconded to the Project Company as Additional Project Company Employees, and shall cause such personnel and subcontractors to comply with all applicable Egyptian laws, regulations, ordinances, and all applicable policies of the Project Company, and to conform to a high standard of moral and ethical conduct. The Private Party shall take prompt action in accordance with applicable law to dismiss or discipline any of its personnel or subcontractors who do not conform to such standards and shall take prompt action at its own expense to correct any violations of such standards brought to its attention. The Private Party further agrees to take prompt action to cause all its personnel and subcontractors to comply with the terms of this Agreement and the Project documents to which it is a party in accordance with applicable law and with a view to ensuring the efficient and cost-effective carrying out of construction activities and operation of the system and all construction activities in accordance with the terms of such agreements.

23.4 Standard of Conduct

The Private Party shall fulfil its obligations under this Agreement and the Project documents to which it is a party by using the highest level of knowledge, experience, and expertise in accordance with recognized international professional standards. The Private Party shall further take all such action as may reasonably be necessary to ensure that the new facilities

are constructed and the system operated in accordance with all applicable laws and international professional standards and, without limiting the generality of the foregoing, shall ensure that all such operations comply with applicable environmental and employee health and safety laws.

23.5 Ownership of the Project Company

During the Project Period the Private Party shall not sell, transfer, pledge, assign, nor otherwise encumber any of its rights in, or to all or any part of its interest in, the Project Company without the prior written consent of Grantor; *provided, however*, that the Private Party may mortgage, pledge, or otherwise encumber its interest in the Project Company in favor of a reputable third party financial institution for purposes of facilitating the financing of the construction pursuant to the Construction Agreement or an Additional Works Agreement in accordance with a technical and construction plan approved by Grantor.

23.6 Cooperation

The Private Party shall not knowingly take or omit to take or cause the Project Company to take or omit to take any action which could interfere with or interrupt the normal functioning of the business operations of Grantor inside or outside the Project Territory, including the operation of other water treatment plants and systems. The Private Party shall immediately notify or cause the Project Company to notify Grantor of any fact or circumstance which comes to its attention and which could cause such interruption or interference.

23.7 Indemnity

The Private Party shall indemnify and hold harmless Grantor in respect of all damages, losses, or costs incurred by Grantor as a result of any material breach by the Private Party or the Project Company or any of their respective employees or subcontractors of any term, representation, warranty, covenant, or other obligation in this Agreement, any Additional Works Agreement, or any Project Document to which it is a party. The Private Party shall further indemnify and hold harmless Grantor in respect of all damages, losses, or costs incurred by Grantor as a result of any action, suit, proceeding, or claim made by third parties, including subcontractors and suppliers of the Private Party or the Project Company and members of the public, who have suffered loss, injury, or damage as a result of the negligence or willful misconduct of the Private Party or the Project Company in connection with the construction, operation, maintenance, repair, or upgrading of the system or otherwise in any manner relating to the project, this Agreement, or any project document to which it is a party. The indemnification provided for in this Section 23.7 shall survive the termination of this Agreement. In no case shall Grantor be entitled to its indirect or consequential losses or damages, whether or not such losses or damages are subject to this indemnity.

24. Certain Obligations of the Project Company

24.1 Good Faith

The Project Company shall perform each of its obligations under this Agreement and the Project documents to which it is a party promptly, diligently, in good faith, and in a cooperative spirit in accordance with all applicable laws and shall promptly take all action within its power to cause the Project Company employees, the President, and all

subcontractors engaged by it and the members of the Committee appointed by it to comply with and perform this Agreement and the project documents to which it is a party.

24.2 Compliance with Applicable Laws and Regulations

The Project Company shall comply with all applicable legal requirements and shall comply in all material respects with and shall keep in full force and effect all government authorizations required to be in its name for the performance of its obligations under this Agreement or any project document to which it is a party.

24.3 Conduct of the Project Company

At all times during the project period the Project Company shall exercise complete control over its personnel and subcontractors and shall cause such personnel and subcontractors to comply with all applicable Egyptian laws, regulations, ordinances, and all applicable policies of the Project Company and to conform to a high standard of moral and ethical conduct. The Project Company shall take prompt action in accordance with applicable law to dismiss or discipline any of its personnel or subcontractors who do not conform to such standards and shall take prompt action at its own expense to correct any violations of such standards brought to its attention. The Project Company further agrees to take prompt action to cause all its personnel and subcontractors to comply with the terms of this Agreement and the project documents to which it is a party in accordance with applicable law and with a view to ensuring the efficient and cost-effective carrying out of all construction activities and operation of the system and all construction activities in accordance with the terms of such agreements.

24.4 Standard of Conduct

The Project Company shall fulfill its obligations under this Agreement and the project documents to which it is a Party by using the highest level of knowledge, experience, and expertise in accordance with recognized international professional standards. The Project Company shall further take all such action as may reasonably by necessary to ensure that the new facilities are constructed and the system operated in accordance with all applicable laws and international professional standards and without limiting the generality of the foregoing, shall ensure that all such operations comply with applicable environmental and employee health and safety laws.

24.5 Financing of the Project Company

At all times during the project period the Project Company shall maintain a debt to equity ratio such that the equity portion of its total financing is at no time less than*[___percent]*.

24.6 Ownership of the Project Company

(a) The Project Company shall not make or permit any change in its ownership during the Project Period without the prior written consent of Grantor. The Project Company will promptly notify Grantor of any actual or proposed change in its ownership structure of which it becomes aware. Notwithstanding the foregoing, all but not less than all of the shares in the Project Company may be pledged to a reputable financial institution in connection with the financing of the construction of the new facilities; *provided, however,*

that the identity of such financial institution and the form and content of such pledge shall be subject to the prior written approval of Grantor. Any such pledge shall require that if the financial institution to which the shares were pledged enforces its rights under the pledge, it shall be obligated to ensure within *[six (6)]* months from the date it takes action to enforce its rights pursuant to the pledge that a public water treatment plant operator satisfactory to Grantor is substituted for the current shareholders as the owner of not less than *[___percent]* of the shares of the Project Company.

(b) Should a financial institution in fact enforce its rights pursuant to such a pledge and fail to substitute an acceptable public water treatment plant operator in accordance with the terms of the pledge within the *[six (6)]* months period referred to above, Grantor shall have the option at any time thereafter to purchase the system from the Project Company.

24.7 Limitation on Encumbrances

During the Project Period the Project Company shall take all such action as may be necessary to protect and safeguard its right, title, and interest in the system and shall not sell, transfer, pledge, assign, or otherwise encumber any of its rights in or to all or any part of the system without the prior written consent of Grantor; *provided, however*, that the Project Company may mortgage, pledge, or otherwise encumber its interest in the system in favor of a reputable third party financial institution for purposes of facilitating the financing of the construction pursuant to the Construction Agreement in accordance with a technical and construction plan approved by Grantor and which provides that such financial institution agrees to subordinate its interest in the system to the rights of Grantor to acquire the system free and clear of any encumbrances in accordance with Section 25.5.

24.8 Integrated Facilities

The Project Company shall construct the new facilities and shall exercise its responsibilities in the operation of the system so that the existing facilities and the new facilities will operate in an efficient, cost-effective, and integrated manner in accordance with the standards and specifications established under this Agreement, the Construction Agreement, or any Additional Works Agreement.

24.9 Conduct of Tests

The Project Company shall ensure that the interconnection tests and the initial performance test in respect of the system are completed successfully within the construction period and that any further interconnection tests conducted pursuant to this Agreement, the Construction Agreement, or any Additional Works Agreement are successfully completed within the applicable time periods. The Project Company shall further diligently work at its own expense to remedy any deficiencies noted in the testing process and set out on a punch list created at the time of testing.

24.10 Cooperation

The Project Company shall not knowingly take or omit to take any action which could interfere with or interrupt the normal functioning of the business operations of Grantor inside or outside the territory, including the operation of other water treatment plants and systems.

The Project Company shall immediately notify Grantor of any fact or circumstance which comes to its attention and which could cause such interruption or interference.

24.11 Egyptian Participation

The Project Company shall and shall cause each of its contractors and subcontractors to:

(a) To the maximum extent permitted by the financing agreements and other documents as may be executed by the Project Company and its lenders, give preference to the use of construction equipment and other equipment, materials, and products produced and manufactured in Egypt.

(b) To the maximum extent permitted by the financing agreements and other documents as may be executed by the Project Company and its lenders, give preference to the use in the performance of its obligations under the obligations under the project documents to Egyptian labor for (both skilled and unskilled); Egyptian supervisory, professional, other personnel; Egyptian services; and Egyptian contractors.

(c) Use in respect of any insurance policies obtained in connection with the Project Egyptian insurance companies brokers and agents.

(d) Use Egyptian importers, agents, and freight forwarders, *provided, however*, that, in the case of (a) and (b), that such equipment, materials, products, personnel, service providers, and contractors are at least as reasonably appropriate to the Project Company as others available, taking into account price, quality, reliability, and schedule.

24.12 Other Business

Except as otherwise permitted hereunder, the Project Company shall not (i) engage in any business activity other than as reasonably required to perform its obligations and enjoy its rights under the project documents, (ii) enter into any agreement of merger, consolidation, or amalgamation with any entity, or (iii) except as may otherwise be required by a lender for the purpose of enforcing a financing agreement or other document as may be executed by the Project Company and its lenders, dispose of all or substantially all of its assets.

24.13 Indemnity

The Project Company shall indemnify and hold harmless Grantor in respect of all damages, losses, or costs incurred by Grantor as a result of any material breach by the Project Company or the Private Party or any of their respective employees or subcontractors of any term, representation, warranty, covenant, or other obligation in this agreement, any additional works agreement, or any project document to which it is a party. The Project Company shall further indemnify and hold harmless Grantor in respect of all damages, losses, or costs incurred by Grantor as a result of any action, suit, proceeding, or claim made by third parties, including subcontractors and suppliers of the Private Party or the Project Company and members of the public, who have suffered loss, injury, or damage as a result of the negligence or willful misconduct of the Private Party or the Project Company in connection with the construction, operation, maintenance, repair, or upgrading of the system or otherwise in any manner relating to the project, this agreement, or any project document to which it is a party. The indemnification provided for in this Section 24.13 shall survive the termination of

this agreement. In no case shall Grantor be entitled to its indirect or consequential losses or damages, whether or not such losses or damages are subject to this indemnity.

24.14 Taxes

Except for those taxes which are being contested in good faith, the Project Company shall promptly pay when due all taxes accruing from time to time following the implementation date to any government authority in Egypt in respect of the Project.

25. Events of Default and Termination

[The events of defaults are another fundamental element of risk allocation. Again, the following list is included only as an illustration of the type of events that may be included.]

25.1 Event of Default by the Private Party or the Project Company

This Agreement may be terminated by Grantor in accordance with Section 25.3 upon the occurrence of any one of the following events:

(a) Misrepresentation of a material fact or illegal conduct by the Private Party or the Project Company in connection with the bidding or negotiation process leading to the execution of this agreement, including without limitation of the generality of the foregoing, any communications with other actual or prospective bidders relating to bid-rigging or any agreement with other actual or prospective bidders with respect to any material aspect of a proposal.

(b) The Private Party or the Project Company ceasing to carry on business in the ordinary course or becoming insolvent, bankrupt, or otherwise unable to pay its liabilities as they fall due or the taking of any action by the Private Party or the Project Company in respect of a voluntary liquidation or winding up of its business.

(c) Failure of the Project Company to begin actual physical construction of the new facilities on a substantial scale within ***[nine (9)]*** months of the signing of this agreement.

(d) Substantial interruption or stoppage of the construction of the new facilities at any time during the construction period for a total of ***[twenty (20)]*** calendar days out of any period of ***[thirty (30) consecutive calendar days].***

(e) Failure of the Project Company to meet the construction timetable established pursuant to the Construction Agreement for ***[six (6) consecutive months].***

(f) Failure of the Project Company to complete construction and successfully pass inter-connection tests in respect of the new facilities prior to the end of the construction period.

(g) Failure of the integrated system comprised of the distribution performance test prior to the end of the construction period.

(h) The occurrence of any other material breach by the Private Party or the Project Company of any of its respective obligations under this agreement or the project documents to which it is a party, including the failure of the Private Party to make or cause the Project

Company to make payment to Grantor of any amounts when due, *provided, however*, that the occurrence of any such event will not entitle Grantor to terminate this agreement to the extent it constitutes an event of *Force Majeure* or to the extent to occurrence of such event can be clearly demonstrated by the Private Party or the Project Company as the case may be, to have been caused by (i) the failure of Grantor to take action as required by terms of this agreement, a Project Document to which it is a party, or any applicable law, or (ii) acts or omissions of an Egyptian Government Authority, to the extent such acts or omissions relate to the construction of the new facilities or the operation of the system.

25.2 Event of Default by Grantor

This agreement may be terminated by the Private Party and the Project Company in accordance with Section 25.3 upon the occurrence of a material breach by Grantor of any of its obligations under this agreement or the Construction Agreement; *provided, however*, that the occurrence of any such event will not entitle the Private Party and the Project Company to terminate this agreement to the extent it constitutes an event of *Force Majeure* or to the extent the occurrence of such event can be clearly demonstrated by Grantor to have been caused by the failure of either the Private Party or the Project Company to take or refrain from taking action as required by the terms of this agreement or any project document to which the Private Party or the Project Company, as the case may be, is a party, or any applicable law.

25.3 Termination on Default

If Grantor, the Private Party, or the Project Company (hereinafter in this Section 25.3 referred to as the "Aggrieved Party") becomes entitled to terminate this agreement in accordance with Section 25.1 or Section 25.2, it may give written notice of termination to the other Parties stating the termination to the other Parties and the nature and extent of the default committed by another Party (hereinafter in this Section 25.3 referred to as the "Defaulting Party"), and, if such notice is given and the default is not remedied to the reasonable satisfaction of the Aggrieved Party within ***[ninety (90)]*** business days of the date of such notice, this agreement may be terminated effective at the end of the said ***[90-day]*** period by notice to the Defaulting Party. This agreement shall terminate on the date such notice is given and all of the right, title, and interest of the Project Company and the Private Party in and to the system (in this Section 25.3 referred to as the "Transferred Assets") shall be sold, transferred, and assigned to Grantor effective on the last day of such ***[90-day]*** period without further action by any Party upon payment by Grantor to the Private Party or the Project Company by certified cheque, bank draft, or wire transfer of immediately available funds (i) in the event Grantor is the Aggrieved Party, of an amount equal to ***[fixed amount or describe formula, which may be based on the book value or fair market value of the assets of the Project Company]*** or (ii) in the event that the Private Party or the Project Company is the Aggrieved Party, of an amount equal to ***[fixed amount or describe formula, which may be based on the book value or fair market value of the assets of the Project Company]***. Termination of this agreement in accordance with this Section 25.3 shall be without prejudice to any other rights the Aggrieved Party may have pursuant to law, contract, or equity. Following termination of this agreement pursuant to this Section 25.3, none of the Parties hereto shall have any further rights or obligations to any other Party hereunder or under the Construction Agreement or in respect of the system except as expressly provided herein.

25.4 Termination and Transfer upon Conclusion of Project Period

Unless earlier terminated in accordance with Section 25.1 or Section 25.2 or otherwise in accordance with law, this Agreement and the Construction Agreement shall terminate on the last day of the project period at which time all right, title, and interest of the Project Company and the Private Party in the system shall be transferred to Grantor without requiring any further action by any party, upon payment by Grantor to the Project Company of one hundred Egyptian pounds (LE 100.00).

25.5 Representations and Warranties upon Transfer

The Project Company and the Private Party shall at the time of transfer of the system to Grantor in accordance with this Section 25 be deemed to jointly and severally represent and warrant to Grantor that:

a. The system is being transferred to Grantor free and clear of any liens, charges, encumbrances, or any other rights of others.

b. The assets comprising the system are in good working order, reasonable wear and tear and equipment in the course of routine maintenance excepted.

c. The system has been operated in all material respects only in the ordinary course of its business.

d. The system has been operated so as to meet the performance targets during the previous year.

The representations and warranties of the Project Company and the Private Party made pursuant to this Section 25.5 shall survive the termination of this Agreement and shall remain enforceable against the Project Company and the Private Party notwithstanding such termination, and this Agreement shall remain in force for such purpose.

25.6 Effect of Termination

Upon termination of this Agreement and the Construction Agreement and the transfer of the system to Grantor in accordance with this Section 25, Grantor will assume from the Project Company full responsibility for the operation of the system. In such event the Working Committee shall be disbanded and the Project Company and the Private Party shall have no further right or interest in or to the system. The Private Party and/or the Project Company shall pay all transfer taxes, duties, including import duties, and other similar charges payable in connection with such transfer transaction.

25.7 Waiver of *[any specific provisions of Egyptian law governing termination of companies that might conflict with the provisions of this Agreement]*

25. 8 Licenses and Warranties

Any licenses for the use of intellectual property rights, product or equipment warranties or other rights or contracts in the name of the Project Company or the Private Party, if any, relating to the system shall be assigned or otherwise transferred at the expense of the Project Company or the Private Party to Grantor on the date of transfer ofthe system to Grantor pursuant to this Section 25.

25.9 Inspection, Testing, and Certification

Prior to the transfer of the system to Grantor pursuant to this Section 25, Grantor shall have the right to inspect and test the system to ensure that the system is fully functional and in good operating condition and to verify that the representations and warranties in Section 25.5 are true and accurate at the time of transfer. The Project Company or the Private Party will, at its own expense, replace and correct any ***[Defects or Deficiencies (as defined in the Construction Agreement)]*** noted in such inspection and testing, to the reasonable satisfaction of Grantor. The obligation of the Project Company and the Private Party to correct such ***[Defects and Deficiencies]*** shall survive the termination of this Agreement and remain enforceable against the Project Company and the Private Party jointly and severally notwithstanding such termination, and this Agreement shall remain in force for such purpose. The exercise or failure to exercise the right of inspection and testing under this Section 25.9 shall not limit or mitigate the liability of the Project Company or the Private Party under the representations and warranties contained in Section 25.5.

26. Dispute Resolution

26.1 Cooperative Negotiation

The Parties hereto shall use their best efforts and shall cooperate and negotiate in good faith to resolve any and all disputes, which may arise between them relating to this Agreement, the Construction Agreement, or the Project (hereinafter in this Section 26.1 referred to as a "Dispute"). All such disputes shall be referred initially to the Working Committee for resolution. For a period of ***[two (2)]*** months from the date of such referral no Party shall take any further action in respect of a dispute that has been referred to the Working Committee in accordance with this Section 26.1. The Working Committee shall use its best efforts to resolve a dispute brought to it, and the members of the Working Committee in good faith and in cooperative spirit that benefits both parties shall use their best efforts so that any dispute can be resolved at the Working Committee level.

26.2 Arbitration

(a) The Parties hereto hereby consent and agree that any dispute not settled by amicable agreement in accordance with Section 26.1 shall be finally settled by arbitration under the rules of procedure of ***[e.g., The Egyptian Centre for International Arbitration]***. Such arbitration shall be conducted in ***[Cairo, Egypt]***. In the event of a conflict between the rules of procedure and the terms of this Agreement, the terms of this Agreement shall govern.

(b) Arbitration shall be conducted in English before a panel of three (3) arbitrators. If the dispute involves two (2) Parties, each Party to the dispute shall select one arbitrator within fourteen (14) business days after either Party shall give the other notice of commencement of arbitration proceedings and, within such fourteen (14) business day period, each Party shall notify the other Party in writing of the identity of the arbitrator so selected. Should either Party not appoint its arbitrator in this period, the other Party may so notify the Chairman of the Arbitration Panel and request that its' Chairman appoint such arbitrator. If the dispute involves three (3) or four (4) Parties, the Parties shall jointly appoint two (2) arbitrators within the fourteen (14) business-day period referred to above. Failing such joint appointment within such fourteen (14) business day period, any party may so notify the Chairman of the Arbitration Panel and request that the Chairman appoint such arbitrators. The arbitrators as herein above selected shall select the third arbitrator who will act as president of the arbitral panel. If the arbitrators do not agree on the selection of a president of the arbitral panel within fourteen (14) business days from the date of appointment of the second of the two (2) arbitrators, then, upon written request of any Party, the president of the arbitral panel shall be selected by the Chairman of Arbitration Panel.

(c) The award rendered shall apportion the costs of the arbitration. The arbitrators need not be bound by strict rules of law where they consider the application thereof to particular matters to be inconsistent with the spirit of this Agreement and the underlying intent of the Parties, and as to such matters their conclusions shall reflect their judgment of the correct interpretation of all relevant terms hereof and the correct and just enforcement of this Agreement in accordance with such terms.

26.3 Award to Be Final and Conclusive

The award rendered in any arbitration commenced hereunder shall be final and conclusive and judgment thereon may be entered in any court having jurisdiction for its enforcement. The Parties agree that no Party shall appeal to any court from the decision of the arbitral panel. In addition, each Party agrees that no Party shall have any right to commence or maintain any suit or legal proceeding concerning a dispute hereunder until the dispute has been determined in accordance with the arbitration procedure provided for herein and then only for enforcement of the award rendered in such arbitration.

26.4 Good Faith

Each Party agrees to participate in negotiation or arbitration pursuant to this Section 26 in good faith and in a cooperative manner with a view to resolving any and all disputes on an equitable and expedited basis and, without limiting the generality of the foregoing, agrees to make available in such process all documents, data, and members of its personnel, including its senior management and officers, to the extent reasonably necessary in the circumstances.

26.5 Costs

Subject of to the award of the arbitral tribunal, each Party shall be responsible for its own costs and expenses incurred in connection with any dispute-resolution process hereunder and the costs and expenses of the arbitrators and the forum shall be borne equally by the Parties.

27. *Force Majeure*

The obligations of any Party hereunder, except for any obligation to make payments of money when due, shall be suspended to the extent and for the period that performance is prevented by labor disputes; acts of God; laws, regulations, or governmental entities; judgments or orders of any courts; acts of war or conditions arising out of or attrbutable to war, whether declared or undeclared; riots; terrorism or other criminal activity; insurrections or rebellions; fire; explosions; earthquake; storm, flood, volcanic eruption, drought, or other severe and unusual adverse weather conditions; accidents; or any other cause similar to the foregoing that is not within the reasonable control of such Party.

Notwithstanding the foregoing, it is understood and agreed that no Party hereto may claim the benefit of this Section 27 to the extent the event of *Force Majeure* occurs as a result of the action or inaction of its affiliates or other persons under its control. Any Party affected by a *Force Majeure* circumstance shall immediately, but in any event not later than ten (10) business days, notify in writing the other Parties of the suspension of performance, the reasons therefore, and the expected duration thereof and shall use the best efforts with the cooperation of the other Parties to resume performance as soon as reasonably possible. If one (1) or more events of *Force Majeure* prevent successful completion of the initial performance test, the Project Company and the Private Party shall as soon as reasonably possible thereafter complete construction of the new facilities.

28. Assignment and Delegation

The rights and obligations arising under this Agreement may not be assigned or delegated by any Party to any person without the prior written consent of the other Parties; *provided, however,* that Grantor may at any time transfer its rights under this Agreement to any government authority in Egypt. Any assignee will be required to agree in writing to be bound by the provisions of this Agreement in its entirety.

29. General

29.1 Notices

Any demand, notice, or other communication to be made or given hereunder shall be in writing and made by facsimile transmission with confirmation by first class mail, courier, or by personal delivery addressed to the respective Party as follows:

To Grantor:
_____ *[Address to which notices may be sent]*
Attention: _____ *[Name and/or title of appropriate person who should receive notices]*
Facsimile: _____ *[Facsimile number to which notices may be sent]*

To the Project Company:
_____ *[Address to which notices may be sent]*
Attention: _____ *[Name and/or title of appropriate person who should receive notices]*
Facsimile: _____ *[Facsimile number to which notices may be sent]*

To the Private Party:
_____ *[Address to which notices may be sent]*
Attention: _____ *[Name and/or title of appropriate person who should receive notices]*
Facsimile: _____ *[Facsimile number to which notices may be sent]*

or to such other address, person, or telecopy or facsimile number as any Party may from time to time notify to the others in accordance with this Section 29.1. Any demand, notice, or other communication made or given pursuant hereto shall be conclusively deemed to have been made or given on the day of actual delivery thereof if delivered during the normal business hours of the recipient and, if delivered outside such hours, on the day on which such normal business hours next occur.

29.2 Governing Law

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Arab Republic of Egypt and shall for all purposes be conclusively deemed to be an Egyptian contract.

29.3 Interpretation

Each of the Parties hereto expressly acknowledges its intention that this Agreement be construed, interpreted, and enforced in accordance with the true spirit, intent, meaning, and purpose hereof and in light of the circumstances in which it was made. In the event of any contradiction or discrepancy between the terms of this Agreement and any project document, the terms of this Agreement shall govern and prevail.

29.4 Confidentiality

Except to the extent required by applicable law, no Party to this Agreement may communicate or use any confidential information ("Confidential Information") or permit the communication or use of Confidential Information to or by any person other than its own shareholders, lenders, professional advisers, management personnel, employees, and subcontractors who need to know or use such information for purposes related to the project. For purposes of this Section 29.4, Confidential Information shall include all technical and commercial information, in whatever form, having technical or commercial value which is obtained by a Party hereto as a result of or in connection with the system and which is not in the public domain. All information marked "Confidential," or with words of similar import by a Party, shall be treated for all purposes by the Parties as Confidential Information under this Section 29.4 unless and until it is clearly demonstrated by a Party that such information is not Confidential Information as herein defined. The provisions of this Section 29.4 shall survive the termination of this Agreement.

29.5 Changes in Legislation

Except as may be expressly provided for or contemplated herein, if after the signing of this Agreement any enactment of or amendment to any statute, ordinance, decree, or other law or regulation in Egypt materially adversely affects the rights or the reasonable economic expectations of any of the Parties hereto under this Agreement, the Parties hereto agree to enter into negotiations in good faith with a view to making such amendments to this

Agreement or the Project documents as may be necessary to minimize or eliminate to the extent reasonably possible in the circumstances such adverse effects and so as to give effect to the original intentions of the Parties hereto.

[Provisions relating to "change in law risk," such as this Section 29.5, should be evaluated as part of the overall allocation of risk and responsibility.]

29.6 Entire Agreement

This Agreement and the project documents constitute the entire agreement between the Parties and cancel and supersede any prior understandings and agreements between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings, or collateral agreements expressed, implied, or statutory between the Parties other than as expressly set forth in this Agreement and the project documents

29.7 Severability

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

29.8 No Waiver

Failure on the part of a Party hereto to exercise any right under this Agreement or failure on the part of a Party to insist that another Party adhere to the strict terms of this Agreement will not constitute a repudiation of the terms of this Agreement and will not be considered a waiver by such Party of its right to demand at a later date strict adherence to the terms of this Agreement.

29.9 Language

This Agreement is concluded in ***[both Arabic and English]. [In the event of any inconsistency or contradiction between the Arabic and English texts, the English text shall govern and prevail.]***

29.10 Date for Performance

If the date for performance of any obligation or payment of any amount pursuant to this Agreement falls on a day which is not a business day, performance of such obligation or payment of such amount shall be made or due, as the case may be, on the followingbusiness day.

29.11 Further Assurances

Each of the Parties hereto shall from time to time execute and deliver all such further documents, instruments, and further assurances, and do or refrain from doing all such further acts and things as the other party may from time to time reasonably require to effectively carry out or better evidence or perfect the true spirit, intent, meaning, and purpose of this Agreement.

29.12 Benefits of Agreement

This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and permitted assigns.

29.13 Taxes

All taxes and other duties in connection with the implementation of the Agreement and the Construction Agreements shall be the responsibility of each Party in accordance with prevailing laws and regulations.

29.14 Amendments

No modifications or restatement of, or amendment or supplement to, this Agreement shall be valid or binding unless set forth in writing and duly executed by all the Parties hereto.

IN WITNESS WHEREOF the Parties have signed this Agreement under the hand of their duly authorized representatives:

[Grantor]
By: _____
Name: _____
Title: _____

[Private Party]
By: _____
Name: _____
Title: _____

[Project Company]
By: _____
Name: _____
Title: _____

Performance-Based Management Contract

Important Note on Model Performance-Based Management Contract

The Model Performance-Based Management Contract for Water Supply and Wastewater Services in Egypt ("Contract") incorporates international standards and best practices. To some extent, certain provisions of the Contract differ from Egyptian law and practice. This Note identifies those differences.

Users of the Contract are advised to amend or delete provisions that differ from Egyptian law and to substitute provisions that are consistent therewith.

General Comment

Tendering and tendering procedure: Tendering and tendering procedures for management contracts and other types of major contracts are governed by Law 89/1998 (Tenders Law) and its regulations, which are found in Ministerial Decree 1367/1998 (Executive Statutes).

Specific Comments

- *Nature of the Model Contract contained in the Bid Documents:* The Model Contract may be used in cases in which either an official GOE Tendering Agency or a Project Company contracts with a private Operator. When an official Tendering Agency is involved, to the extent that the contract is commercial in nature, it is a commercial contract governed by the Civil Code. To the extent that it grants or delegates sovereign or public-interest powers to the private-sector Operator, it is an administrative contract governed by general administrative law. Furthermore, where a Tendering Agency is involved, care must be taken that nothing in the Agency's establishing legislation restricts or prohibits it from entering into management contracts and that a duly authorized representative of the Agency is designated and authorized to contractually bind it.
- *Model Contract Clause 2.11.1 "Termination":* Articles 75 and 84 of the Tenders Regulations provide that the Employer may terminate the contract for breach of any conditions of contract, following a fifteen (15) day cure period, subject to notice by registered post with acknowledgement of receipt. In addition, Article 24 of the Tenders Law provides that a contract awarded pursuant to the Tenders Law may be canceled for fraud or corruption or where the contractor becomes bankrupt or insolvent.
- *Model Contract Clause 2.11.3 "Cessation of rights and obligation":* Article 14 of the Tenders Regulations provides that in addition to the ceding of other rights, the Employer is entitled to the forfeiture of the Operator's performance bond.
- *Model Contract Clause 4.4 and Appendix E "Working hours, etc.":* To the extent that the stipulated working conditions meet or exceed those provided in the Labor Law, the Parties will be complying with Egyptian law. Although service and employment contracts can stipulate foreign law as governing, the protective provisions of the Labor Law are matters of public order and cannot be restricted by contract. Appendix E should note that working conditions shall meet the minimum requirements of the Labor Law.
- *Model Contract Clause 9 "Settlements of Disputes":* If the Project Company or Tendering Agency is a public-sector entity according to Egyptian law, controversies related to agreements between such entity and the private-sector Operator are to be litigated before special administrative courts, such as those established under Article 172 of the Constitution, under control of the Council of State. However, it must be mentioned that the 1994 Arbitration Law, modeled on the UNCITRAL (UN Commission on International Trade Law), model arbitration procedures, permits arbitration between the GOE and private parties where the concerned Minister has agreed to such arbitration.
- *Section V, 2 "Bid Security Form":* In addition to the event described in the Form, Article 30 of the Tenders Law and Article 60 of the Tenders Regulations provide that the bid bond will not be refunded if the tender is canceled as a result of the nonconformity of the tenders submitted or if the tenderer ***[Bidder]*** withdraws its bid before the date set for opening technical bids.

A. Model Performance-Based Management Contract

A1. Model Cover Page

Performance-Based Management Contract for Water Supply and Wastewater Services in Egypt

between

UtilityCo
[The Tendering Agency]

and

[The Operator]

Date _____

A2. Model Table of Contents

Performance-Based Management Contract

1. General Conditions

1.1 Definitions
1.2 Relation Between the Parties
1.3 Law Governing Contract
1.4 Language
1.5 Headings
1.6 Notices
1.7 Location
1.8 Authority of Member in Charge
1.9 Authorized Representatives
1.10 Taxes and Duties

2. Commencement, Completion, Modification, Renewal, and Termination of Contract

2.1 Effectiveness of Contract
2.2 Termination of Contract for Failure to Become Effective
2.3 Commencement of Services
2.4 Expiration of Contract
2.5 Entire Agreement
2.6 Modification
2.7 Renewal
2.8 Right to Bid on Subsequent Arrangements
2.9 *Force Majeure*
2.10 Suspension
2.11 Termination

3. Obligations of the Operator

3.1 General
3.2 Conflict of Interests
3.3 Confidentiality
3.4 Liability of the Operator

3.5 Insurance to Be Taken by the Operator
3.6 Accounting, Inspection, and Auditing
3.7 Operator's Actions Requiring Employer's Approval
3.8 Reporting Obligations
3.9 Documents Prepared by the Operator to be the Property of the Employer
3.10 Equipment and Materials Furnished by the Employer

4. Operator's Personnel

4.1 General
4.2 Description of Personnel
4.3 Approval of Personnel
4.4 Working Hours, Overtime, Leave, *et cetera*
4.5 Removal and/or Replacement of Personnel
4.6 Resident Project Manager

5. Obligations of the Employer

5.1 Delegation of Day-to-day Management
5.2 Assistance and Exemptions
5.3 Access to Land and Information
5.4 Change in the Applicable Law
5.5 Services, Facilities, and Property of the Employer
5.6 Payment
5.7 Counterpart Personnel

6. Payments to the Operator

6.1 Cost Estimates, Ceiling Amount
6.2 Currency of Payment
6.3 Payments
6.4 Valuation of Currencies
6.5 Mode of Billing and Payment

7. Control

7.1 Independent Technical and Financial Auditors

8. Fairness and Good Faith

8.1 Good Faith
8.2 Operation of the Contract

9. Settlement of Disputes

9.1 Amicable Settlement
9.2 Right to Arbitration
9.3 Selection of Arbitrators
9.4 Rules of Procedure
9.5 Substitute Arbitrators
9.6 Nationality and Qualifications of Arbitrators
9.7 Miscellaneous

Appendices to Contract

A. Description of Services
B. Reporting Requirements
C. Key Personnel and Subcontractors
D. Hours of Work for Key Personnel
E. Duties of the Employer
F. Cost Estimates in Foreign Currency
G. Incentive Payments

H. Form of Bank Guarantee for Advance Payments
I. Guarantee
J. Procurement Procedures

A3. Model Performance-Based Management Contract

Performance-Based Management Contract

THIS CONTRACT (hereinafter, together with all Appendices attached hereto and forming an integral part hereof, called the "Contract") is made the _____ day of the month of ***[month]***, 2002, between, on the one hand, UtilityCo (hereinafter called the "Employer") and, on the other hand, _____ (hereinafter called the "Operator"). The Employer has designated its Board of Directors to administer this contract on its behalf. The Operator shall fully cooperate with the Employer and the Board.

WHEREAS:

(a) The Employer has requested the Operator to provide certain services as defined in this Contract.

(b) The Operator, having represented to the Employer that it has the required professional skills, personnel, and technical resources, has agreed to provide the services on the terms and conditions set forth in this Contract.

(c) The Employer has received a credit from the ***[name of Donor]*** (hereinafter called "***[Donor]***") toward the cost of services and intends to apply a portion of the proceeds of this credit to eligible payments under this Contract, it being understood (i) that payments by ***[Donor]*** will be made only at the request of the Employer and upon approval by ***[Donor]***, (ii) that such payments will be subject, in all respects, to the terms and conditions of the agreement providing for the credit, and (iii) that no party other than the Employer shall derive any rights from the agreement providing for the credit or have any claim to the credit proceeds.

(d) The Operator's parent has guaranteed this Contract as provided for in Appendix J.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. General Conditions

1.1 Definitions

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

(a) "Applicable Law" means the laws and any other instruments having the force of law in Egypt, as they may be issued and in force from time to time.

(b) "Board" or "Board of Directors" means the Board of Directors of UtilityCo.

(c) "Contract" means this contract between the Employer and the Operator.

(d) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause 2.1 hereof;

(e) "Employer" means UtilityCo.

(f) "Foreign currency" means any currency other than the currency that constitutes legal tender in Egypt.

(g) "Egypt" means the Arab Republic of Egypt.

(h) "Local currency" means a currency that constitutes legal tender in Egypt.

(i) "Member" in case the Operator consists of a joint venture or more than one entity, means any of these entities, and "Members" means all of these entities.

(j) "Party" means the Employer or the Operator, as the case may be and "Parties" means both of them.

(k) "Personnel" means persons hired by the Operator or by any Subcontractor as employees and assigned to the project or any part thereof; "Foreign Personnel" means such persons who at the time of being so hired had their domicile outside Egypt and "Local Personnel" means such persons who at the time of being so hired had their domicile in Egypt.

(l) "Project" means providing water and/or wastewater services in Egypt.

(m) "Services" means the work to be performed by the Operator pursuant to this Contract for the purposes of the Project, as described in Appendix A. hereto.

(n) "Starting Date" means the date referred to in Clause 2.3 hereof.

(o) "Subcontractor" means any entity to which the Operator subcontracts any part of the Services in accordance with the provisions of Clause 3.8 hereinafter.

(p) "Third Party" means any person or entity other than Egypt, the Employer, the Operator, or a Subcontractor.

1.2 Relation between the Parties

The Operator, subject to this Contract, has complete charge of personnel performing the services and shall be fully responsible for the services performed by it or on its behalf hereunder. The Employer will provide its current personnel as counterpart, who will fall under the supervision of the Operator.

1.3 Law Governing Contract

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

1.4 Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.5 Headings

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

1.6 Notices

1.6.1 Any notice, request, or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request, or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telegram, or facsimile to such Party at the following address:

For the Employer:
Attention: _____
Cable address: _____
Facsimile: _____

For the Operator:
Attention: _____
Cable address: _____
Facsimile: _____

1.6.2 Notice will be deemed to be effective as follows:

(a) In the case of personal delivery or registered mail, on delivery.
(b) In the case of telegrams, four (4) hours following confirmed transmission.
(c) In the case of facsimiles, four (4) hours following confirmed transmission.

1.6.3 A Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to this Clause.

1.7 Location

The services shall be performed at such locations as are specified in Appendix A. hereto and, where the location of a particular task is not so specified, at such locations, whether in Egypt or elsewhere, as the Employer may approve.

1.8 Authority of Member in Charge

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

1.9 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract, may be taken or executed:

(a) On behalf of the Employer by its Board of Directors or his designated representative.

(b) On behalf of the Operator by _____ or his designated representative.

1.10 Taxes and Duties

The Employer warrants that the Operator and the personnel shall be exempt from (or that the Employer shall pay on behalf of the Operator and the personnel) any taxes, duties, fees, levies, and other impositions imposed, under the Applicable Law, on the Operator and the personnel in respect of:

(a) Any payments whatsoever made to the Operator, Subcontractors, and the personnel of either of them (other than nationals or permanent residents of Egypt), in connection with the carrying out of services.

(b) Any equipment, materials, and supplies brought into Egypt by the Operator or Subcontractors for the purpose of carrying out the services and which, after having been brought into such territory, will be subsequently withdrawn therefrom by them.

(c) Any equipment imported for the purpose of carrying out the services and paid for out of funds provided by the Employer and which is treated as property of the Employer.

(d) Any property brought into Egypt by the Operator, any Subcontractors, the personnel of either of them (other than nationals of Egypt or permanent residents of Egypt), or the eligible dependents of such personnel for their personal use and which will subsequently be withdrawn therefrom by them upon their respective departure from Egypt, provided that:

i. The Operator, Subcontractors, and personnel, and their eligible dependents, shall follow the usual customs procedures of Egypt in importing property into Egypt.
ii. If the Operator, Subcontractors, or personnel, or their eligible dependents, do not withdraw but dispose of any property in Egypt upon which customs duties and taxes have been exempted, the Operator, Subcontractors, or personnel, as the case may be, (1) shall bear such customs duties and taxes in conformity with the regulations of Egypt, or (2) shall reimburse them to the Employer if they were paid by the Employer at the time the property in question was brought into Egypt.

2. Commencement, Completion, Modification, Renewal, and Termination of Contract

2.1 Effectiveness of Contract

This Contract shall come into force and effect on the date this Contract is executed (the "Effective Date") contingent on final approval of funding by ***[Donor]***.

2.2 Termination of Contract for Failure To Become Effective

If this Contract has not been finally approved by ***[Donor]*** within sixty (60) days of the effective date, either Party may, by not less than four (4) weeks' written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

2.3 Commencement of Services

The Operator shall begin carrying out the services not later than on a date (the "starting date") the later of forty-five (45) days after the effective date or approval of the Contract by ***[Donor]***, or on such later date as the Parties may agree in writing.

2.4 Expiration of Contract

Unless terminated earlier pursuant to Clause 2.9 hereof, this Contract shall terminate on the fifth anniversary of the starting date, except if the Parties agree to extend the Contract under the same terms and conditions for an additional period not to exceed five (5) years.

2.5 Entire Agreement

This Contract contains all covenants, stipulations, and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise, or agreement not set forth herein.

2.6 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the services, may only be made by written agreement between the Parties; provided, however, that if during the term of this Contract other contractors are engaged for work with respect to the water and sewerage systems in Egypt and their activities materially impact the incentive payments pursuant to clause 6.3 (d), the Parties shall mutually agree on appropriate adjustments to such incentive payments. ***[If appropriate: Modifications shall not be effective until the consent of (Donor) has been obtained.]*** Pursuant to Clause 7.2 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

2.7 Renewal

The Contract is renewable for a term of five (5) years at the discretion of the Employer, and with the agreement of the Operator. As part of the renewal process, the Employer or the Operator shall be entitled to request that the Contract be modified or that performance targets be renegotiated.

If the Employer decides to award another management contract, but does not wish to automatically renew the Contract with the incumbent Operator, then it shall award the subsequent contract through international competitive bidding, and the incumbent Operator shall be entitled to participate in this bidding process (however, the Operator shall not be given any preferential treatment).

2.8 Right To Bid on Subsequent Arrangements

The Operator shall be eligible to bid on subsequent long-term arrangements such as leases, concessions, or other similar arrangements that result from or follow-on the Contract. However, the Operator shall not be given preferential treatment (including, but not limited to, the right of first refusal) in bidding on subsequent arrangements.

2.9 *Force Majeure*

2.9.1 Definition

(a) For the purpose of this Contract, "*Force Majeure*" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts, or other industrial action (expect where such strikes, lockouts, or other industrial action are within the power of the Party invoking *Force Majeure* to prevent), confiscation, or any other action by government agencies.

(b) *Force Majeure* shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's subcontractors, agents, or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Contract and (B) avoid or overcome in the carrying out of its obligations hereunder.

(c) *Force Majeure* shall not include insufficiency of funds or failure to make any payment required hereunder.

2.9.2 No Breach of Contract

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

2.9.3 Measures To Be Taken

(a) A Party affected by an event of *Force Majeure* shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.

(b) A Party affected by an event of *Force Majeure* shall notify the other Party of such event as soon as possible, and in no event later than five (5) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

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

2.9.4 Extension of Time

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

2.9.5 Payments

During the period of their inability to perform the services as a result of an event of *Force Majeure*, the Operator shall be entitled to continue to be paid under the terms of this Contract as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Services after the end of such period.

2.9.6 Consultation

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

2.10 Suspension

The Employer may, by written notice of suspension to the Operator, suspend all payments to the Operator hereunder if the Operator fails to perform any of its obligations under this Contract, including the carrying out of the services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Operator to remedy such failure within a period not exceeding thirty (30) days after receipt by the Operator of such notice of suspension.

2.11 Termination

2.11.1 By the Employer

The Employer may, by not less than thirty (30) days' written notice of termination to the Operator (except in the event listed in paragraph (f) below, for which there shall be a written notice of not less than sixty (60) days), such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause 2.11.1, terminate this Contract:

(a) If the Operator fails to remedy a failure in the performance of its obligations hereunder (a failure to meet a composite performance factor of 2.5 pursuant to Appendix H. shall put the Operator on notice of possible termination and failure to meet a composite performance of 3.5 is grounds for termination), as specified in a notice of suspension pursuant to Clause 2.8 hereof, within thirty (30) days of receipt of such notice of suspension or within such further period as the Employer may have subsequently approved in writing.

(b) If the Operator becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or takes advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary.

(c) If the Operator fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 8 hereof.

(d) If the Operator submits to the Employer a statement which has a material effect on the rights, obligations, or interests of the Employer and which the Operator knows to be false.

(e) If, as the result of *Force Majeure*, the Operator is unable to perform a material portion of the services for a period of not less than sixty (60) days.

(f) If the Employer, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

2.11.2 By the Operator

The Operator may, by not less than thirty (30) days' written notice to the Employer, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause 2.11.2, terminate this Contract:

(a) If the Employer fails to pay any money due to the Operator pursuant to this Contract and not subject to dispute pursuant to Clause 8 hereof within forty-five (45) days after receiving written notice from the Operator that such payment is overdue.

(b) If the Employer is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Operator may have subsequently approved in writing) following the receipt by the Employer of the Operator's notice specifying such breach.

(c) If, as the result of *Force Majeure*, the Operator is unable to perform a material portion of the services for a period of not less than sixty (60) days.

(d) If the Employer fails to comply with any final decision reached as a result of arbitration pursuant to Clause 8 hereof.

2.11.3 Cessation of Rights and Obligations

Upon termination of this Contract pursuant to Clauses 2.2 or 2.11 hereof, or upon expiration of this Contract pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause 3.3 hereof, (iii) the Operator's obligation to permit inspection, copying and auditing of its accounts and records set forth in Clause 3.6(ii) hereof, and (iv) any right which a Party may have under the Applicable Law.

2.11.4 Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses 2.11.1 or 2.11.2 hereof, the Operator shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Operator and equipment and materials furnished by the Employer, the Operator shall proceed as provided, respectively, by Clauses 3.9 or 3.10 hereof.

2.11.5 Payment upon Termination

Upon termination of this Contract pursuant to Clauses 2.11.1 or 2.11.2 hereof, the Employer shall make the following payments to the Operator:

(a) Remuneration pursuant to Clause 6 hereof for services satisfactorily performed prior to the effective date of termination.

(b) Reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the effective date of termination.

(c) Except in the case of termination prior to paragraphs (a) through (d) of Clause 2.11.1 hereof, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract including the cost of the return travel of the Operator's personnel and their eligible dependents.

2.11.6 Disputes about Events of Termination

If either Party disputes whether an event specified in paragraphs (a) through (e) of Clause 2.11.1 or in Clause 2.11.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 8 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. Obligations of the Operator

3.1 General

3.1.1 Standard of Performance

The Operator shall perform the services and carry out its obligations hereunder with all due diligence, efficiency, and economy, in accordance with generally accepted techniques and practices used in the water and sewerage industry and with professional engineering and consulting standards recognized by international professional bodies, and shall observe sound management, technical, and engineering practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials, and methods. The Operator shall, in respect of any matter relating to this contract or to the services, at all times support and safeguard the Employer's legitimate interests in any dealings with Subcontractors or Third Parties.

3.1.2 Law Governing Services

The Operator shall perform the services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Subcontractors, as well as the personnel and agents of the Operator and any Subcontractors, comply with the Applicable Law. The Employer shall advise the Operator in writing of relevant local customs and the Operator shall, after such notifications, respect such customs.

3.2 Conflict of Interests

3.2.1 Operator Not To Benefit from Commissions, Discounts, *et cetera*

The remuneration of the Operator pursuant to Clause 6 hereof shall constitute the Operator's sole remuneration in connection with this Contract or the services and, subject to Clause 3.2.2 hereof, the Operator shall not accept for its own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the services or in the discharge of its obligations hereunder, and the Operator shall use its best efforts to ensure that any Subcontractors, as well as the personnel and agents of either of them, similarly shall not receive any such additional remuneration.

3.2.2 Procurement Rules of Funding Agencies

(a) The Operator, as part of the services, has the responsibility on behalf of the Employer to procure goods, works, and services. The Operator shall comply with any applicable procurement guidelines of ***[Donor]*** and other funding agencies (see Appendix J., Procurement Procedures) and shall at all times exercise such responsibility in the best interest of the Employer. Any discounts or commissions obtained by the Operator in the exercise of such procurement responsibility shall be for the account of the Employer.

(b) The Operator shall prepare an Annual Strategic Plan that includes all procurements which the Operator anticipates will be necessary for the year. After the Employer has approved the Annual Strategic Plan, the identified expenditures are eligible for procurement by the Operator and shall be paid by the Employer. The Operator shall be authorized to make additional procurements valued at less than ***[e.g., US $3,000.00]*** equivalent that are not detailed in the Annual Strategic Plan, up to an annual ceiling of ***[e.g., US $20,000.00]***, without the prior consent of the Employer. Separate monthly invoices for all procurements shall be presented to the Employer for approval and, if necessary, subsequent forwarding to ***[Donor]*** or other funding agencies as required under disbursement procedures and consistent with the requirements of Clause 6.5(b) hereof, except payments pursuant to this Clause 3.2.2 instead of Clause 6.3 hereof, and all payments shall be made consistent with Clause 6.5(c) hereof.

3.2.3 Operator and Affiliates Not To Be Otherwise Interested in Project

The Operator agrees that, during the term of this Contract and after its termination, the Operator and any entity affiliated with the Operator, as well as any Subcontractor and any entity affiliated with such Subcontractor, shall be disqualified from providing goods, works, or services (other than the services and any continuation thereof) for the Project and any project resulting from or closely related to the services, except as specifically provided for in this Contract.

The Operator will be eligible to bid on subsequent long-term arrangements such as leases, concessions, or other similar arrangements. However, the incumbent Operator will not be given preferential treatment (including, but not limited to, the right of first refusal) in bidding on subsequent arrangements.

3.2.4 Prohibition of Conflicting Activities

Neither the Operator nor its Subcontractors nor the personnel of either of them shall engage, either directly or indirectly, in any business or professional activities in Egypt that would conflict with the activities assigned to them under this Contract.

3.3 Confidentiality

The Operator, its Subcontractors, and the personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the services, this Contract or the Employer's business or operations without the prior written consent of the Employer.

3.4 Liability of the Operator

The Operator shall be liable to the Employer for the performance of the services in accordance with the provisions of this Contract and for any loss suffered by the Employer as a result of a default of the Operator in such performance, subject to the following limitations:

(a) The Operator shall not be liable for any damage or injury caused by or arising out of the act, neglect, default or omission of any persons other than the Operator, its Subcontractors or the personnel of either of them.

(b) The Operator shall not be liable for any loss or damage caused by, or arising out of, circumstances over which the Operator had no control.

3.5 Insurance To Be Taken Out by the Operator

The Operator shall (i) take out and maintain, and shall cause any Subcontractors to take out and maintain, at their (or the Subcontractors', as the case may be) own cost, but on terms and conditions approved by the Employer, insurance against the risks, and for the coverages, set forth below, and (ii) at the Employer's request, provide evidence to the Employer showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid:

(a) Third Party motor vehicle liability insurance in respect of motor vehicles operated in Egypt by the Operator or its Personnel or any Subcontractors or their Personnel, with a minimum coverage of ***[e.g., US$1,000,000].***

(b) Third Party liability insurance, with a minimum coverage of ***[e.g., US$1,000,000].***

(c) Professional liability insurance, with a minimum coverage of ***[e.g., US$1,000,000].***

(d) Employer's liability and workers' compensation insurance in respect of the personnel of the Operator and of any Subcontractor, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to the personnel, any such life, health, accident, travel, or other insurance as may be appropriate.

(e) Insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Operator's property used in the performance of the services, and (iii) any documents prepared by the Operator in the performance of the services.

3.6 Accounting, Inspection, and Auditing

The Operator (i) shall keep accurate and systematic accounts and records in respect of the services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the bases thereof (including the bases of the Operator's representations referred to in Clause 6.3 hereof), and (ii) shall permit the Employer or its designated representative periodically, and up to one year from the expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Employer.

3.7 Operator's Actions Requiring Employer's Prior Approval

The Operator shall obtain the Employer's prior approval in writing before taking any of the following actions:

(a) Appoint personnel who, for exceptional reasons, must replace personnel proposed by the Operator in its bid, or who supplement the personnel proposed by the Operator in its bid.

(b) Enter into a contract with a value of more than ***[e.g., US $3,000.00]*** equivalent (and not exceeding an annual ceiling of ***[e.g., US $20,000.00]***) for the supply of goods or subcontract for the performance of any part of the services, it being understood that the Operator shall remain fully liable for the performance of the services by the Subcontractor and its personnel pursuant to this Contract. In this regard, approval of the annual strategic plan pursuant to Clause 3.2.2 hereof will constitute approval for the Operator entering into the necessary contracts.

3.8 Reporting Obligations

The Operator shall submit to the Employer ten (10) copies in English of the reports and documents specified in Appendix B. hereto, within the time periods set forth in said Appendix.

3.9 Documents Prepared by the Operator to Be the Property of the Employer

All plans, drawings, specifications, designs, reports, and other documents prepared by the Operator in performing the services shall become and remain the property of the Employer, and the Operator shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Employer, together with a detailed inventory thereof. The Operator may retain a copy of such documents but shall not use them for purposes unrelated to this Contract without the prior written approval of the Employer.

3.10 Equipment and Materials Furnished by the Employer

The assets of the water and sewerage systems in Egypt will remain under the ownership and control of UtilityCo. Equipment and materials made available to the Operator by the Employer, or purchased by the Operator with funds provided by the Employer, shall be the property of the Employer and shall be marked accordingly. Upon termination or expiration of this Contract, the Operator shall make available to the Employer an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the Employer's instructions. While in possession of such equipment and materials, the Operator shall insure them at the expense of the Employer in an amount equal to their full replacement value. The cost of such insurance shall be treated as a procurement pursuant to Clause 3.2.2 hereof.

Contracts entered into by UtilityCo that are still in force at the Effective Date of this Contract, shall remain in force until the Operator recommends to the UtilityCo Board of Directors: 1) that they not be renewed; or 2) that they be modified and/or renegotiated; or 3) that responsibility for the scope of the contracts be transferred to UtilityCo, either through cancellation or non-renewal of said contracts.

4. Operator's Personnel

4.1 General

The Operator shall employ and provide such qualified and experienced Personnel as are required to carry out the services. In addition, the Operator may provide bonus payments pursuant to Employer's procedures to the Employer's personnel. Any such bonus payments shall be the Operator's responsibility, but will be payable at cost as a procurement pursuant to Clause 3.2.2 hereof.

4.2 Description of Personnel

(a) The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the services of each of the Operator's Key Personnel are described in Appendix C.

(b) If required to comply with the provisions of Clause 3.1.1 hereof, adjustments with respect to the estimated periods of engagement of Personnel set forth in Appendix C may be made by the Operator by written notice to the Employer, provided (i) that such adjustments shall not alter the originally estimated period of engagement of any individual by more than 10 percent or one week, whichever is larger, and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause 6.1(b) hereof. Any other such adjustments shall only be made with the Employer's written approval.

(c) If additional work is required beyond the scope of the services specified in Appendix A., the estimated periods of engagement of Personnel set forth in Appendix C. may be increased by agreement in writing between the Employer and the Operator, provided that any such increase shall not, except as otherwise agreed, cause payments under this Contract to exceed the ceilings set forth in Clause 6.1(b) hereof.

4.3 Approval of Personnel

The Personnel and Subcontractors listed by title as well as by name in Appendix C. are hereby approved by the Employer. In respect of other full time personnel that the Operator proposes to use in the carrying out of the services, the Operator shall submit to the Employer for review and approval a copy of their biographical data. If the Employer does not object in writing (stating the reasons for the objection) within twenty-one (21) calendar days from the date of receipt of such biographical data, such personnel shall be deemed to have been approved by the Employer.

4.4 Working Hours, Overtime, Leave, *et cetera*

(a) Working hours and holidays for foreign personnel are set forth in Appendix D. hereto. To account for travel time, foreign personnel carrying out services inside Egypt shall be deemed to have commenced (or finished) work in respect of the services such number of days (not to exceed in any event one day per trip) before their arrival in (or after their departure from) Egypt as is specified in Appendix D hereto.

(b) The personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation except as specified in Appendix D hereto, and except as specified in such Appendix, the Operator's remuneration shall be deemed to cover these items. All leave to be allowed for the personnel is included in the man-months of service set forth in Appendix C. Any taking of leave by personnel shall be subject to the prior approval by the Operator who shall ensure that absence for leave purposes will not delay the progress and adequate supervision of the services.

(c) Actual presence of personnel in the man-months of service set forth in Appendix C is subject to audit, and a corresponding certification of said audit will be included as a note in the Operator's Annual Report.

4.5 Removal and/or Replacement of Personnel

(a) Except as the Employer may otherwise agree, no changes shall be made in the personnel. If, for any reason beyond the reasonable control of the Operator, it becomes necessary to replace any of the personnel, the Operator shall forthwith provide as a replacement a person of equivalent or better qualifications.

(b) If the Employer (i) finds that any of the personnel has committed serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the personnel, then the Operator shall, at the Employer's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Employer.

(c) Any of the personnel provided as a replacement under Clauses (a) and (b) above, the rate of remuneration applicable to such person as well as any reimbursable expenditures (including expenditures due to the number of eligible dependents) the Operator may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Employer.

(d) Except as the Employer may otherwise agree, (i) the Operator shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (iii) the remuneration to be paid for any of the personnel provided as a replacement shall not exceed the remuneration which would have been payable to the personnel replaced.

4.6 Resident Project Manager

The Operator shall ensure that at all times during the Operator's performance of the Services in Egypt a resident project manager, acceptable to the Employer, shall take charge of the performance of such services.

5. Obligations of the Employer

5.1 Delegation of Day-to-day Management

(a) The Employer will appoint the resident project manager as General Manager of UtilityCo, and will vest him with total responsibility for the day-to-day management of the services. The General Manager will not be restricted in his ability to manage nor be impeded from carrying out his duties and responsibilities. The General Manager will have the authority to commit and approve expenditures to a level

commensurate with the Operator's obligations to manage the Employer successfully and the scope of activities agreed upon in the Annual Plan for Procurement.

(b) The General Manager and other Personnel under this Contract, and within the constraints of the agreed Annual Strategic Plan, has the obligation to implement the strategies in said plan, and is authorized to manage the organization in every area of its operations in order to achieve those goals. The relationship between the General Manager and the Board of Directors shall be such that information flows readily between them, and consultation is used to reach consensus on strategic matters.

(c) The Employer will cooperate and not interfere with the Operator's Personnel in their execution of their duties or in the day-to-day management of the services. In this respect, the Employer will give timely consideration to the reports and proposals made to it by the Operator, and approval for such reports and proposals shall not be unreasonably withheld.

5.2 Assistance and Exemptions

The Employer shall use its best efforts to:

(a) Provide the Operator, Subcontractors, and Personnel with work permits and such other documents as shall be necessary to enable the Operator, Subcontractors, or Personnel to perform the services.

(b) Arrange for the personnel and, if appropriate, their eligible dependents to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits, and any other documents required for their stay in Egypt.

(c) Facilitate prompt clearance through customs of any property required for the services, and of the personal effects of the personnel and their eligible dependents.

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

(e) Exempt the Operator and the personnel and any Subcontractors employed by the Operator for the services from any requirement to register or obtain any permit to practice their given profession or to establish themselves either individually or as a corporate entity according to the applicable law.

(f) Grant to the Operator, any Subcontractor and the personnel of either of them the privilege, pursuant to the applicable law, of bringing into Egypt reasonable amounts of foreign currency for the purposes of the services or for the personal use of the personnel and their dependents and of withdrawing any such amounts as may be earned therein by the personnel in the execution of the services.

5.3 Access to Land and Information

(a) The Employer warrants that the Operator shall have, free of charge, unimpeded access to all land in Egypt in respect of which access is required for the performance of the services. The Employer will be responsible for any damage to such land or any property thereon resulting from such access and will indemnify the Operator and each of the personnel in respect of liability for any such damage, unless such damage is caused by the default or negligence of the Operator or any Subcontractor or the personnel of either of them.

(b) The Employer shall give the Operator full access to all information, plans, policies, board papers, reports, and data necessary to permit the Operator to carry out the services.

5.4 Change in the Applicable Law

If, after the date of this Contract, there is any change in the applicable law which increases or decreases the cost or reimbursable expenses incurred by the Operator in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Operator under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause 6.1(b) hereof.

5.5 Services, Facilities, and Property of the Employer

The Employer shall make available to the Operator and the personnel, for the purposes of the services and free of any charge, the services, facilities, and property described in Appendix F at the times and in the manner specified in said Appendix F, provided that if such services, facilities, and property shall not be made available to the Operator as and when so specified, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Operator for the performance of the services, (ii) the manner in which the Operator shall procure any such services, facilities, and property from other sources, and (iii) the additional payments, if any, to be made to the Operator as a result thereof pursuant to Clause 3.2.2 hereof.

5.6 Payment

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

5.7 Counterpart Personnel

The Employer will put at the disposal of the Operator, under the time periods and conditions stipulated in Appendix F, free of charge, the personnel that are employed by UtilityCo for the provision of water and sewerage services. Said personnel will work under the exclusive direction of the Operator, but will retain their legal employment status as employees of UtilityCo. The Operator will have all of the rights and powers established in the Articles of Incorporation and Bylaws of UtilityCo to remove, promote/demote, and hire personnel in order to improve the quality and efficiency of services provided by UtilityCo, always under the terms established by the Scope of Work presented in Appendix A.

6. Payments to the Operator

6.1 Cost Estimates, Ceiling Amount

(a) An estimate of the cost of the services payable in foreign currency is set forth in Appendix F.

(b) Except as otherwise agreed under Clauses 2.6 and 6.5 hereof, payments under this Contract shall not exceed a ceiling of US$ ***[total fixed fee]*** minus US$ ***[total fixed fee portion times twenty (20) percent – this equals the advance payment]*** (with a calendar monthly ceiling equal to 1/60th of such ceiling accumulating through the sixty (60) months of the Contract, prorated for beginning and ending short months if the Starting Date is in the middle of a month) for Services and US$ ***[total incentive compensation]*** (the incentive payment cannot exceed twenty (20) percent of such amount for any year) for incentive payments pursuant to Clause 6.3(d) hereof in foreign currency.

6.2 Currency of Payment

Payments in foreign currency shall be made in _____.

6.3 Payments

(a) Subject to the ceilings specified in Clause 6.1(b) hereof, the Employer shall pay to the Operator in foreign currency (i) remuneration as set forth in Clause 6.3(b) hereof; (ii) reimbursable expenditures as set forth in Clause 6.3(c) hereof; and (iii) incentive fees as provided in Clause 6.3(d) hereof. Payments for remuneration made in accordance with Clause 6.3(a) hereof in foreign currency shall be adjusted as follows: Remuneration paid in foreign currency pursuant to the rates set forth in Appendix G shall be adjusted every 12 months (and, the first time, with effect for the remuneration earned in the 13th calendar month after the date of the Contract) by applying the following formula:

$$Rf = Rfo \times If/Ifo$$

where *Rf* is the adjusted remuneration, *Rfo* is the remuneration payable on the basis of the rates set forth in Appendix F for remuneration payable in foreign currency, *If* is the official index for salaries in the country of the foreign currency for the first month for which the adjustment is supposed to have effect and *Ifo* is the official index for salaries in the country of foreign currency for the month of the date of the Contract.

(b) Remuneration for the personnel shall be determined on the basis of time actually spent by the personnel in the performance of the services after the starting date (including time for necessary travel via the most direct route) at a the rates specified in respect of such personnel in Appendix F, subject to the following:

i. It is understood (A) that the remuneration rates shall cover (1) such salaries and allowances as the Operator shall have agreed to pay to the personnel as well as factors for social charges and overhead based on the Operator's average costs, as represented by the financial statements of the Operator's latest three fiscal years, (2) the cost of backstopping by home office staff not included in the personnel listed in Appendix C, and (3) the Operator's fee; and (B) that bonuses or other means of profit sharing shall not be allowed as an element of overhead.

ii. Remuneration for periods of not less than one month shall be calculated on an hourly basis for actual time spent in the Operator's home office and directly attributable to the services (one hour being equivalent to 1/240th of a month) and on a calendar day basis for time spent away from home office (one day being equivalent to 1/30th of a month).

(c) Reimbursable expenditures, as shown in Appendix F, shall consist of the following types of expenditures actually and reasonably incurred by the Operator in the performance of the services:

i. A per diem allowance for each of the personnel for every day in which such personnel shall be absent from his home office (the home office in Egypt, in the case of long-term personnel, and the home-office in the Operator's home country, in the case of short term personnel) and shall be outside the country of Egypt for the purpose of the services at the daily rate specified in Appendix F.

ii. The following transportation costs:

1. The cost of international transportation of the foreign personnel and, as specified below, eligible dependents of the foreign personnel, by the most appropriate means of transport and the most direct practicable route to and from the Operator's home office; in the case of air travel, this shall be by less than first class.

2. For any foreign personnel spending twelve (12) consecutive months or more in Egypt, one extra round trip will be reimbursed for every twelve (12) months

372

of assignment in Egypt. Such personnel will be entitled to such extra round trip only if upon their return to Egypt, such personnel are scheduled to serve for the purposes of the project for a further period of not less than six (6) consecutive months.

3. The cost of transportation to and from Egypt of eligible dependents who shall be the spouse and all unmarried dependent children under eighteen (18) years of age of those of the foreign personnel assigned to resident duty in Egypt for the purpose of the services for periods of six (6) consecutive months or longer, provided that the stay of such dependents in Egypt shall have been for not less than six (6) consecutive months duration. If the assignment period for resident staff of the foreign personnel will be thirty (30) months or more, one extra economy class air trip for their eligible dependents for every twelve (12) month assignment will be reimbursed.

4. For the air travel of each of the foreign personnel, and each eligible dependent, the cost of excess baggage up to twenty (20) kilograms per person, or the equivalent in cost of unaccompanied baggage or air freight.

5. Miscellaneous travel expenses such as the cost of transportation to and from airports, airport taxes, passport, visas, travel permits, vaccinations, *et cetera*, at a fixed unit price specified in Appendix F per round trip.

iii. The cost of communications (other than those arising in Egypt) reasonably required by the Operator for the purpose of the services.

iv. The cost of printing, reproducing, and shipping of the documents, reports, drawings, *et cetera*, specified in Appendix F hereof.

v. The cost of acquisition, shipment, and handling of equipment, instruments, materials, and supplies required for the Services as specified in Appendix F hereof.

vi. The cost of shipment of personal effects as specified in Appendix F.

vii. The cost of programming and use of, and communication between, the computers for the purposes of the services at the rate set forth in Appendix F.

viii. The cost of training of the Employer's personnel outside Egypt, as specified in Appendix F.

ix. The cost of laboratory tests on materials, model tests, and other technical services authorized or requested by the Employer, as specified in Appendix F.

x. The foreign currency cost of any subcontract required for the Services and approved in writing by the Employer.

xi. The cost of items not covered in the foregoing but which may be required by the Operator for completion of the Services, subject to the prior authorization in writing the Employer.

(d) In addition the Operator shall be paid incentive amounts as calculated pursuant to Appendix G.

6.4 Valuation of Currencies

Whenever it shall be necessary to determine the equivalent amount in one currency in terms of another for the purposes of this Contract, the conversion shall be made at the rate legally applicable at the time and place of, and to the currency utilized in, the underlying expenditure or transaction.

6.5 Mode of Billing and Payment

Billings and payments in respect of the Services shall be made as follows:

(a) On the Starting Date, the Employer shall cause to be paid to the Operator advance payments of US$ ***[fixed fee for 5 years]*** times twenty (20) percent in foreign currency. The advance payments will be set off by the Employer in equal installments against the statements for the first sixty (60) months of the services until said payments have been fully set off. The advance payments will be due after provision by the Operator to the Employer of a bank guarantee by a bank acceptable to the Employer in an amount of foreign currency equal to the foreign currency portion of the advance payments, such bank guarantee to (i) remain effective until the advance payments have been completely set off as provided above, and (ii) be in the form set forth in Appendix H hereto or in such other form as the Employer shall have approved in writing.

(b) As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, the Operator shall submit to the Employer, in duplicate, itemized statements, accompanied by copies of receipted invoices, vouchers, and other appropriate supporting materials, of the amounts payable pursuant to Clauses 6.3 hereof for such month. Each such separate statement shall distinguish that portion of the total eligible costs which pertains to remuneration from that portion which pertains to reimbursable expenditures.

(c) The Employer shall cause the payment of the Operator's statements within sixty (60) days after the receipt by the Employer of such statements with supporting documents. Only such portion of a statement that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Operator, the Employer may add or subtract the difference from any subsequent payments. Interest at the rate of ten (10)percent per

year shall become payable as from the above due date on any amount due by, but not paid on, such due date.

(d) All payments under this Clause shall be made only after all reports pursuant to Appendix B required prior to the statement shall have been submitted by the Operator and approved as satisfactorily by the Employer. Reports shall be deemed completed and finally accepted by the Employer and shall be deemed approved by the Employer as satisfactory thirty (30) calendar days after receipt of the report unless the Employer, within such thirty (30) day period, gives written notice to the Operator specifying in detail deficiencies in the Services or the report. The Operator shall thereupon promptly make any necessary corrections, and upon completion of such corrections, the foregoing process shall be repeated. Any amount which the Employer has paid or caused to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of this Contract shall be reimbursed by the Operator to the Employer within thirty (30) days after receipt by the Operator or notice thereof. Any such claim by the Employer for reimbursement must be made within twelve (12) calendar months after receipt by the Employer of a report approved by the Employer in accordance with the above.

(e) The incentive amounts shall be paid pursuant to Operator's statements for each twelfth calendar month following the starting date and shall consist of five (5) payments with the last payment pursuant to the invoice for the last calendar month (short month if applicable) of this Contract. The Operator shall include in such statements all information required to calculate the amount of any such payment and shall promptly supply any further information required by the Employer to determine the amount of such payment.

(f) All payments under this Contract shall be made to the account of the Operator with: ***[Specify bank account]***

7. Control

7.1 Independent Technical and Financial Auditors

Within four (4) months of the effective date of the Contract, the Operator shall nominate and contract (with the approval of the Employer – such approval shall not be unreasonably withheld) qualified independent technical and financial auditors whose function shall be to certify, within their professional capacity, that the Operator is maintaining files and accounts in the form, quality, and quantity sufficient to achieve the objectives and scope of the Contract, and that the information provided by the Operator is an accurate reflection of the Operator's management of UtilityCo, and that the systems and procedures used to compile said information are reasonable and accurate.

The independent technical and financial auditors shall additionally, on an annual basis, review the Operator's Annual Report (which contains the Operator's self-assessment of its performance in achieving performance targets and milestones under the Contract) and

provide to the UtilityCo Board of Directors a report certifying the Operator's performance in achieving the performance targets and milestones specified in Appendix G. This certification shall be used by the UtilityCo Board of Directors as the basis for calculating the Operator's incentive compensation.

All costs associated with contracting independent technical and financial auditors shall be borne by the Employer.

8. Fairness and Good Faith

8.1 Good Faith

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

8.2 Operation of the Contract

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is in their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

9. Settlement of Disputes

9.1 Amicable Settlement

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

9.2 Right to Arbitration

Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party to arbitration in accordance with the provisions of Clauses 9.3 through 9.7 hereof.

9.3 Selection of Arbitrators

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

(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to the International Chamber of Commerce ("ICC") for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, the ICC shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.

(b) Where the Parties do not agree that the dispute concerns a technical matter, the Employer and the Operator shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by the ICC.

(c) If, in a dispute subject to Clause 9.3(b) hereof, one (1) Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the ICC to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.

9.4 Rules of Procedure

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

9.5 Substitute Arbitrators

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

9.6 Nationality and Qualifications of Arbitrators

The sole arbitrator or the third arbitrator appointed pursuant to paragraphs (a) through (c) of Clause 9.3 hereof shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Operator's home country or of Egypt. For the purposes of this Clause, "home country" means any of:

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

9.7 Miscellaneous

In any arbitration proceeding hereunder:

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

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written:

FOR AND ON BEHALF OF

UtilityCo
[Tendering Agency]

FOR AND ON BEHALF OF

[Operators]

Appendix A. Description of the Services

Note: The GOE retains the exclusive right to set tariffs, fees, and any other customer charges paid for the water and sewerage services provided.

The Government of Egypt (GOE) is seeking professional services of an Operator for the management of the potable water and sewerage systems currently operating in Egypt, in order to achieve the GOE's vision, mission, and strategic objectives for the water and sewerage sector in Egypt:

- *Vision:* An efficient, sustainable, and financially viable water and sewerage sector delivering a high quality of service to customers.

- *Mission:* To deliver safe, adequate, and affordable water and ensure safe sewerage systems for improved public health and sustainable economic development.

- *Strategic Objectives:*

  1. Provide water to customers at an adequate pressure and volume at all times so that customer demand is met and revenue targets can be achieved.

  2. Improved delivered water quality working to (e.g., Egypt National Standards Bureau) targets over time so that public health is improved and customer acceptability enhanced.

  3. Efficiently produce, treat, and distribute water to customers in order to contain costs and minimize the impact of tariffs on the poor.

  4. Make water services readily available to new customers in order to satisfy increasing demand and to reduce the impact of capital costs on tariffs, fees, and charges.

  5. Improve water supply services to the poor and to communities in less-developed areas.

  6. Ensure the effective treatment and disposal of sewerage to support improved public health standards.

  7. Achieve financial self-sufficiency so that long-term dependence on external funding is removed.

This section provides additional information describing the specific professional services to be provided by the Operator and to be addressed in the Bid. This scope of services applies to all water and sewerage facilities and systems under the auspices of UtilityCo in Egypt. The Operator will be required to reach specific performance targets that are included in Appendix G.

The Operator shall provide all personnel and associated wages, salaries, benefits, administrative facilities, services and other services necessary to oversee the management and direct the operations of the various water and sewerage systems including abstraction, treatment, pumping, distribution systems, wastewater collection, pumping, treatment, and disposal in order to complete the following Scope of Work:

(a) To improve the efficiency and operation of the water and sewerage systems the Operator will:

i. Examine each of the wells and identify and carry out the work and obtain parts, supervise and direct the required wellhead protection measures.

ii. Examine existing chlorination equipment, obtain needed spare parts, direct and supervise repairs, prepare operational procedures and manuals, and direct subsequent maintenance.

iii. Supply sufficient chlorine to ensure chlorine residuals throughout the distribution system.

iv. Develop and implement a water-quality monitoring program.

v. Identify non-compliance with water and wastewater quality standards, prepare regular reports, and recommend and implement improvement measures.

vi. Develop, direct, and supervise a leak-detection program, including repair of leaks, replacement of pipe, and collection, compilation and analysis of repair statistics.

vii. Develop, direct, and supervise an operational and customer-meter installation, calibration, repair, and replacement program, starting with the master meters at the wellheads and including all distribution meters.

viii. Map the water and sewerage network showing all operational facilities, pipes, manholes, valves, and hydrants, including schematic zone plans and elevation drawings. Develop and test a hydraulic model and train UtilityCo staff in its use. Provide any hardware and/or software for this model to UtilityCo.

ix. Install pressure monitors at critical locations within the water distribution network, monitor and report levels of service, and develop and implement improvement proposals.

x. Using the hydraulic model and levels of service information, identify and implement a program of system strengthening to improve operational efficiency, secure supplies, and improve customer service and reduce hydraulic losses.

xi. Study the water production, conveyance, and distribution systems and establish a water balance (audit), identifying the various components of supply and demand, quantifying losses from the system and other elements of unaccounted for water. Repeat the water balance exercise at six-month intervals and identify changes and the effects of improvement strategies.

xii. Review existing procedures for providing new water and wastewater connections including new connections to existing water mains, and sewers; procedures for bringing new customers into the charging system; and methods of financing the cost of providing mains and sewers required to service new developments. Implement revised procedures as necessary to improve levels of customer service and financial performance.

xiii. Identify the immediate needs for equipment repair; obtain parts and tools, direct and supervise the repairs and maintenance, including, but not limited to, all wells, storage tanks, pumps, generators, controls, water and sewage treatment equipment; and auxiliary equipment included in the water and sewerage systems.

xiv. Identify the need for support facilities and equipment and administrative support; e.g., transportation, including specialized vehicles; communication systems, including telephones, two-way radios; facilities including office space, warehouse space, workshops, repair space, and repair tools; and equipment, meter testing, and repair space and equipment.

xv. Develop and establish a preventive-maintenance program, including task definition, skill level, manning level, frequency, task duration, and train the operators.

xvi. Develop and maintain a job-planning and control system for planned and emergency works.

xvii. Develop and establish a computerized materials and maintenance management system, obtain the hardware, software, and train the employees.

xviii. Examine the existing inventory of spare parts, materials, equipment and the computerized inventory-management system for storage and replacement. Obtain any needed parts, materials, and equipment. Identify and carry out needed enhancement to the computerized system.

xix. Assist the Employer in the implementation of donor-funded investment and technical-assistance programs.

xx. Set up operational and safety procedures and manuals.

(b) To improve service to less-developed areas the Operator will:

i. Examine current local and international programs and best practices for improving service to poor areas and develop and implement a strategy for improving such services.

ii. Support the establishment of a less-developed areas unit within UtilityCo, and support said unit in carrying out a needs assessment of water and sewerage services in the less-developed areas.

iii. Develop, supervise, and direct a service-improvement program for the water and sewerage services in the less-developed areas.

iv. Develop and establish systems, procedures, and practices that support a participatory approach to service-provision in the less-developed areas.

(c) To improve the efficiency of revenue collection and implement the cost-recovery policies of the GOE the Operator will:

i. Develop, supervise, and direct a program to identify illegal connections and convert these connections to legal service connections.

ii. Develop and implement a strategy to introduce universal metering for domestic and non-domestic customers.

iii. Develop, supervise, and direct a program to update the database of connections and to classify the use in accordance with current tariff definitions.

iv. Develop, supervise, and direct the improvement or enhancement of computerized administrative systems for billing, collection, and to enforce collection of overdue accounts. If necessary, provide hardware and software and train the employees in its use.

v. Examine existing financial accounts for water and sewerage and identify and carry out required improvements, based on international best practices relating to standard utility cost accounting systems.

(d) To improve the efficiency of the customer-service and public-relations functions the Operator will:

i. Develop a customer-service system and train employees involved in responding to customer complaints, inquiries, and any other communication with the customer.

ii. Analyze customer complaints by type (no water, poor pressure, taste, odor, blocked sewers, flooding, *et cetera*) and geographical location and prepare reports and recommend and implement improvement measures.

iii. Develop a public-information program to educate the public as to:

1. The importance of water supply and sewage collection and treatment to the population, public health, and the economy.

2. The problems existing in the sector, including contamination of source water, illegal connections, and excessive leakage.

3. The programs underway to improve service.

4. The costs of operating the systems and the methods of recovering the costs, including the provisions of needed amounts for domestic use at minimum cost and the concept of everyone paying his "fair share."

(e) To improve the effectiveness of the management of the water and sewerage systems the Operator will:

i. Develop and implement a management-training program consisting at a minimum of the elements of management, personnel management, financial management, supervision, budgeting, planning, and controlling.

ii. Develop and implement a training program to provide technical operations and maintenance training to all water-system operators and maintenance workers.

iii. Develop computerized administrative systems, obtain the hardware and software, and train the employees.

iv. Develop a comprehensive occupational safety program and provide safety training.

v. Develop an emergency operations plan, train the water/sewerage-system employees, and conduct mock drills as training for the implementation of the emergency actions.

(f) To improve the long-range performance of the water and sewerage system the Operator will support the UtilityCo Board of Directors in:

i. Identifying major problem areas.

ii. Updating the findings and recommendations of the (e.g.) Cairo Water and Sewerage Master Plan.

iii. Developing a prioritized capital-improvement and rehabilitation plan.

iv. Developing long-term strategic plans.

(g) To assist in implementing the investment component that will be carried out in parallel and financed by other donors, the Operator will:

i. Prepare tender documents for the procurement of the different activities included in donor-funded programs, administer the bidding processes, and prepare bid-evaluation reports to be submitted to the Employer and to donors.

ii. Identify rehabilitation and extension sub-projects.

iii. Supervise the construction of sub-projects and prepare requests for disbursement to be submitted to the Employer and to donors.

To provide for administrative control of the above Scope of Work, the Operator will:

(a) Compile and maintain comprehensive monthly records and report to the appropriate authorities for facilities and systems operations, regulatory matters, laboratory analyses, maintenance plans and activities, related financial matters, permit and compliance results, equipment status, and other relevant information in accordance with applicable laws, regulations, permits, and guidelines.

(b) At least monthly, or as necessary, meet with the UtilityCo Board of Directors to review operations, reports, ongoing cost information, and key upcoming projects and/or operations which may affect service-delivery to the public. Conduct annual comprehensive plant and system inspections with the UtilityCo Board of Directors' designated representative, to evaluate and document conditions, safety, or other concerns.

In managing the above operations, the Operator will be guided by the various standards, requirements, and guidance documents including, but not limited to, the following:

(a) Industry best practices as identified by recognized international standards.

(b) (e.g., Egypt National Standards Bureau) guidelines.

(c) Design criteria and performance specifications for the various components and equipment throughout the utility as identified by manufacturers' information.

(d) Asset-maintenance-performance standards as identified by manufacturers' information.

The Workplan and Staffing Plan that are proposed by the successful Bidder will be binding, and will be included in this Appendix as the implementation of the Scope of Work.

Management Staff Expertise

For the information of Bidders, the Employer estimates that the following fields of expertise will be required of the proposed staff in order to ensure that the above tasks in the Scope of Work are completed in an accurate and timely manner:

Field of Expertise *[Not individuals]*	**Examples of Task Coverage** *[Examples only, not an exhaustive list]*
General Management	Overall management of the project Reporting and coordination with the UtilityCo Board of Directors
General Accounting/ Finance	Balance sheet Profit and loss statements Financial reporting
Cost Accounting/ Budgeting	Profit and cost centers Variable and fixed costs Cost allocation Plan vs. Actual variance analysis Fixed assets register
Economic Analysis	Expansion and replacement analysis Cost savings and revenue improvement programs
Participatory Development	Develop and implement participatory approach to services in the Less-Developed Areas Support Needs Assessment for such Areas
Water Engineering	Operations Supply/demand management and control Pressure management leakage control and loss reduction Connections and mains for new development Development and application of regular and emergency operation plan Maintenance plans Organization of complaints system Reduction of illegal water supply connections Supply concepts
Wastewater Engineering	Operations Connections and sewers for new development Development and application of regular and emergency operation plan Maintenance plans Organization of complaints system Reduction of illegal sewerage dumping and storm water connections
Rural Water Supply	Support establishment and operationalization of Less-Developed Areas Unit Support needs assessment for such areas Support implementation of Program for such areas
Capital Works Program	Identify improvement opportunities to be financed by capital investment Prepare outline proposals, budget estimates, and cost/benefit analyses Priorities schemes Contract Preparation and supervision of works
GIS and Systems Administration	Operation and systems administration of all systems Development and introduction of all needed software applications Extension of computer network
Database Management	Operation and systems administration of all existing database systems Development and introduction of all needed software applications Standardization of database systems

Customer Management	New connections Billing and revenue collection Customer billing queries Reduction of illegal water/wastewater connections
Public Information	Customer service Public relations Awareness-raising campaigns
Maintenance and Repair Management	Develop and apply future models for maintenance and repair management, identify and implement "best practices" Identification of needed rehabilitation and renewals
Mechanical Engineering	Development and introduction of preventative maintenance plans Rehabilitation of pumping stations and well-fields Energy use optimization
Electrical Engineering	Development and introduction of preventative maintenance plans Rehabilitation of pumping stations and well-fields Energy use optimization
Instrumentation	Development and introduction of preventive maintenance plans Introduction of appropriate monitoring and control systems
Water and Wastewater Quality Monitoring	Regular monitoring of quality Design of quality improvement program
Materials Management	Development and application of new procurement policy Procurement and inventory management
Human Resources Development	Development and implementation of on-the-job training program Change management / management of cultural integration General and specific training programs for computerization Occupational health and safety Pay, rewards, and incentives

Appendix B. Reporting Requirements

Operator shall file Annual Reports with the invoice when required in Clause 6.5(e) hereof, fully disclosing all progress toward and actions taken to meet all performance factors in Appendix IV (contained in Appendix G).

Operator shall file Interim Reports after the 6th, 18th, 30th, 42nd, and 54th month after the starting date disclosing all progress towards and actions taken to meet all performance factors in Appendix IV (contained in Appendix G.) within fifteen (15) days after the end of the month.

An annual strategic plan pursuant to Clause 3.2.2 hereof shall be prepared and filed 6, 12, 24, 36, and 48 months after the starting date.

Appendix C. Key Personnel and Subcontractors

[List under:	*C-1*	*Titles [and names, if already available], detailed job descriptions and minimum qualifications of Key Foreign Personnel to be assigned to work in Egypt and staff-months for each.*
	C-2	*Same information as C-1 for Key Local Personnel.*
	C-3	*Same as C-1 for Key Personnel to be assigned work outside Egypt.*
	C-4	*List of approved Subcontractors [if already available]; same*

information with respect to their Personnel as in C-1 through C-4.]

A. Operator's Representations Regarding Costs and Charges

We hereby confirm that (a) the basic salaries indicated below are taken from the firm's payroll records and reflect the current salaries of the staff members listed which have not been raised other than within the normal annual salary increase policy as applied to all the firm's staff; (b) attached are true copies of the latest salary slips of the staff members listed; (c) the field allowances indicated below are those that the Operator has agreed to pay for this assignment to the staff members listed; (d) the factors listed below for social charges and overhead are based on the firm's average cost experiences for the latest three years as represented by the firm's financial statements; and (e) said factors for overhead and social charges do not include any bonuses or other means of profit-sharing.

	1	2	3	4
Name Position	Basic Salary per Working Month/Day/Hour	Social Charges (___% of 1)	Overhead (___% of 1)	Overseas/Field Allowance (___% of 1)

---------- Expressed in *[name currency]* ----------

[Name of Operator]

By: _____ *[Authorized Representative]*
Name: _____
Title: _____
Date: _____

Operator: _____
Assignment: _____
Country: _____
Date: _____

B. Breakdown of Agreed Fixed Rates in Operator's Contract

We hereby confirm that we have agreed to pay to the staff members listed, who will be involved in this assignment, the basic salaries and field allowances (if applicable) indicated below.

Name	Position	Basic Salary Per Working Month/Day/Hr	Social Charges (___% of 1)	Overhead (___% of 1)	Subtotal	Fee (___% of 1)	Overseas/field Allowance (___% of 1)	Agreed Fixed Rate Per Working Month/Day/Hr	Agreed Fixed Rate (___% of 1)

---------- Expressed in *[name currency]* ----------

_____ *[Signature]* _____ *[Date]*

Name: _____
Title: _____

Appendix D. Hours of Work for Key Personnel

Note: Notwithstanding any provisions of the Contract to the contrary, Egyptian Labor Laws and Regulations shall govern hours of work and related issues for key personnel.

[List here the hours of work for Key Personnel; travel time to and from Egypt for foreign personnel; and entitlement, if any, to overtime pay, sick leave pay, vacation leave pay, et cetera]

Appendix E Duties of the Employer

The Employer shall provide personnel and equipment reasonably available and that is reasonably required for the Operator in order for the Operator to perform the services.

Appendix F Cost Estimates in Foreign Currency

[List hereunder cost estimates in foreign currency:]

1. Monthly rates for:

   - Foreign Personnel (Key Personnel and other Personnel)
   - Local Personnel (Key Personnel and other Personnel) ***[Note: This should be added if local Personnel are also being paid in foreign currency.]***

2. Reimbursable expenditures:

   - Per diem allowances;
   - Air transport for foreign Personnel;
   - Air transport for dependents;
   - Transport of personal effects;
   - International communications;
   - Printing of documents specified in Appendices A and B hereof;
   - Acquisition of specified equipment and materials to be imported by the Operator and to be paid for by the Employer (including transportation to Egypt); and
   - Other foreign-currency expenditures, like use of computers, foreign training of Employer's staff, various tests, *et cetera.*

Appendix G. Incentive Payments

The maximum amount that can be paid as an Incentive Fee for meeting the specified targets over the duration of the Contract has been fixed at USD _____. The maximum amount of Incentive Fee that can be paid annually is equal to USD _____ (USD _____ divided into five equal parts). The actual amount of the Incentive Fee received by the Operator will depend on the extent of the achievement of performance targets specified in this Appendix and will be determined by the application of a performance factor (composite score) to the Maximum Annual Incentive Fee amount of USD _____. Details of the performance obligations to earn the Incentive Fee are included in this Appendix. Sample calculation of the performance factor (composite score) is included in Appendix V. The Incentive Fee scheduled based upon the Performance Factor (composite score) is included in Appendix VI.

Excellent performance, as defined by the level of targets included under column one of the Performance matrix, is expected from the Operator. Consequently, if the Operator does not meet the targets for Excellent performance for any performance criteria, for any year, the unmet target will be added to the succeeding year's target for Excellent performance and thus raising the Excellent target for the succeeding year.

Performance of the Operator will be measured against the specific Performance targets and a weighted score of achievement called Composite Score calculated each year. A

Composite Score of 2.5 or greater will place the Operator on notice of possible termination. Performance of 3.5 or greater will be cause for termination of the Contract.

Performance Obligations of the Operator for the Duration of the Five-Year Management Contract

Performance Criterion	Units	Yearly Targets					Total Target for 5 Years
		Year 1	Year 2	Year 3	Year 4	Year 5	
Reduction in Unaccounted for Water[1]	% (volume of water sold / volume of water produced)						15%
Collection Efficiency[2]	% (value of bill payments collected divided by total value of customer billings)	70%	75%	80%	85%	90%	90%
Metering Coverage[3]	% (customers billed on metered basis divided by total customers)	29%	46%	59%	72%	85%	85%
Disposal Efficiency[4]	% (actual sewerage pumping hours / ideal hours)	75%	85%	95%	100%	100%	100%
Establishment of Less-Developed Areas Unit	Time	100%	–	–	–	–	100%
Completion of Needs Assessment for such Areas	Time	100%	–	–	–	–	100%

[1] *"Reduction in Unaccounted for Water" is calculated as m^3 of water billed divided by m^3 of water produced.*
[2] *"Collection Efficiency" is calculated as total collections (in local currency) divided by total billing (in local currency).*
[3] *"Metering Coverage" is calculated as the number of customers in the former service area billed on a metered basis divided by total customers in the former service area.*
[4] *"Disposal Efficiency" is calculated as the number of hours that pumps in sewerage pumping stations were in operation during the year divided by the number of hours that those pumps should have been in operation in normal conditions of the system.*

Performance Obligations of the Operator for the First Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Reduction of Unaccounted for Water	.25					
Collection Efficiency	.25	70%	68%	66%	64%	62%
Metering Coverage	.20	29%	27%	25%	23%	21%
Disposal Efficiency	.10	75%	73%	70%	68%	65%
Establishment of Less-Developed Areas Unit	.10	1 month	2 months	3 months	4 months	5 months
Completion of Needs Assessment for such Areas	.10	4 months	5 months	6 months	7 months	8 months

Performance Obligations of the Operator for the Second Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Reduction of Unaccounted for Water	.35					
Collection Efficiency	.35	75%	73%	71%	69%	67%
Metering Coverage	.15	46%	44%	42%	40%	38%
Disposal Efficiency	.15	85%	83%	80%	77%	75%

390

Performance Obligations of the Operator for the Third Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Reduction of Unaccounted for Water	.40					
Collection Efficiency	.40	80%	77%	75%	73%	70%
Metering Coverage	.15	59%	57%	55%	53%	51%
Disposal Efficiency	.15	95%	93%	90%	87%	85%

Performance Obligations of the Operator for the Fourth Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Reduction of Unaccounted for Water	.40					
Collection Efficiency	.40	85%	83%	80%	78%	76%
Metering Coverage	.15	72%	70%	68%	66%	64%
Disposal Efficiency	.15	100%	97%	95%	93%	90%

Performance Obligations of the Operator for the Fifth Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Reduction of Unaccounted for Water	.40					
Collection Efficiency	.40	90%	87%	85%	83%	80%
Metering Coverage	.15	85%	83%	81%	79%	77%
Disposal Efficiency	.15	100%	99%	98%	97%	96%

Brief Description of Calculation Procedure for Performance Factor (Composite Score)

The proposed performance evaluation system for the Management Contract will consist of the following four parts:

Part 1: Criterion Selection
Part 2: Criterion Weight Selection
Part 3: Criterion Value Selection
Part 4: Decision on the Scoring System: Calculation of Composite Score

The first three (3) parts are designed at the beginning of each year and the last part is executed at the end of the year.

Part 1: Selection of Performance Criteria

In this part, the criteria for evaluating performance of the Operator are specified. In order to select an appropriate set of criteria, one needs to ensure that they are fair to the Operator and fair to UtilityCo.

Part 2: Criterion Weight Selection

Whenever there is more than one indicator, we must decide what are the relative priorities so the Operator can allocate his time more effectively in achieving those priorities.

Part 3: Criterion Value Selection

The third part in the performance-evaluation system relates to criteria-value selection; i.e., the level of performance expected with respect to different indicators. One way to do so is to have a 5-point scale, where:

1 = Excellent
2 = Very Good
3 = Good
4 = Fair
5 = Poor

Part 4: Performance Evaluation at the End of the Year

The fourth and final step is taken at the end of the year, when we look at the achievements of the Operator and compare them with the criteria values and determine the composite score – reflecting overall performance of the Operator.

A hypothetical example of the above system, including the calculation of the composite score is given below:

Sample Management Contract Targets at the Beginning of the Year of Year x

Criterion	Units	Weight	Criterion Values				
			Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Reduction of unaccounted for water	%	.30	55	57	59	61	63
Collection efficiency	%	.40	35	37	39	41	43
Metering coverage	%	.30	30	28	26	24	22

The following table demonstrates the procedure for the calculation of the "Composite Performance Score," if at the end of the year the achievements of the Operator are as follows:

Reduction of unaccounted for water	57
Collection efficiency	36
Metering coverage	30

Calculation of Composite Performance Score

Criterion	Units	Weight	Achievement	Raw Score	Weighted Score
Reduction of unaccounted for water	%	.30	57	2	.6
Collection efficiency	%	.40	36	1.5	.6
Metering coverage	%	.30	30	1	.3
Composite Performance Score					**1.5**

The Method for Incentive Payments

The Operator will be paid an Incentive Fee based on the following formula:

Annual Incentive Payment	=	3.5 - Composite Score	X	Maximum Annual Incentive Fee
		2.5		

The method for calculating the Composite Score is given in Appendix V.

The maximum annual Incentive Fee is that fee that can be earned by the Operator by achieving all targets for "Excellent" performance specified in column one of the performance matrix included in Appendix IV.

Appendix H. Form of Bank Guarantee for Advance Payments

To:

_____ *[Name of Employer]*
_____ *[Address of Employer]*
_____ *[Name of Contract]*

Gentlemen:

In accordance with the provisions of Clause 6.5(a) of the above-mentioned Contract (hereinafter called "the Contract) _____ ***[name and address of Operator]*** (hereinafter called "the Operator") shall deposit with

_____
[name of Employer] a bank guarantee to guarantee its proper and faithful performance under the said provisions of the Contract in an amount of
_____ - ***[twenty (20) percent of total fixed fee portion of contract]*** (_____) ***[in words]***.

We, the _____ ***[bank or financial institution]***, as instructed by the Operator, agree unconditionally and irrevocably to guarantee as primary obligor and not as Surety merely, the payment to _____ ***[name of Employer]*** on his first demand without whatsoever right of objection on our part and without his first claim to the Operator, in the amount not exceeding
_____ ***[twenty (20) percent of total fixed fee portion of contract]***
(_____) ***[in words]***.

We further agree that no change or addition to or other modification of the terms of the Contract which may be made between _____ ***[name of Employer]*** and the Operator shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid and in full effect from the date of the advance payment under this Contract until _____ ***[name of Employer]*** has been set off by the Employer in accordance with Clause 6.5(a).

Yours truly,

Signature and Seal: _____
Name of Bank/Financial Institution: _____
Address: _____
Date: _____

Appendix I. Guarantee

Guarantee

This Guarantee is made as of the _____ day of _____, 2002, by _____, a _____ corporation ("Guarantor"), having its principal place of business in _____, to and for the benefit of UtilityCo._____

WITNESSETH:

WHEREAS_____, a _____ corporation, (the "Company") having an office at _____, has entered into a Performance-Based Management Contract for Water Supply and Sewerage Services in Egypt (the "Contract") with UtilityCo, dated _____, 2002.

WHEREAS, Guarantor is willing to guarantee, as set forth below, the performance of the Company under the Contract.

WHEREAS, UtilityCo would not enter into the Contract unless the Guarantor provided this Guarantee.

NOW, THEREFORE, as an inducement to UtilityCo to enter into this Contract, Guarantor agrees as follows:

1. Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Company of all of the Company's obligations under the Contract in accordance with the terms and conditions therein.

2. This Guarantee shall be governed by the laws of Egypt exclusive of the choice-of-law rules thereof, and Guarantor hereby agrees to the service of process in Egypt for any claim or controversy arising out of this Guarantee or relating to any breach hereof.

3. This Guarantee shall be binding upon and enforceable against the Guarantor, its successors, assigns, and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the properties of Guarantor), whether or not such obligations are expressly assumed by such successor, assignee, or transferee, and is for the benefit of UtilityCo and any permitted successors and assigns under the Contract.

4. This Guarantee may be enforced by UtilityCo without first resorting to any action against the Company or exhausting any other remedies that UtilityCo may have.

5. Each and every Event of Default under the Contract shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by UtilityCo as each cause of action arises. Guarantor waives presentation to, demand of performance from, and protest to UtilityCo of the obligations of the Company under the Contract.

6. No failure or delay by UtilityCo in exercising any right, power, or privilege hereunder or under the Contract shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other right, power, or privilege. No waiver, amendment, release, or modification of this Guarantee shall be established by conduct, custom, or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release, or modification is sought to be enforced.

7. Guarantor may not assign its obligations hereunder, except to a successor by merger or consolidation or to any transferee of all or substantially all of the property of Guarantor. Notice of any such assignment shall be given in writing to UtilityCo within thirty (30) days of the effective date of any such merger, consolidation, or transfer.

8. The respective obligations of Guarantor to UtilityCo set forth in this Guarantee shall be absolute and unconditional, shall not be subject to any requirement that UtilityCo first enforce any remedies it may have against the Company or any other Person, or any requirement to seek to recover from Company hereunder before proceeding against Guarantor hereunder, and shall not be subject to any claim of Guarantor against any other Person (including Persons in Egypt), other than a claim that the matter giving rise to UtilityCo's claim is the subject of dispute-resolution in good faith under the Contract or in the courts.

9. This Guarantee may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The invalidity or unenforceability of one or more provisions of this Guarantee shall not affect the validity or enforceability of the remaining portions of this Guarantee. This Guarantee is entered into by Guarantor solely and exclusively for the benefit of UtilityCo, and may be enforced against Guarantor by UtilityCo.

10. Any term used but not otherwise defined herein and defined in the Contract shall have the meaning attributed to it in the Contract.

11. Notices to be given pursuant to this Guarantee, unless otherwise stated, shall be in writing and shall be served personally or sent by certified mail, return receipt requested to:

Guarantor at: _____ *[Name]*
If by Mail: _____ *[Address]*
If by Hand: _____ *[Address]*

UtilityCo at: _____

Or to such other address as shall be designated by such party in a written notice to the other party hereto. Any notice given pursuant to this Section if transmitted by certified mail shall be effective immediately upon receipt and, if delivered by hand, upon delivery.

IN WITNESS WHEREOF, Guarantor has executed this instrument the day and year first above written.

ATTEST: _____
ACCEPTED BY: _____

Appendix J. Procurement Procedures

The Operator must adhere to the following procurement guidelines for procurement of goods and services.

Model Forms and Procedures

1. Bid Forms and Price Schedules

Technical Bid Form

Date:

_____

Grant/Credit N°:

_____

IFB N°:

_____

[Name of Contract]
To: *[Name and address of Employer]*

Ladies and/or Gentlemen,

396

Having examined the Bid Documents, including Addendum/Addenda No(s). ***[number(s)]***, the receipt of which is hereby acknowledged, we, the undersigned, offer to provide the services under the above-named Contract in full conformity with the said Bid Documents. We are hereby submitting our Bid, which includes this Technical Bid (including our Staffing Plan and Workplan), and a Price Bid sealed under a separate envelope.

We undertake, if our Bid is accepted, to commence work and to complete the work within the respective times stated in the Bid Documents.

If our Bid is accepted, we undertake to provide an advance payment security and a performance security in the form, in the amounts, and within the times specified, in the Bid Documents.

If negotiations are held during the period of validity of the Bid (i.e., before ***[date]***), we undertake to negotiate on the basis of the proposed staff. Our Bid is binding upon us and subject to the modifications resulting from Contract negotiations.

We understand you are not bound to accept any Bid you receive.

Dated this _____ day of, 20_____

_____ ***[Signature]***In the capacity of: _____ ***[Position]***

Duly authorized to sign this Bid for and on behalf of: _____ ***[Name of Bidder]***

Attachments: Attachment 1 - Bid Security
Attachment 2 - Power of Attorney
Attachment 3 – Bidder's Eligibility and Qualifications
Attachment 4 – Subcontracts Proposed by the Bidder

Part A: Staffing Plan[1]

The Bidder shall include a detailed staffing plan (the "Staffing Plan") setting out the Bidder's proposed staffing arrangements (the Bidder's own staff only) for carrying out the services, divided into the following sections:

1. Staffing Chart
2. Summary of Staff Qualifications
3. Curricula Vitae

The required format for these sections is provided below and on the following pages.

Staffing Chart

[1] See Bid Data Sheet, ITB 27, for more information.

The Staffing Chart should list all proposed staff, the role of each staff member, the duration of the involvement of each staff member, and the location of each staff member during their periods of assignment to carry out the Services. The Chart should cover all five years of the Management Contract (due to space constraints, this may be presented as five separate Charts).

Staffing Chart

			Months (in the Form of a Bar Chart)[2]												
Name	Position	Role	1	2	3	4	5	6	7	8	9	10	11	12	Number of Months
															Subtotal (1)
															Subtotal (2)
															Subtotal (3)
															Subtotal (4)

Full-time: _____ Part-time: _____

Signature: _____ Full Name: _____ ***[Authorized Representative]***

Summary of Staff Qualifications

The Summary of Staff Qualifications shall consist of a summary table setting out the names of each proposed staff member and their qualifications, years of experience, and areas of expertise, as follows:

Summary of Staff Qualifications

Name	Qualifications	Years of Experience	Areas of Expertise

[2] Staff inputs in these columns should be distinctly marked as either in Egypt or in the Operator's home country.

398

Curricula Vitae

This Section shall contain the signed curricula vitae of all proposed staff members, in the following format:

Proposed Position: _____
Name of Firm:

_____

Name of Staff:

_____

Profession:

_____

Date of Birth:

_____

Years with Firm/Entity: _____ Nationality:

_____

Membership in Professional Societies:

_____

Detailed Tasks
Assigned:_____

_____

Key Qualifications

[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations. Use about half a page.]

Education

[Summarize college/university and other specialized education of staff member, giving names of schools, dates attended, and degrees obtained. Include any professional certifications. Use about one quarter of a page.]

Employment Record

[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of assignments. For experience in last ten years, also give types of activities performed and client references, where appropriate.]

Languages

[Indicate proficiency in English and native tongue, if other than English: excellent, good, fair, or poor in speaking, reading, and writing.]

Certification

I, the undersigned, certify that to the best of my knowledge and belief, these data correctly describe my qualifications, my experience, and me.

_____ Date_____

[Signature of staff member and authorized representative of the firm]

Full name of staff member:

_____

Full name of authorized representative:

_____

Part B: Workplan[3]

In this Section, the Bidder shall include a detailed strategy and workplan (the "Workplan") setting out the manner in which the Bidder proposes to carry out the services as defined in the Scope of Work in Appendix A of the Contract Model (Section IV of the Bid Documents), meet the performance standards, and achieve ratings of "Excellent" in accordance with the Incentive Compensation Appendix (Appendix G of the Contract Model). The Workplan shall be divided into the following sections:

Information Requested	Bidder's Response
Strategy for Improving the Efficiency and Operation of the Water and Sewerage Systems	
Strategy for Improving Service to Less-Developed Areas	
Strategy for Improving the Efficiency of Revenue Collection and Implementing the Cost Recovery Policies of the Government of Egypt	
Strategy for Improving the Efficiency of the Customer Service and Public Relations Functions	
Strategy for Improving the Effectiveness of the Management of the Water and Sewerage Systems	
Strategy for Improving the Long Range Performance of the Water and Sewerage Systems	
Strategy for Assisting in Implementing the Investment Component that will be Carried Out in Parallel and Financed by other Donors	
Support for Ongoing Integration of Utilities Plan	

[3] See Bid Data Sheet, ITB 27, for more information.

Price Bid Form

Date: _____
Grant/Credit N°: _____
IFB N°: _____

[Name of Contract]
To: ***[Name and address of Employer]***

Ladies and/or Gentlemen,

Having examined the Bid Documents, including Addendum/Addenda No(s). ***[number(s)]***, the receipt of which is hereby acknowledged, we, the undersigned, offer to provide the Services under the above-named Contract in full conformity with the said Bid Documents and our Technical Bid for a Total Management Fixed Fee[4] of: ***[amount of foreign currency in words], [amount in figures]***. This amount is exclusive of local taxes, which we estimate at: ***[amount of local currency in words], [amount in figures]***. The above amounts are in accordance with the Price Schedules attached herewith and are made part of this bid.

We agree to abide by this Price Bid, which consists of this letter and Attachments 1 through 4 hereto, for a period of ***[number]*** days from the date fixed for submission of Bids as stipulated in the Bid Documents, and, together with the above written undertakings, it shall remain binding on us subject to modifications resulting from Contract negotiations.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

Name and address of agent	Amount and currency	Purpose of commission or gratuity
		[if none, state "none"]

We understand that you are not bound to accept the lowest or any Bid you may receive.

Dated this _____ day of, 20_____

_____ ***[Signature]***

In the capacity of _____ ***[Position]***

Duly authorized to sign this Bid for and on behalf of _____ ***[Name of Bidder]***

Attachments: Schedule 1. Remuneration for the personnel

[4] Insert amount calculated as Item 4.3 of Commercial Bid Schedule 4 (Summary – Total Management Fixed Fee).

Schedule 2. Reimbursable Expenditures
Schedule 3. Incentive Compensation
Schedule 4. Summary – Total Management Fixed Fee

Price Bid - Price Schedules

PREAMBLE

General

1. The Price Schedules are divided into separate Schedules as follows:

   - Schedule 1. Remuneration for the personnel
   - Schedule 2. Reimbursable Expenditures
   - Schedule 3. Incentive Compensation
   - Schedule 4. Summary – Total Management Fixed Fee

2. The Schedules do not include a full description of the services to be performed. Bidders shall be deemed to have read the Bid Documents to ascertain the full scope of services prior to filling in the rates and prices. The entered rates and prices shall be deemed to apply to the full scope as aforesaid, including overheads and profit.

3. If Bidders are unclear or uncertain as to the scope of any item, they may seek clarification in accordance with the Instructions to Bidders in the Bid Documents prior to submitting their Bids.

Pricing

4. Prices shall be filled in indelible ink, and any alterations necessary due to errors, *et cetera*, shall be initialed by the Bidder.

   - As specified in the Bid Data Sheet, prices shall be fixed and firm for the duration of the Contract.

5. Bid prices shall be quoted in the manner indicated and in the currencies specified in the Instructions to Bidders in the Bid Documents.

   - For each item, Bidders shall complete each appropriate column in the respective Schedules, giving the price breakdown as indicated in the Schedules.
   - Prices given shall be in accordance with the provisions of Clause 6.3 of the Contract Model (Section IV of the Bid Documents).

6. In the event that the Bidder is selected as the Apparent Successful Bidder, and as such enters into negotiations with the Employer, the prices given in Schedule 1 (Remuneration for the personnel) shall be substantiated by the following forms, which shall be completed and signed by the Bidder's Authorized Representative:

402

- Operator's Representations Regarding Costs and Charges
- Breakdown of Agreed Fixed Rates in Operator's Contract

provided in Appendix C of the Contract Model (in the Bid Documents), and this form shall be provided by the Bidder to the Employer at the time of negotiations.

7. In completing Schedules 1 (Remuneration for the personnel) and 2 (Reimbursable Expenditures), the Bidder shall indicate the portion of the Total that is attributable to the services to be provided for the Less-Developed Areas Program (Task (b), Subtasks (i) through (iv), of the Scope of Work in Appendix A – included in the Bid Documents). The purpose of presenting the price for services in this manner is to enable the Employer to evaluate the impact of the services required under the Less-Developed Areas Program on the total cost of the Contract. The Employer may, at its sole discretion, remove the Less-Developed Areas Program from the scope of services following opening of Bidders' Price Bids. In this case, the portion of the Bidder's fixed fee attributable to such Program will be deducted from the Total Management Fixed Fee to arrive at an amended Total Management Fixed Fee.

8. Where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly.

   - Where there are errors between the total of the amounts of Schedules 1 to 3 and the amount given in Schedule 5 (Summary – Total Management Fixed Fee), the former shall prevail and the latter will be corrected accordingly.
   - Where there are discrepancies between amounts stated in figures and amounts stated in words, the amounts stated in words shall prevail.

9. Payments will be made to the Operator in the currency or currencies indicated under each respective item.

10. Items left blank will be deemed to have been included in other items. The TOTAL for each Schedule and the TOTAL of the Summary shall be deemed to be the total price for providing the services in complete accordance with the Contract, whether or not each individual item has been priced.

11. When requested by the Employer for the purposes of making payments or part payments, valuing variations or evaluating claims, or for such other purposes as the Employer may reasonably require, the Operator shall provide the Employer with a breakdown of any composite or lump sum items included in the Schedules.

Schedules of Rates and Prices

The following schedules are included:

- Schedule 1. Remuneration for the personnel
- Schedule 2. Reimbursable Expenditures
- Schedule 3. Incentive Compensation
- Schedule 4. Summary – Total Management Fixed Fee

Schedule 1. Remuneration for the personnel[5]

Item	Description	Unit	Unit Price (specify currency)	Quantity	Total Price
			(1)	*(2)*	*(1 x 2)*
1.1	Remuneration				
	[Personnel No. 1]				
	[Personnel No. 2]				
	[Personnel No. 3]				
1.2	TOTAL (to Schedule 4. Summary – Total Management Fixed Fee)				
1.3	Portion of TOTAL (1.2) attributable to Less-Developed Areas Program[6]				
			Name of Bidder	_____	
			Signature of Bidder	_____	

Schedule 2. Reimbursable Expenditures[7]

Item	Description	Unit	Unit Price (specify currency)	Quantity	Total Price
			(1)	*(2)*	*(1 x 2)*
2.1	Per Diem Allowance	Day			
	[Personnel No. 1]				
	[Personnel No. 2]				
	[Personnel No. 3]				
			Subtotal – Per Diem Allowances		
2.2	Transportation				
			Subtotal - Transportation		

[5] To be completed per Sub-Clause 6.3(b) of the Contract Model (Section IV of the Bid Documents).
[6] The Less-Developed Areas Program is described by Task (b), Subtasks (i) through (iv), of the Scope of Work (Appendix A of the Contract Model, includes as Section IV of the Bid Documents).
[7] To be completed as per Sub-Clause 6.3(c) of the Contract Model (Section IV of the Bid Documents).

404

2.3	Communications					
	Subtotal - Communications					
2.4	TOTAL (to Schedule 4. Summary – Total Management Fixed Fee)					
2.5	Portion of TOTAL (2.4) attributable to the Less-Developed Areas Program[8]					
			Name of Bidder		_____	
			Signature of Bidder		_____	

Schedule 3. Incentive Compensation[9]

The total *[five-year]* ceiling for Incentive Compensation is *[specify currency]* _____ *[amount in figures], [amount in words]*						
3.1	TOTAL (to Schedule 4. Summary – Total Management Fixed Fee)					
			Name of Bidder		_____	
			Signature of Bidder		_____	

[8] The Less-Developed Areas Program is described by Task (b) , Subtasks (i) through (iv), of the Scope of Work (Appendix A of the Contract Model, included as Section IV of the Bid Documents).
[9] The actual amount of Incentive Compensation to be paid to the Operator shall be calculated pursuant to Appendix H of the Contract Model (Section IV of the Bid Documents).

405

Schedule 4. Summary – Total Management Fixed Fee (TMFF)

Item	Description	Total Price	
		Foreign	LE
4.1	Fixed Fee Component		
	Total Schedule 1. Remuneration for the personnel (1.1)		
	Total Schedule 2. Reimbursable Expenditures (2.4)		
	Subtotal – Fixed Fee		
4.2	Incentive Compensation Component		
	Total Schedule 3. Incentive Compensation (3.1)		
	Subtotal – Incentive Compensation		
4.3	*TOTAL (to Bid Form)*		
4.4	Total Portion of Fixed Fee Attributable to Less-Developed Areas Program *(1.3 + 2.5)*		
		Name of Bidder	_____
		Signature of Bidder	_____

406

Bid Security Form

Date: _____
Grant/Credit N°: _____
IFB N°: _____

[Name of Contract]
To: ***[Name and address of Employer]***

WHEREAS, ***[name of Bidder]*** (hereinafter called "the Bidder") has submitted its Bid dated ***[date of Bid]*** for the performance of the above-named Contract (hereinafter called "the Bid").

KNOW ALL PERSONS by these present that We ***[name of bank]*** of ***[address of bank]*** (hereinafter called "the Bank"), are bound unto ***[e.g., UtilityCo]*** (hereinafter called "the Employer") in the sum of ***[e.g., US$ 50,000.00 (fifty thousand United States dollars)]***, for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents.

Sealed with the Common Seal of the said Bank this _____ day of _____ 20

THE CONDITIONS of this obligation are the following:

1. If the Bidder withdraws its Bid during the period of bid validity specified by the Bidder in the Bid Form, or
2. If the Bidder, having been notified of the acceptance of its Bid by the Employer during the period of bid validity:
   - fails or refuses to sign the Contract Agreement when required or
   - fails or refuses to issue the performance security in accordance with the Bid Documents,

We undertake to pay to the Employer up to the above amount upon receipt of its first written demand, without the Employer having to substantiate its demand, provided that in its demand the Employer will note that the amount claimed by it is due it, owing to the occurrence of one or both of the two above-named conditions, and specifying the occurred condition or conditions.

This guarantee will remain in full force up to and including ***[date thirty (30) days after the period of bid validity]***, and any demand in respect thereof must reach the Bank not later than the above date.

For and on behalf of the Bank

_____ ***[Signature]***

In the capacity of

_____ ***[Position]***

Common Seal of the Bank

Performance Security Form
(Letter of Guarantee)

Date: _____
Grant/Credit N°: _____
IFB N°: _____

[Name of Contract]
To: *[Name and address of Employer]*

Dear Ladies and/or Gentlemen,

We refer to the Contract Agreement ("the Contract") signed on *[date]* between you and *[name of Operator]* ("the Operator") concerning the Performance-Based Management Contract for Water Supply and Wastewater Services in Egypt. The Operator is required, pursuant to the Contract, to give *[e.g., UtilityCo]* a guarantee by a recognized bank or financial institution in the sum of *[e.g., US$ 250,000.00 (two hundred and fifty thousand United States dollars)]*.

By this letter we, the undersigned, *[name of Bank]*, a Bank (or company) organized under the laws of *[country of Bank]* and having its registered/principal office at *[address of Bank]*, do hereby jointly and severally with the Operator irrevocably guarantee payment owed to you by the Operator, pursuant to the Contract, up to the sum of *[e.g., US$ 250,000.00 (two hundred and fifty thousand United States dollars)]* under the terms set out in this guarantee.

GUARANTEE

We guarantee and will be responsible to *[e.g., UtilityCo]* for all amounts owed to it by the Operator from time to time up to a total aggregate amount of *[e.g., US$ 250,000.00 (two hundred and fifty thousand United States dollars)]*. Amounts payable under this guarantee will be paid in United States dollars.

We undertake to make payment under this Letter of Guarantee upon receipt by us of your first written demand signed by your duly authorized officer declaring the Operator to be in default under the Contract and without cavil or argument any sum or sums within the above-named limits, without your need to prove or show grounds or reasons for your demand and without the right of the Operator to dispute or question such demand.

Our liability under this Letter of Guarantee shall be to pay to you whichever is the lesser of the sum so requested or the amount then guaranteed hereunder in respect of any demand duly made hereunder prior to expiry of this Letter of Guarantee, without being entitled to inquire whether or not this payment is lawfully demanded.

We waive any requirement that *[e.g., UtilityCo]* demand any debt or payment from the Operator before presenting us with a demand under this guarantee.

We agree that no change, addition to, or other modifications of the terms of the Contract or to any documents that have or may be made between ***[e.g., UtilityCo]*** and the Operator will in any way release us from any liability under this guarantee, and we waive any requirement for notice of any such change, addition, or modification.

This Letter of Guarantee shall be valid from the date of issue. This guarantee and our obligations under it will terminate on the date sixty (60) days after the first to occur of:

- The Expiry Date (as defined in the Contract)
- The earlier termination of the Contract

each as advised to us in writing by ***[e.g., UtilityCo]***.

Except for the documents herein specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation.

Our liability under this Letter of Guarantee shall become null and void immediately upon its expiry, whether it is returned or not, and no claim may be made hereunder after such expiry or after the aggregate of the sums paid by us to you shall equal the sums guaranteed hereunder, whichever is the earlier.

All notices to be given hereunder shall be given by registered (airmail) post to the addressee at the address herein set out or as otherwise advised by and between the parties hereto.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released, or discharged by mutual agreement between you and the Operator, and this security may be exchanged or surrendered without in any way impairing or affecting our liabilities hereunder without notice to us and without the necessity for any additional endorsement, consent, or guarantee by us; provided, however, that the sum guaranteed shall not be increased or decreased.

No action, event, or condition which by any applicable law should operate to discharge us from liability hereunder shall have any effect, and we hereby waive any right that we may have to apply such law, so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

The laws of Egypt govern this guarantee.

This guarantee is binding on our successors and permitted assignees.

Yours truly,
[Name of the Bank]

_____ *[Authorized Signature]*

Bank Guarantee Form for Advance Payment

See Appendix H of the Contract Model (in the Bid Documents).

Service Contract

A. Model Service Contract

Service Contract for Operation and Maintenance of Water/Wastewater Facilities

THIS AGREEMENT is made and entered into this _____day of _____, 20___, between _____, a *[Government-owned or private Utility]* with its principal place of business located at _____ (hereinafter "the Utility"), acting through its Board of Directors (hereinafter "Board"), and _____, a private company with its principal place of business located at _____ (hereinafter "the Contractor").

WHEREAS, the Utility owns the water/wastewater treatment and conveyance facilities (hereinafter "Facilities")

WHEREAS, the Utility has authority under the *[appropriate legal justification]* to enter into a professional services contract for the operation and maintenance of said Facilities.

WHEREAS, the Contractor is experienced in and capable of supplying the professional management, operation, and maintenance services for such Facilities.

NOW, THEREFORE, in consideration of the mutual agreement of the terms and conditions herein, the Parties agree as follows:

Article I: Purpose

The Utility agrees to engage the Contractor as an independent Contractor to manage, operate, and maintain the Facilities that are owned and controlled by the Utility during the term of this Agreement.

Article II: Scope of Services

The Scope of Services contemplated under this Agreement shall include the management, operations, maintenance, and repair of the Facilities (e.g., wellfields, treatment plant, pumping stations, water distribution network, and collection system) as more fully set forth in Appendix A, attached hereto. In addition, all services will comply with all requirements listed in the Utility's Request For Proposal (hereinafter "RFP"), attached hereto Appendix B.

1. Process Control

The Contractor shall manage, operate, and maintain the Facilities within their design capacity and capability in order that the finished water quality/effluent discharges from the Facilities meet the requirements as specified in Appendix B. The Contractor may alter the Facilities to achieve the objectives of this Agreement; *provided, however,* that no alteration shall be without the Utility's approval.

2. Technical Support

The Contractor shall provide on-call backup expertise in process control, management, operations, and maintenance necessary to assure performance of this Agreement at no additional cost to the Utility.

The Contractor shall implement site-specific safety programs to include training, record keeping, safety meetings, and an emergency response program, all to be acceptable to the Utility.

3. Odor Control and Abatement

The Contractor shall implement odor-control measures at the Facilities as required and necessary to prevent the emission of odors from said Facilities. The Parties agree that preventing odors is a prime operating consideration.

The Contractor shall respond to all odor complaints in a positive and professional manner. Whenever an odor complaint is investigated, a record shall be made that includes the time and circumstances of the complaint and follow-up action(s) taken. A copy of the report shall be submitted to the Board promptly.

4. Testing and Laboratory Analysis

The Contractor shall perform the necessary testing and laboratory analysis as required by the Utility's operating permit, and for process control. Laboratory analysis shall conform to the latest edition of *Standard Methods for Examination of Water and Wastewater* or its European equivalent. The Contractor shall submit results on a monthly basis to the appropriate monitoring agency, with copies to the Utility.

5. Finished Water/Wastewater Effluent Standards

Within its capacity and capabilities, the Contractor shall operate and maintain the Facilities in such a manner that the finished water/wastewater effluent quality is maintained at all times at a level equal to, or better than, the finished water/wastewater effluent requirements established in the operating permit of the Facilities.

In the event that the finished water/wastewater effluent quality is not in compliance with the requirements of the permit, the Contractor shall immediately notify the Utility and shall submit a report within forty-eight (48) hours outlining the proposed corrective action and schedule thereof. In the event that abnormal or biologically toxic material is received at the Facilities, the Contractor shall immediately notify the Utility and work with the Utility to remove and/or reduce such substances to the best ability of the Parties. If these substances cannot be removed, and if finished water/wastewater effluent parameters affected by these substances exceed the operating permit, the Contractor shall not be responsible for permit compliance for the parameters until these substances are removed from the Facilities.

6. Management Systems

The Contractor shall install (i) the necessary computer hardware and software to provide a comprehensive preventive maintenance management system, and (ii) a process-monitoring and -reporting system. The Utility will approve all software in advance. Computer hardware and software shall become the property of the Utility.

7. Operations

The Contractor shall maintain complete and accurate records of operations, maintenance, repairs, and improvements, together with an operator's daily log of significant events of the Facilities history. All such records and diaries shall be available for inspection by the Utility.

8. Monthly Report

The Contractor shall prepare and submit to the Board two (2) copies of a monthly report, including, but not limited to, the following information:

- Data required by the operating permit;
- Summary of quantitative and qualitative data for liquid and solids process control;
- Staff changes;
- Both existing and planned training activities;
- Safety and related items;
- Status of equipment and facilities.
- Status of its budget.

9. Annual Report

Once each year at a time to be determined by the Board, the Contractor shall prepare and submit three (3) copies of an annual report describing the operational and maintenance status, overall plant performance, requirements for additional capital equipment, and significant occurrences during the previous year.

10. Budget

The Contractor's budget and Agreement year shall be from January 1 to December 31.

11. Supervision

The Contractor shall provide a professional Treatment Facility Manager whose skills and experience shall include, but not be limited to, personnel administration, technical water and wastewater treatment, public relations, and communications necessary for the operations, maintenance, and repair of the Facilities.

12. Staffing

The Contractor shall staff the Facilities with employees experienced in every aspect of treatment systems. The staffing plan used by the Contractor shall be consistent with project requirements and shall be as represented by the Contractor in his proposal. The Facilities'

staff provided by the Contractor shall have the required certifications to operate and maintain the Facilities.

13. Training

The Contractor shall conduct an ongoing training program with both classroom and field training for all personnel associated with the operation and maintenance of the Facilities. The training shall include, but not be limited to, safety, operations, maintenance, repair, and first aid. The Utility may send its employees to these training sessions.

14. Vehicles

The ***[Utility/Contractor]*** shall provide all vehicles necessary to meet the requirements of this Agreement. All vehicles shall be restricted in use to work provided under this Agreement.

15. Security

The Contractor shall properly secure access to the Facilities, within the limits of existing security measures.

16. Appearance

The Contractor shall obtain the Board's approval of any modification or major maintenance affecting appearance. The Contractor recognizes the concern of local groups toward the outward appearance of buildings and structures, and agrees to maintain the cleanliness and appearance of the Facilities in a professional manner.

17. Public Relations

Subject to approval by the Board, the Contractor shall develop and implement a comprehensive public-awareness program to provide information to increase public understanding of the Facilities' programs, operations, and obligations.

18. Expenses

The Contractor shall pay all expenses required for the normal and routine operation and maintenance of the Facilities, including, but not limited to, the following: personnel costs, fuel, electricity, chemicals, and expendable supplies, in compliance with the RFP. The Contractor shall not pay expenses arising from a change to the Scope of Services, extension of time, changes in law, or any damages resulting from an Act of God, the Utility, or a third Party.

19. Maintenance

The Contractor shall perform routine preventive and corrective maintenance at the Facilities. The Contractor shall install, operate, and administer a computerized maintenance management program and maintain all equipment and structures assigned to the Contractor by the Utility under this Agreement.

The system shall produce an inventory of spare parts and readily available documentation of the corrective maintenance history for each piece of equipment. The Contractor shall provide records of maintenance performance, which shall be in accordance with manufacturers' specifications. The maintenance records should be updated weekly. The Contractor shall be responsible for all grounds care, including lawns, landscaping, fencing, signs, site drainage, walkways, snow removal, and building paint.

20. Capital Expense (Two Options Shown, Select One Option)

20a. Option 1 (Contractor Pays No Capital)

The Contractor shall not be responsible for capital improvements. For purposes of this Agreement, a capital item is defined as any new item of equipment that significantly extends service life, represents a non-routine type of purchase, is usually preplanned for purchase, and costs at least *[LE _____]*.

All proposed capital repairs/replacement amounts shall be submitted to the Board for approval prior to proceeding with repairs or replacement. Each request should identify the repair or replacement needed, its cause, its estimated cost, and the degree of urgency.

20b. Option 2 (Contractor Responsible for Replacement of Some Capital Items)

The Contractor shall establish and maintain an Asset-Replacement Fund (hereafter "the Fund") to which shall be credited all monthly capital-replacement payments described in Article V of this Agreement. The amounts credited to the Fund are as follows:

1. The Contractor shall from time-to-time disburse amounts from the Fund for the purchase of capital items at the direction of the Utility, or at the initiative of the Contractor, but only with the prior consent of the Utility in each instance. Capital items shall mean any item of equipment which:

    - Significantly extends service life of equipment or process.
    - Represents a non-routine purchase.
    - Is customarily planned for purchase.
    - Costs at least *[LE _____]*.

2. All earnings on amounts credited to the Fund shall be paid to the Contractor monthly as an agency fee for establishment and maintenance of the Fund.

3. At the termination of the Agreement, all amounts then remaining in the Fund shall be credited and paid to the Utility.

In the establishment and maintenance of the Fund, the Contractor shall at all times act as agent for and under the control of the Utility, which shall be the owner of all capital items purchased from the Fund.

As such agent, the Contractor shall provide the Utility with an accounting of the Fund, which the Contractor may, at its election, commingle with its own funds for ease of administration.

415

21. Laws

The Contractor shall comply with all applicable laws of the *[_____ District]*, as well as relevant laws and decisions of the institutions of Government of Egypt, as theypertain to the Facilities.

22. Warranties and Guarantees

The Contractor shall assist the Utility with the enforcement of existing equipment warranties and guarantees, and maintain all warranties on new equipment purchases after this Agreement is executed. The Utility shall cooperate with the Contractor on any existing warranties for the mutual benefit of the Utility and the Contractor.

23. Penalties and Fines

The Contractor shall be responsible for fines and penalties from environmental or other government agencies that may result from discharge violations resulting from lack of adequate process control and/or improper operations or maintenance of the Facilities. Through administrative procedures and legal action, the Contractor reserves the right to contest any such actions prior to payment. The Contractor shall not be liable for such fines if he can establish that such violations were the result of Acts of God, the Utility, or third Parties.

24. Sludge Disposal

The Contractor shall dispose of treatment residuals at the landfill site designated by the Utility and/or other government agencies. Should the current disposal method or disposal site be discontinued, the Contractor and the Utility agree that this shall constitute a change in the Scope of Services.

25. Plant Modifications

In the event that construction and/or modification of the Facilities is required during the term of this Agreement, the Board and the Contractor shall work together to maintain accessibility and minimize disruptive problems when encountered.

However, the Contractor shall be compensated for costs that arise from causes outside of its responsibility and control, including equipment outages and/or damage. The Contractor shall not be responsible for finished water/wastewater effluent violations resulting from such outages.

The Contractor agrees to review modifications to the Facilities and startup plans for equipment and processes. However, the Contractor shall not have any liability arising from the design of such Facilities or for damages arising from defects in their construction.

As new equipment and/or processes comes on-line, the Contractor and the Board shall agree to an adjustment in the contract price, if required, prior to such services being provided by the Contractor.

26. Inspection

The Board shall have the exclusive right to inspect the Facilities and equipment at any time during the term of this Agreement to ensure compliance with the terms and conditions herein.

27. Accounting Records

The Contractor shall maintain complete, accurate, and up-to-date financial records as they apply to the terms of this Agreement. All records shall be maintained in accordance with generally accepted accounting principles.

28. Access to Records

Upon reasonable notice, the Contractor shall provide the Board access to financial and operating records during normal business hours.

29. Licenses, Permits, and Certificates

The Contractor shall apply for, obtain, and maintain all licenses, permits, and certifications necessary to execute services in compliance with governing laws and regulations as they apply to this Agreement. The Contractor agrees to keep these documents current, and to pay for associated fees and charges.

Article III: Responsibilities of the Utility

The Utility shall provide all equipment, structures, facilities, and vehicles under their ownership and presently assigned to the Facilities or as specified in future construction contract specifications.

The Utility shall pay for necessary capital expenditures as defined in Article II of this Agreement.

Article IV: Term and Termination

1. Contract Term

The professional services under this Agreement shall commence on *[date]* and end on *[date, (usually five (5)-seven (7) years)]*, unless this Agreement is extended as hereinafter provided.

2. Extension

This Agreement may be extended at the agreement of the Parties. The Parties agree to meet not later than six (6) months before the termination date of this Agreement for purposes of negotiating an extension of this Agreement on mutually agreeable terms.

3. Termination

Either Party to this Agreement may terminate this Agreement upon a material breach by the other Party, providing that the terminating Party first provides written notice of such breach to the other Party and assuming that such breach is not corrected within ninety (90) days.

In this event, the Contractor shall continue to provide operations staff, should it be required, for a period of at least ninety (90) days beyond the date of termination, at cost plus overhead and reasonable profit.

Article V: Compensation – Option 1

The contractor assumes inflation and demand risk.

1. Fixed Fee

The Utility shall pay the Contractor an annual lump sum fixed fee, which is not subject to review, audit, or modification except as otherwise provided in this Agreement. The fixed fee for the Agreement shall be payable in equal monthly amounts, which are due on the first of each month for which services will be rendered.

For any payment to the Contractor which is not made within fifteen (15) days after it is due, the Contractor shall receive interest at the current prime interest rate of the national bank, plus one percent per annum on the unpaid balance.

The Contractor's fee is broken down into a series of five (5) one-year prices to include monthly payment for said periods, as follows ***[figures are indicative only]***:

Year	Annual Fixed Fee	Monthly Payment
1	$555,308	$46,276
2	$619,833	$51,653
3	$666,495	$55,541
4	$718,664	$59,889
5	$778,150	$64,846

2. Changes

In the event that any changes in the scope of operation of the Facilities shall occur including, but not limited to:

- Changes in law or regulations or reporting requirements.
- Changes in finished water/wastewater effluent standards that increase the cost of operating and maintaining the Facilities.
- Additional costs for treating abnormal or biologically toxic material.
- Other changes in the Scope of Services in Article II of this Agreement.

The Contractor shall be entitled to additional compensation that shall be retroactive to the time of such change, and shall be negotiated by the Parties within a reasonable period of time.

Any changes in the Scope of Services that decrease the cost of operating the Facilities shall entitle the Utility to a reasonable reduction of the fixed fee, and shall be negotiated by the Parties within a reasonable period of time.

Article VI: Compensation – Option 2

The utility assumes inflation and demand risk.

1. Fee

The Utility shall pay the Contractor an initial annual lump sum fee of_____, which is not subject to review, audit, or modification except as otherwise provided in this Agreement. This fee is based on an initial average daily demand (water supply or wastewater flow) of _____ liters-per-second. The fixed fee for the Agreement shall be payable to the Contractor in equal monthly amounts, which are due on the first of each month for which services will be rendered.

The fee shall be adjusted every six (6) months for changes in demand and inflation, using the formula below:

$$F_{n+1} = F_n \times \left[\frac{CPIU_{n+1}}{CPIU_n}\right] + VC \times \left[\frac{Demand_{n+1}}{Demand_n}\right]$$

Where:

n = initial time n
n+1 = time 6 months later than time n
Fn = Fee at initial time n
Fn+1 = Adjusted fee at time n+1
CPIU = Consumer Price Index—Utilities (or Alternative Inflation Index)
VC = Variable Operating Costs (Pumping Electricity + Process Chemicals)
Demand = Average water/wastewater processed between time n and n+1

For any payment to the Contractor which is not made within fifteen (15) days after it is due, the Contractor shall receive interest at the current prime interest rate of the national bank, plus one percent per annum on the unpaid balance.

2. Changes

In the event that any changes in the scope of operation of the Facilities shall occur including, but not limited to:

- Changes in law or regulations or reporting requirements.
- Changes in finished water/wastewater effluent standards that increase the cost of operating and maintaining the Facilities.
- Additional costs for treating abnormal or biologically toxic material.
- Other changes in the Scope of Services in Article II of this Agreement.

The Contractor shall be entitled to additional compensation that shall be retroactive to the time of such change, and shall be negotiated by the Parties within a reasonable period of time.

Any changes in the Scope of Services that decrease the cost of operating the Facilities shall entitle the Utility to a reasonable amount of reduction in the fixed fee, and shall be negotiated by the Parties within a reasonable period of time.

Article VII: Risk Management

1. Indemnification

The Contractor shall hold the Utility and its elected and appointed officers and employees harmless from any liability for claims or damages for personal injury or property damage that is caused by, or arises from, the negligence of the Contractor. In turn, the Utility shall hold the Contractor and its officers and employees harmless from any liability for claims or damage that is caused by or arises from the negligence of the Utility. In no event shall the Contractor be liable for indirect and consequential damages (including, but not limited to, loss of profits or revenue and loss of use of equipment and facilities) arising out of any error or agreement, based upon contract, negligence, or any other cause of action.

2. Comparative Responsibility

In the event that both Parties are found by a fact-finder to be negligent, and the negligence of both is the proximate cause of such claim for damage for personal injury or property damage, then, in such event, each Party shall be responsible for the portion of the liability equal to such Party's comparative share of the total negligence.

3. Insurance

The Contractor shall maintain the following insurance coverage during the term of this Agreement:

- Public Liability and Property Damage Insurance in the amount of not less than ***[local equivalent of US$1,000,000]*** with combined single limits for personal injury and property damage.

- Workman's Compensation Insurance ***[or local equivalent]*** for all of the Contractor's employees employed by the Facilities.

- Automobile liability insurance in amounts not less than ***[local equivalent of US$100,000/US$200,000]*** for personal injury and property damage, respectively.

The Contractor shall furnish the Board with satisfactory proof of such insurance and each policy shall require a thirty (30)-day notice of cancellation or material change to be given to the Board while this Agreement is in effect. These policies shall be in effect at the time the Contractor takes possession of the Facilities.

The Utility agrees to purchase and maintain property and structures liability insurance ***[if available]*** and flood insurance ***[if available]*** policies, including extended coverage plus

vandalism and malicious mischief to the full insurable value of the Facilities. The Contractor shall be named as an additional insured, according to its interest, under these policies during the term of this Agreement.

Article VIII: *Miscellaneous*

1. Relationship

It is understood that the relationship between the Utility and the Contractor is that of independent contractor and none of the agents of the Contractor shall be considered agents or employees of the Utility.

2. Applicable Law

The Contractor shall comply with all applicable laws as they apply to the Facilities. Departures therefrom shall be promptly corrected and shall be the responsibility of the Contractor.

3. Amendments

This Agreement contains the entire agreement between the Utility and the Contractor and supersedes all previous or contemporaneous communications, representations, or agreements. This Agreement may only be modified by a written amendment signed by both Parties.

4. Waiver

The failure on the part of either Party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

5. Assignment of the Agreement

This Agreement shall not be assigned by either Party without prior written consent of the other unless such assignment shall be to an affiliate or successor of either Party.

6. *Force Majeure*

Each Party's performance under this Agreement shall be excused if the Party is unable to perform because of actions due to causes beyond its reasonable control such as, but not limited to, Acts of God, the acts of a civil or military authority, governmental priorities, fires, strikes and/or picketing, epidemics, quarantine restrictions, riots, civil disobedience, and delays in transportation.

In the event of any such *Force Majeure*, the Party unable to perform shall notify the other Party within twenty-four (24) hours of the existence of such *Force Majeure* and shall be required to resume performance of its obligations under this Agreement upon the termination of the aforementioned *Force Majeure*.

7. Authority to Contract

Each Party warrants and represents that it has authority to enter in to this Agreement. The Utility warrants, represents, and certifies that it has appropriate funds available for payment to the Contractor required by this Agreement. If the Utility is unable to provide appropriate funds, the Contractor shall have the option to terminate this Agreement.

8. Access

The Contractor agrees to allow the Utility's officials access to all of the Facilities covered by this Agreement during normal working hours.

9. Notices

All notices shall be in writing and shall be delivered in person or transmitted by certified mail, return receipt requested. Notices to the Contractor shall be addressed to:*[Address of the Contractor]*

Notices required to be given to the Utility shall be addressed to: *[Address of the Utility]*

10. Severability

Should any part of this Agreement, for any reason be declared invalid or void, such decision shall not affect the remaining portion of the Agreement, which remaining portion shall remain in full force and effect as if this Agreement had been executed with the invalid portion eliminated.

IN WITNESS WHEREOF, the Parties sign this Agreement as of the date first written.

WITNESS: _____ *[The Utility]*

BY: _____

WITNESS: _____ *[The Contractor]*

BY: _____

Appendices

Appendix A. Facilities

[Provide a description of the Facilities.]

Appendix B. Request for Proposal (RFP)

[Provide the Request for Proposal.]

SECTION IV

Lease

A. Model Cover Page

[Name of GOE Agency]

and

[Name of Private Company]

[Date]

Enhanced Operating Lease

B. Model Table of Contents

1. **Definitions and Interpretation**
   - 1.1 Definitions
   - 1.2 Interpretation

2. **Conditions Precedent**
   - 2.1 Conditions Precedent
   - 2.2 The Lessor's Conditions Precedent
   - 2.3 The Lessee's Conditions Precedent
   - 2.4 Time Limit for Satisfaction
   - 2.5 Deemed Satisfaction
   - 2.6 Waiver
   - 2.7 Progress Reports
   - 2.8 Termination for Non-Satisfaction

3. **The Lease**
   - 3.1 Grant of Lease
   - 3.2 Title
   - 3.3 Quiet Enjoyment
   - 3.4 Reservations To Grant
   - 3.5 Conditions on Reservations
   - 3.6 Liabilities and Reimbursement
   - 3.7 Lessee's Access to Third Party Land
   - 3.8 Operating Assets
   - 3.9 Commencement Assets
   - 3.10 Lessor System Contracts
   - 3.11 New Works

4. **General Representations and Warranties**
   - 4.1 The Lessor
   - 4.2 The Lessee
   - 4.3 Exclusions

5. Transitional Arrangements
5.1 Operation of the business unit
5.2 Lessor Receivables
5.3 Notice to Consumers
5.4 Agent of the Lessor

6. Material Documents
6.1 Approval
6.2 Required Term
6.3 Approval Process
6.4 The Lessee's Response
6.5 Final Form
6.6 The Lessor's Approval
6.7 No Change Without Consent
6.8 Certified Copy
6.9 Consumer Charter

7. Lessor transferring employees
7.1 Offer Letters
7.2 Lessor's Obligations
7.3 Lessee's Obligations
7.4 Probationary Period

8. Use of Land and The System
8.1 Permitted Use
8.2 No Third Party Rights
8.3 Compliance
8.4 Notices

9. Obligations
9.1 Lessor's General Obligations
9.2 Lessee's General Obligations
9.3 Existing Consumers
9.4 New Connections and Consumer Connections
9.5 Water for Public Purposes
9.6 Collection of Sewerage Charges
9.7 Non-Compliance
9.8 Liquidated Damages
9.9 Termination of Service

10. Works
10.1 Coordination of Works
10.2 Connections
10.3 Improvements
10.4 Maintenance
10.5 Expansions
10.6 Renewals and Rehabilitations
10.7 Supervising Engineer
10.8 Lessor's Investment Program
10.9 Monitorable Implementation Plan
10.10 Additional Works by the Lessee
10.11 Obligations in Respect of Works
10.12 Ownership of Works

11. Operation and Maintenance
11.1 Operating Committee
11.2 Planned Interruptions
11.3 Unplanned Interruptions
11.4 Maintenance and Renewals
11.5 Condition Surveys

12. Record Keeping
12.1 Records
12.2 Retention and Disposal

13. Environmental Compliance
13.1 The Lessee's Obligations
13.2 Environmental Management System
13.3 Contamination
13.4 Environmental Audit

14. Monitoring
14.1 Reporting
14.2 Inspections

15. Billing, Collection, and Payment
15.1 Tariff Billing
15.2 Delivery of Invoices
15.3 Payment of Invoices
15.4 Lessee Fee

16. Insurance
16.1 Operating Period
16.2 Failure To Insure
16.3 Changes to Insurance Terms
16.4 Non-Payment of Premiums
16.5 Evidence of Insurance Cover
16.6 Effects of Not Obtaining Insurance
16.7 Disputes over Availability
16.8 Application of Insurance
16.9 State Insurance Corporation

17. *Force Majeure*
17.1 Relief for *Force Majeure* Events
17.2 *Force Majeure* Events Defined
17.3 Insufficiency of Funds
17.4 Notice of *Force Majeure* Events
17.5 Duty To Mitigate and Assist
17.6 Breakdown of Communications
17.7 Extension of the Expiry Date
17.8 Set-Off against Insurance Proceeds
17.9 Termination on Total Loss

18. Egyptian Political Events
18.1 Relief for Egyptian Political Events
18.2 Egyptian Political Events Defined
18.3 Notice of Egyptian Political Events
18.4 Inspection by the Lessor
18.5 Duty To Mitigate
18.6 Additional Compensation and Lessor Subrogation
18.7 Termination for Egyptian Political Events
18.8 Breakdown of Communications

19. Change In Law
19.1 Application
19.2 Notification of Change in Law
19.3 Procedure

20. Events of Default
20.1 Lessee Events of Default
20.2 Lessor Events of Default
20.3 Preliminary Termination Notice
20.4 Suspension Period
20.5 Lessor's Right To Operate
20.6 Termination for Events of Default

21. Term and Termination
21.1 Term
21.2 Early Termination
21.3 Liability after Termination
21.4 Survival
21.5 Obligations on Termination

22. Liability and Indemnity
22.1 Indemnified Losses
22.2 Indemnity
22.3 Limitation on Indemnity
22.4 Contractors Taking Benefit of Indemnity
22.5 Intention To Claim
22.6 Right To Contest Proceedings
22.7 Assuming Control of the Defense
22.8 Consequential and Indirect Losses
22.9 Lessor's Review or Approval
22.10 Liability Relating to the business unit
22.11 Exclusion of Consequential Damage
22.12 Equitable Relief

23. Assignments and Charges
23.1 Assignments
23.2 Transfer of Lessor's Function
23.3 Delegation
23.4 Permitted Liens

24. Dispute Resolution
24.1 Dispute Resolution
24.2 Mediation
24.3 Arbitration
24.4 Arbitration Awards To Be Binding
24.5 Expert

25. Confidentiality
25.1 Non-Disclosure
25.2 Public Information
25.3 Permitted Disclosure
25.4 Conditions of Permitted Disclosure

26. Miscellaneous Provisions
26.1 Amendments
26.2 Third Parties
26.3 Waiver
26.4 Relationship of the Parties
26.5 Change of Index
26.6 Language
26.7 Entirety
26.8 Successors and Assigns
26.9 Affirmation
26.10 Notices
26.11 Egyptian Participation
26.12 No Other Business
26.13 Governing Law
26.14 Counterparts

Schedules

Schedule 1 Initial and Operating Consents
Schedule 2 The System
Schedule 3 The Land
Schedule 4 Rehabilitations, Renewals, and Improvements
Schedule 5 Investment Program
Schedule 6 Monitorable Implementation Plan
Schedule 7 Lease Fee
Schedule 8 Performance Targets
Schedule 9 Form of Performance Bond
Schedule 10 Operating Assets
Schedule 11 Non-Operating Assets
Schedule 12 Lessor transferring employees
Schedule 13 Commencement Sale
Schedule 14 Insurance Policies
Schedule 15 Termination Sale
Schedule 16 Reporting Requirements
Schedule 17 Tariff Account Agreement

C. Model Lease

THIS LEASE is dated _____, 20_____.

BETWEEN

[Name of Utility or Other Government Contracting Authority (the Lessor)]; and

[Name of the Lessee]

BACKGROUND

A. Under its company regulations, the Lessor is responsible for providing, distributing, and conserving the supply of urban water in *[geographical area]* for public, domestic and industrial purposes.

B. The Lessor will grant to the Lessee an exclusive lease of the business unit for its operation and maintenance and for the purpose of producing, distributing, and collecting charges for portable water in accordance with this lease.

C. During the Operating Period, the Lessee will be responsible for managing and operating the business unit and the Connections Improvements, Rehabilitations, Renewals, and Maintenance. All Expansions and some repairs and replacements to the business unit will be undertaken by the Lessor.

D. The Lessee will purchase from the Lessor the Commencement Assts.

E. As at the Expiry Date or the earlier termination of this lease:

(a) The Lessee will return the business unit to the Lessor.
(b) The Lessor will acquire from the Lessee the Termination Assets.

LEASE

1. Definitions and Interpretation

1.1 Definitions

Unless the context requires otherwise:

"Agreed Form" means the form of a document initiated by the parties for identification or as approved by the Lessor.

"Arbitration Rules" means the Rules of Arbitration of the International Chamber of Commerce.

"Automatic Payment Instructions" is defined in the Tariff Account Agreement.

"Bulk Water Meters" means those meters in the Bulk Water System that are used to measure bulk water flow.

"Bulk Water Meters" means the facilities used to procure and deliver bulk water for the business unit including dams, catchments, reservoirs, springs, associated pipelines, water treatment facilities and their related facilities that do not form part of the Distribution System.

"Business Unit" means:

(i) The Land
(ii) The Operating Assets
(iii) The Bulk Water System
(iv) The Distribution System
(v) The Bulk Water Meters
(vi) The Consumer Meters
(vii) All Works
(viii) Any facilities in Schedule 2 that are used to procure, treat, transport or deliver water and to provide the Services.

"Cause" means any fact or circumstance that legally entitles an authority to impose a requirement for, revoke or amend the terms or conditions of, a Consent.

"Change in Law" means any of the following that happen after the date of this lease:

(a) the enactment or commencement of any Egyptian law;
(b) the repeal, modification or re-enactment of any existing Egyptian law;
(c) a change in the generally accepted interpretation or application of any Egyptian law by an Governmental Instrumentally which has the authority to interpret or apply that law;
(d) the introduction of a Tax Holiday; or
(e) except with Cause:

    (i) the imposition of a requirement for a Consent;
    (ii) a change in or addition of terms or conditions to an issued Consent; or
    (iii) the revocation or cancellation of a Consent.

"Change in Law Notice" is defined in Clause 19.2(a).

"Change in Law Option" is defined in Clause 19.3(a).

"Commencement Assets" is defined in Schedule 13.

"Commencement Completion" is defined in Schedule 13.

"Commencement Date" means the first date on which all condition precedents referred to in Clause 2 have been satisfied or waived by the party entitled to do so.

"Commission" means ***[the regulatory authority, if any]***.

"Completion Accounts" is defined in Schedule 15.

"Completion Date" is defined in Schedule 15.

"Condition Survey" means a survey of the condition of the business unit or any part of it carried out in accordance with Clause 11.5.

"Connection Point" means the physical point on the boundary of a property of a Consumer where the stop tap measure for that Consumer is located.

"Consents" means:

(a) The Initial Consents
(b) The Operating Consents
(c) Any other consent, license, approval, permit, no objection certificate or other authorization which must be obtained by a party or a Contractor from an Governmental Instrumentality to implement this lease.

"Consumer Database" means ***[describe applicable database(s)]***.

"Consumer Charter" means the Consumer Charter that must be adopted in accordance with the ***[regulatory regulations, if any]***.

"Consumers" mean all persons from time to time with a Connection to the business unit.

"Consumer Connections" means a connection from a Connection Point to a point inside a Consumer's property and includes the Consumer Meter.

"Consumer Deposit" means any deposit or other security held to secure payment of the Tariff by a Consumer.

"Consumer Meters" means meters located on the Consumer's side of a Connection Point that record water flows for the purpose of calculating Tariff Bills.

"Consumer Price Index" means, for any year, the Consumer Price Index to Egypt that is published ***[details]***.

"Contamination" means a solid, liquid, gas, odor, heat, sound, vibration, radiation or substance of any kind which makes or may make the Environment unsafe, unfit or harmful for habitation, use or occupation by any person or animal or is such that any part of the Environment does not satisfy the contamination criteria or standard published or adopted by the ***[relevant agency]*** from time to time and the word.

"Contaminant" has a corresponding meaning.

"Contract Month" means each calendar month during a contract year.

"Contract Year" means each 12-month period starting on January 1 and ending on December 31 during the term of this lease, however:

(a) If the term of this lease does not start on January 1, the first contract year starts on the date of this lease and ends on the following December 31.
(b) If this lease terminates on a day that is not December 31, the last contract year starts on January 1 of the previous year and ends on the date of termination.

"Contractor" means a contractor appointed by either party to carry out any work relating to the business unit and includes the Subcontractors.

"CP Termination Notice" is defined in Clause 2.8.

"Default Termination Notice" is defined in Clause 20.6.

"Default Rate" means the minimum lending rate prescribed by the Central Bank of Egypt as applicable to non-bank borrowers or, if no such rate is prescribed, the arithmetic average of the LE base rates quoted by two international banks, selected by the Lessor with branches in Cairo.

"Direct Egyptian Political Events" is defined in Clause 18.2(b)(ii).

"Directive" means any present or future requirements, instruction, direction, order, regulation or rule of any Governmental Instrumentality which is legally binding on or which would customarily be observed by a reasonable and prudent owner, operator, designer or contractor of facilities like the business unit.

"Distribution System" means the facilities used to provide the Services including all pumping structures, intake structures, plant, distribution mains, Connections and related or interconnected facilities.

"Disbursement Date" is defined in the Tariff Account Agreement.

"District Assembly" means any district assembly that is a Governmental Instrumentality.

"Due Date" means the first business day falling **thirty** ***[30]*** days after the date on which an Invoice is delivered.

"Emergency" means a situation that in the Lessee's or Lessor's opinion may:

(a) pose a significant threat to the safe provision of Service to any person; or
(b) endanger the security or health of persons, plant or equipment.

"Environmental Assessments" means an environmental assessment carried out in accordance with the requirements specified by the ***[relevant Egyptian agency]***.

"Environment" includes the meaning given to it at common law and in any legislation in force in Egypt, including any land, water, atmosphere, climate, sound, odors, tastes, the biological factors of animals and plants and the social factors of aesthetics.

"Environmental Hazard" means a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage or handling of any substance that has toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.

"Environment Law" means any law relating to the Environment including any law relating to land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, the use of transport, the storage and handling of dangerous goods, the health or safety of any person or

any other matters relating to but not limited to the protection of the Environment, health or property.

"Event of Default" means a Lessee Event of Default or a Lessor Event of Default.

"Expansions" means any expansion of the business unit referred to in the Investment Program that must be undertaken by the Lessor.

"Expert" is defined in Clause 24.5.

"Expiry Date" means the last day of the Operating Period.

"Financial Model" means the financial model for the business unit provided by the Lessee (in hard and electronic versions) which sets out the basis for calculating the business unit's costs and revenues and its financing of Works including the assumptions used, the cell logic network for the software, printouts of all the relevant sections of the financial model software and any accompanying documentation necessary to update it.

"*Force Majeure* Event" is defined in Clause 17.2.

"Egypt" means the Arab Republic of Egypt.

"Egyptian Political Event" is defined in Clause 18.2(a).

"GOE" means the Government of the Arab Republic of Egypt.

"Governmental Instrumentality" means a GOE agency or commission relevant to the water/wastewater sector.

"EPE Termination Notice" is defined in Clause 18.7(a).

"Lessor Account" is defined in the Tariff Account Agreement.

"Lessor Event of Default" is defined in Clause 20.2(a).

"Lessor Invoice" is defined in Clause 15.2(b).

"Lessor Leave Adjustment" means an amount equal to ***[amounts]*** the amounts accrued but unpaid at the commencement date:

(a) To each Lessor transferring employee for annual leave.
(b) To each Lessor transferring employee with at least five *[5]* years of service in aggregate with Lessor for long service leave calculated ***[mechanism]***.

"Lessor Receivables" means any trade or other receivables owing to Lessor by Consumers that are unpaid as at the commencement date.

"Lessor System Contracts" means all agreements, arrangements, licenses, understandings and orders entered into, made or accepted by the Lessor before the commencement date that relate to the operation of the business unit or the provision of Services and that have not been

terminated, expired or are not fully performed by the commencement date except for those that directly relate to matters for which the Lessor will remain responsible in accordance with this lease.

"Lessor transferring employees" means the employees of the Lessor to be employed by the Lessee from the commencement date as referred to in Schedule 12.

"Hazardous Substance" means any substance that would or might reasonably by expected to cause injury to any person or the Environment.

"Improvements" means any alteration, modification, enhancement or improvement to the business unit that directly or indirectly contributes to a higher quality of service or improved performance but does not include Maintenance, Renewals, Rehabilitations, Connections or Consumer Connections.

"Indemnified Losses" is defined in Clause 22.1.

"Indirect Egyptian Political Event " is defined in Clause 18.2(b)(i).

"Industrial Waste" means any waste arising from commercial, industrial or trade activities.

"Initial Consents" means those consents that must be obtained by each party before the commencement date, which are referred to Schedule 1.

"Initial Shareholders" means the shareholders of the Lessee at the date of this lease.

"Insurance" means the insurance policies referred to in Schedule 14 and any other insurance that the Lessee must maintain in accordance with Clause 16.

"Intellectual Property" means all intellectual property and proprietary rights (whether registered or unregistered) relating to the business unit including:

(a) Any right to have information (including confidential information) kept confidential.
(b) Patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, database, know-how, logos, designs, design rights, copyright and similar industrial or intellectual property rights.
(c) Intellectual Property Licenses
(d) All accounting systems (including all accounting, invoicing, debt control, credit control, debt collection, computer records, software and all ancillary data systems) other than corporate accounting and statutory records owned or licensed by a party.
(e) Any business names or trademarks used by the Lessee during the Operating Period in connection with the operation or maintenance of the business unit.

"Intellectual Property License" means all agreements under which a party has the right to use, but not ownership of, Intellectual Property.

"Investment Program" means the program of Expansions to be undertaken by the Lessor as set out in Schedule 5.

"Invoices" means a Lessor Invoice, Lessee Fee Invoice and a Supplementary Invoice and "Invoice" means any one of them.

"Invoice Dispute Notice" is defined in Clause 15.3(c).

"Land" means the land described in Schedule 3.

"Lease Payment" means, for any Contract Month, the amount payable to the Lessee under the Lessee Fee Invoice and any Supplementary Invoice.

"Lessee Account" is defined in the Tariff Account Agreement.

"Lessee Event of Default" is defined in Clause 20.1(a).

"Lessee Fee" means, in respect to a Contract Month, the fee payable by the Lessor to the Lessee for each cubic meter of water delivered to Consumers for which the Lessee has collected payment in full calculated and adjusted in accordance with Schedule 7.

"Lessee Fee Adjustment" means the procedure for adjusting the Lessee Fee set out in Schedule 7.

"Lessee Fee Invoice" is defined in Clause 15.2(a).

"Lessee Leave Adjustment" means an amount equal to *[percentage]* of the amounts accrued but unpaid at the Completion Date:

(a) To each Lessee transferring employee for annual leave.
(b) To each Lessee transferring employee with at least *[*five *(5)]* years of service with the Lessee for long service leave calculated ***[mechanism for calculating long service leave entitlement].***

"Lessee Pre-payment" is defined in Schedule 15.

"Lessee Receivables" means any trade or other receivables owing to the Lessee by Consumers that remains unpaid as at the Completion Date.

"Lessee System Contracts" is defined in Schedule 15.

"Lessee transferring employees" means the employees of the Lessee to be employed by Lessor or its nominee from the Completion Date in accordance with Schedule 15.

"Lessee Works" means those Works undertaken by or on behalf of the Lessee.

"Liability" means all liabilities, losses, damages, outgoing, Rates, Taxes, costs and expenses of any description.

"Lien" means any mortgage, pledge, charge, hypothecation, assignment, deposit, arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or nature (including any conditional sale or other title retention

agreement, any financing or similar statement or notice filed under any recording or notice statute and any agreement having substantially the same effect as any of the above).

"Maintenance" means the maintenance of the business unit from time to time in accordance with Prudent Water Utility Practices that is not a Renewal, Improvement, Rehabilitation, Expansion, Connection or Consumer Connection.

"Materials Documents" in defined in Clause 6(a).

"Monitorable Implementation Plan" means the plan prepared by the Lessee and required by Schedule 6 that demonstrates how the Lessee will operate and maintain the business unit, carry out the Works and Maintenance.

"Non-excludable Warranties" is defined in Schedule 13.

"Non-operating Assets" means the motor vehicles, machinery, furniture, equipment, apparatus, spare parts, computers and other moveable assets that are employed, directly or indirectly, to provide the Services and which are referred to in Schedule 11.

"Non-operating Assets Price" is defined in Schedule 13.

"Non-compliance Notice" is defined in Clause 9.7.

"Non-performance Notice" is defined in Clause 9.8(a).

"Non-water Activities" means any activity that does not constitute a Service including the laying and maintenance of oil, gas and other pipelines, electricity and communication cables including fiber optic cables.

"Notice" means any notice, notification, certification, election, consent, approval, waiver, report, acknowledgement or other communication that is required to permit to be given under and in accordance with this lease.

"Notice of Reference" is defined in Clause 24.3(a).

"Operating Assets" means each of the assets referred to in Schedule 10.

"Operating Committee" is defined in Clause 11.1(a).

"Operating Consents" means the consents that must be obtained by each party after the commencement date which are referred in Schedule 1.

"Operating Period" means the period starting of the commencement date and finishing on the first to occur of:

(a) The date falling 10 years from the commencement date
(b) Earlier termination of this lease

"Panel" is defined in Clause 24.2(a)(i).

"Performance Bond" means the on-demand bank guarantee in favor of the Lessor in the sum of LE *[amount]* substantially in the form set out in Schedule 9 that guarantees the Lessee's performance under this lease and given by a bank or financial institution acceptable to the Lessor.

"Performance Targets" means the performance targets for the operation of the business unit that must be achieved as set out in Schedule 8.

"Planned Interruption" means any interruption to the business unit's ability to provide the Services, which is planned in accordance with Clause 11.2 in order to undertake inspections, testing, preventive maintenance, corrective maintenance or any Works.

"Pre-existing Contamination" means any contamination identified as existing in, on, under or emanating from the Land as at the commencement date.

"Preliminary Termination Notice" is defined in Clause 20.3.

"President" is defined in Clause 24.5.

"Proceedings" is defined in Clause 22.6.

"Prudent Water Utility Practices" means exercising the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator and adopting the practices, methods and standards that are generally accepted internationally by water utilities for ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of water production and treatment facilities like the business unit with an necessary adjustments to take account of:

(a) The operation and maintenance guidelines recommended by the manufacturers of the plant and equipment incorporated in the business unit
(b) The requirements of any Directive
(c) The requirements of Egyptian law
(d) The physical, geological and meteorological conditions affecting the business unit

"Rates" means all sewerage rates, drainage rates and other rates, assessments, charges, costs and expenses (including for the construction of any private street, channel, curving, flagging or paving of any footway or pathway abutting the Land) which may at any time be payable to any Governmental Instrumentality.

"Records" is defined in Clause 12.1.

"Rehabilitation" means the repairs or replacements to the business unit referred to in the Rehabilitation Program and repair or replacement necessitated by the failure to carry out adequate Maintenance.

"Rehabilitation Program" is set out in Schedule 4.

"Renewals" means the repairs or replacements to the business unit (without upgrading) not referred to in the Rehabilitation Program and where that part of the business unit has come to the end of its ordinary useful life in accordance with its manufacturer's specifications.

"Service" means the provision of potable water and related services (including providing Connections) to Consumers and in accordance with the terms of this lease and any relevant laws.

"Step-in Notice" is defined in Clause 20.5(a).

"Stock" means all stocks of meters, piping, spares, raw materials, chemicals, lubricants and other consumables directly or indirectly used in relation to the procurement, treatment or supply of water in the business unit.

"Subsequent Contamination" means any Contamination existing in, on, under or emanating from the Land that arises during or can be attributed to the Operating Period and any release or leaching of or deterioration in, or alteration to, the Pre-existing Contamination that arises by reason of the use or occupation of the Land during the Operating Period.

"Supplementary Invoice" is defined in Clause 15.2(a).

"Tariff" means the tariff set by the Commission that is payable by Consumers for the provision of the Services.

"Tariff Account" is defined in the Tariff Account Agreement.

"Tariff Account Agreement" means the agreement to be entered into by the Lessor, the Lessee and the Tariff Bank substantially in the form set out in Schedule 17.

"Tariff Bank" means the bank in Cairo with which the Tariff Account is established.

"Tariff Bills" is defined in Clause 15.1(a).

"Tax" means any Egyptian:

(a) tax (including income tax, withholding tax, wealth tax, works contract tax, entry tax, property tax, profession tax, water tax, energy tax, fuel tax, environmental tax, sales tax, expenses tax or value added tax);
(b) duty (including any import or export duty, countervailing duty, excise tax or duty in the nature of excise); or
(c) surcharge, impost or levy,

of any nature whatever, wherever and whenever charged, levied or imposed together with any interest or penalty.

"Tax Holiday" means a tax holiday applicable to the Lessee under ***[Egyptian law]***.

"Taxes on Income" means all Taxes on the Lessee's net income levied by any taxing authority in Egypt.

"Termination Assets" is defined in Schedule 15.

"Termination Completion" is defined in Schedule 15.

"Termination Notices" means a CP Termination Notice, a Default Termination Notice, a EPE Termination Notice and a Total Loss Termination Notice and

"Termination Notice" means any of them.

"Transaction Fee" means the fee of *[amount]* LE to be paid by the Lessee to the Lessor.

"Total Loss Termination Notice" is defined in Clause 17.9.

"Unplanned Interruption" means any interruption to the business units' ability to provide Services that is not a Planned Interruption.

"Water Standards" means the standards for potable water for consumption or for use by the Egyptian public determined by the *[relevant agency]* and having the force of law as those standards are varied from time to time by the *[said agency]*.

"Week" means the period of seven (7) consecutive days beginning at 00:00 hours on Monday and ending at 24:00 hours on the following Sunday.

"Works" means any works carried out on the business unit including repairs, Maintenance, Expansions, Improvements, Rehabilitations and Renewals undertaken by or on behalf of either party.

1.2 Interpretation

Unless the context requires otherwise:

(a) The singular includes the plural and vice versa and words importing a gender include other genders.

(b) Other grammatical forms of defined words or expressions have corresponding meanings.

(c) Words or expressions that are not defined bear their ordinary English meaning.

(d) The background, table of contents and headings are for ease of reference only and do not affect the interpretation of this lease.

(e) A reference to "include" and "including" is to be construed without limitation to the proceeding words, unless it is expressly stated otherwise.

(f) A reference to a clause, paragraph, schedule, annex or appendix is a reference to a clause, paragraph, schedule or annex to this lease and a reference to this lease includes any schedules, annexes, and appendices.

(g) A reference to any legislation, statutory instrument or regulation is construed in accordance with Egyptian law in practice.

(h) A reference to a document, agreement (including this lease), legislation, statutory instrument or regulation includes a reference to that document, agreement, legislation,

statutory instrument or regulation as novated, altered, replaced, amended or re-enacted from time to time.

(i) A reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form.

(j) A reference to a party's rights or obligations is a reference to that party's rights or obligations under this lease.

(k) A reference to a time of day is a reference to Greenwich Mean Time and a reference to a business day is a reference to a day (other than a Friday or Saturday) on which banks are generally open for business in Cairo.

(l) A reference to pounds or LE is a reference to the lawful currency of Egypt.

(m) Interest payable accrues from day-to-day and is calculated on the basis of a 365-day year.

(n) A reference to a party or person includes its executors, administrators, successors and permitted assigns.

(o) A reference to a person includes a reference to a firm, company, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or any two or more of these.

(p) A reference to a company includes a reference to a body corporate or corporation.

(q) A reference to a holding company of a company is a reference to any company of which the first-mentioned company is a subsidiary.

(r) A reference to a subsidiary of a company is a reference to a company:

(i) That is controlled, directly or indirectly, by the first-mentioned company.
(ii) More than half the issued share capital of which is beneficially owned, directly or indirectly, by the first-mentioned company.
(iii) That is a subsidiary of another subsidiary of the first-mentioned company, and, for these purposes, a company will be controlled by another if that other company is able to direct its affairs and/or control the composition of its board of directors or equivalent body.

(s) A reference to an affiliate includes a reference to a subsidiary or holding company, or a subsidiary of a holding company.

(t) A reference to a change in effective control is a reference to:

(i) Any single person who held, directly or indirectly, more than 50 percent of the share capital of an Initial Shareholder on the date of his lease, who ceases to hold the beneficial interest in at least 50 percent of the share capital of that Initial Shareholder.

(ii) Any person who was not entitled to more than 50 percent of the issued share capital of an Initial Shareholder on the date of this lease, who becomes entitled to more than 50 percent of the issued share capital of that Initial Shareholder.

(u) A reference to indebtedness includes any obligation (whether incurred as principal or surety) for the payment or repayment of money whether present, future, actual or contingent.

(v) A reference to the winding-up, dissolution, administration, insolvency or reorganization of a company and a reference to the liquidator, assignee, administrator, receiver, administrative receiver, receiver and manager, manager or trustee of a company includes any equivalent or analogous proceedings or, as the case may be, insolvency representatives or officers under the law of the jurisdiction in which that company is incorporated or any officers carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, administration, arrangement, adjustment, protection or relief of debtors.

(w) Except where a party is expressly required to act fairly or reasonably, it may exercise any discretion given to it in its absolute discretion and the exercise of that discretion can not be challenged on grounds that the party did not exercise its discretion fairly or reasonably.

(x) All approvals or consents required by a party from the other party must be received before that party undertakes or performs the matter or thing for which that approval or consent is required, unless it is expressly stated otherwise.

(y) A reference to an encumbrance includes a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including title transfer and retention arrangements) which has a similar effect.

2. Conditions Precedent

2.1 Conditions Precedent

This lease (other than for Clauses 1, 2, 4, 5.1, 7.1, 13, 17, 18 (other than 18.1(b)), 22.9, 22.10, 22.11, 23, 24, 25, and 26) has no effect unless all of the conditions precedent referred to in Clauses 2.2 and 2.3 are fulfilled or waived within the time limit referred to in Clause 2.4.

2.2 The Lessor's Conditions Precedent

The Lessor is responsible at its own expense for satisfying the following conditions precedent:

(a) **Parliamentary Approval:** ***[if requested]***

(b) **Tariff Account** Agreement: the Lessor must have entered into the Tariff Account Agreement, performed any obligations under that agreement that must be performed before the Commencement Data and procured the Tariff Bank to have entered in the Tariff Account Agreement.

(c) **Initial Consents:** the Lessor must have obtained all Initial Consents together with all other Consents that it is required to obtain in order to enter into this lease and to implement the transactions contemplated by this lease.

(d) **Legal Opinion:** the Lessor must have given the Lessee on opinion of Egyptian legal counsel, in the Agreed Form, with respect to the Lessor's authority to enter into this lease and its enforceability.

(e) **Consumer Deposits:** the Lessor must transfer to the Lessee any Consumer Deposits held by it on the commencement date.

2.3 The Lessee's Conditions Precedent

The Lessee is responsible at its own expense for satisfying the following conditions precedent:

(a) **Performance Bond:** The Lessee must have procured the Performance Bond.

(b) **Transaction Fee:** The Lessee must have paid to the Lessor the Transaction Fee.

(c) **Tariff Account Agreement:** The Lessee must have entered into the Tariff Account Agreement and performed any obligations under that agreement that must be performed before the commencement date.

(d) **Consumer Charter:** The Lessee must have adopted a Consumer Charter ***[if required under Egyptian Law].***

(e) **Financial Model:** The Lessee must have given the Lessor the financial Model.

(f) **Initial Consents:** The Lessee must have obtained all Initial consents together with all other consents that it is required to obtain in order to enter into this lease and to implement the transactions contemplated by this lease and the Lessee must have given the Lessor a copy of each consent that it obtained.

(g) **Maintenance Account Charge:** The Lessee must have granted the Lessor the charge over its interest in the funds of the Maintenance Account in accordance with Clause 15.6(i).

(h) **Constitutive Documents:** The Lessee must have given the Lessor copies of the constitutive documents of the Lessee which must be certified as true and correct copies by a duly authorized officer of the Lessee.

(i) **Board Resolutions:** The Lessee must have given the Lessor copies of resolutions adopted by the Lessee's board of directors authorizing the execution, delivery and performance by the Lessee of this lease, with those resolutions certified as true and correct copies by a duly authorized officer of the Lessee.

(j) **Legal Opinion:** The Lessee must have given the Lessor an opinion of the Lessee's external legal counsel, in the Agreed Form, with respect to the Lessee's authority to enter into this lease and its enforceability.

440

2.4 Time Limit for Satisfaction

Each party must use all reasonable endeavors to satisfy the conditions precedent for which it is responsible within the period of three (3) months from the date of this lease. During that period, each party must also give the other party any assistance the other party reasonable requires to satisfy the conditions precedent for which that other party is responsible.

2.5 Deemed Satisfaction

If a party is exempted by the responsible Governmental Instrumentality or any other competent body from obtaining any Initial Consent or if the Initial Consent is no longer require by law before the end of the period referred to in Clause 2.4, the requirement to obtain that Initial Consent will be deemed to have been satisfied.

2.6 Waiver

A party may by notice waive the requirement that the other party satisfy any condition precedent for which it is responsible. No waiver by the Lessor of any material nature is effective unless the Commission or any other appropriate Governmental Instrumentality has approved it.

2.7 Progress Reports

Each party must give the other reports every fourteen (14) days on the progress that it has made in satisfying the conditions precedent for which it is responsible.

2.8 Termination for Non-Satisfaction

If all of the conditions precedents referred to in Clauses 2.2 and 2.3 are not satisfied or waived within the period referred to in Clause 2.4, the Lessor may terminate this lease by notice (a "CP Termination Notice") to the Lessee. This lease terminates immediately on receipt by the Lessee of the CP Termination Notice. If the Lessor terminates this lease by a CP Termination Notice as a result of the Lessee's failure to satisfy its conditions precedent under Clause 2.3, the Lessee must pay the Lessor costs, losses and expenses resulting directly or indirectly from the Lessee's failure to satisfy its conditions precedent.

3. The Lease

3.1 Grant of Lease

The Lessor:

(a) Leases the business unit to the Lessee for the operating period.
(b) Grants the Lessee the right to undertake the works that it is required to undertake in accordance with this lease.
(c) Grants the Lessee the right to bill and collect the tariff and any other payments due from consumers for the services.

3.2 Title

The Lessor makes no representation and gives no warranty as to the little of the Land and is not liable for any defects in title or in right of occupation or usage that may exist, either now or in the future, in respect of the Land.

3.3 Quiet Enjoyment

If the Lessee performs its obligations, then subject to this Clause 3, it may peaceably possess and enjoy the Lessor's rights to the Land for the term of the lease without any interruption or disturbance from the Lessor, or any person authorized by it, except where an interruption or disturbance results from the exercise by the Lessor of any its expressed or implied rights under this lease.

3.4 Reservations to Grant

(a) **Adjoining Land:** For the purpose of the Lessor or others providing services to, through, over or under land that is adjacent to the Land, the Lessor reserves the exclusive right for it, or any person authorized by it, to enter upon the Land to undertake or arrange works on, over or adjacent to the Land to:

- (i) Install, maintain, use, repair, alter and replace pipes, ducts, conduits, cables wires and poles on, over and under the Land.
- (ii) Pass and run electricity, sewerage, drainage, gas, communication and other services through those pipes, ducts, conduits, cables and wires.
- (iii) For the purpose of exercising the rights referred to in this paragraph (a), grant contractual and proprietary rights to any person over the Land.

(b) **Non-water Activities:** The Lessor reserves the exclusive right to grant contractual and proprietary rights to any person over the Land in respect of Non-water Activities including the exclusive right for it, or any person authorized by it, to enter upon the Land and to undertake or arrange works on, over or adjacent to the Land to:

- (i) Install, maintain, use, repair, alter and replace pipes, ducts, conduits, cables wires and poles on, over and under the Land.
- (ii) Pass and run electricity, sewerage, drainage, gas, communication and other services through those pipes, ducts, conduits, cables and wires.
- (iii) Develop, maintain, operate and manage the air space over the Land and any buildings, works, structures or other property in that air space.

(c) **Works:** The Lessor reserves the exclusive right for it, or any person authorized by it, to enter upon the Land and undertake or arrange any Works, inspections, Condition Surveys or any other matters for which the Lessor is responsible or which it is permitted to undertake in accordance with this lease.

(d) **Emergencies:** If the Lessor determines that there is an Emergency, it reserves the exclusive right for it, or any person authorized by it, to enter upon the Land without giving notice to the Lessee and to undertake or arrange any works that it determines are necessary in order to alleviate that Emergency.

3.5 Conditions on Reservations

(a) **Notice:** The Lessor must give the Lessee notice in accordance with Clause 10.1(b) of its intention to exercise any of the rights referred to in Clause 3.4 (other than Clause 3.4(d)).

(b) **Interference:** The Lessor must use reasonable endeavors to ensure that the exercise of its rights referred to in Clause 3.4 (other than Clause 3.4(d)).

(i) Does not materially adversely interfere with the operation of the business unit or the provision of services.
(ii) Complies with all reasonable safety precautions and procedures.

(c) **Assistance by Lessee:** If the Lessor exercises any of its rights referred to in Clause 3.4 the Lessee must:

(i) Assist the Lessor, or any person authorized by it, to ensure, as far as reasonably practicable, that appropriate arrangements and procedures are put in place to minimize any interference to the Lessee's use of the Land, the operation of the business unit or the provision of Services during the continuation of those works.
(ii) Implement, as far as reasonably practicable, appropriate work practices during the continuation of those works to assist the Lessor, or any person authorized by it, in completing those works in a timely and cost efficient manner.
(iii) Give the Lessor, or any person authorized by it, access to the land when reasonably required by the Lessor, or any person authorized by it, for the purpose of undertaking those works.
(iv) Use reasonable endeavors to mitigate any loss or damage suffered by the Lessee as a result of those works.

(d) **Right to Revenue:** The Lessor has the exclusive right to receive and retain all revenues derived in connection with any right it grants in accordance with Clause 3.4.

(e) **Compensation Payable by the Lessor:** If the Lessee complies with its obligations, the Lessor must compensate the Lessee on reasonable terms for any financial loss or damage suffered by the Lessee as a direct result of any works carried out in accordance with Clause 3.4 (other than Clause 3.4(d)) except to the extent that the financial loss or damage was caused or contributed to by a negligent act or negligent omission of the Lessee or its agents, affiliates or contractors. If any compensation payable to the Lessee has not been agreed within 60 days after the completion of those works, the matter must be referred to the Expert and resolved in accordance with Clause 24.5.

(f) **Liability:** Except as provided for in Clause 3.5(e), the Lessor is not liable to the Lessee for any loss or damage suffered by the Lessee as a result of any works carried out in accordance with Clause 3.4.

3.6 Liabilities and Reimbursement

(a) **Liabilities:** All liabilities relating to the business unit which are incurred:

(i) Before the commencement date, are the responsibility of the Lessor and the Lessor indemnifies the Lessee from and against those liabilities.

(ii) During the operating period, are the responsibility of the Lessee and the Lessee indemnifies the Lessor from and against those liabilities.

(b) **Reimbursement:** The Lessee must reimburse the Lessor for any liabilities paid by the Lessor for which the Lessee is responsible in accordance with Clause 3.6(a)(ii) through a Lessor Invoice.

3.7 Lessee's Access to Third Party Land

(a) **Grant of Right:** The Lessor appoints the Lessee as its agent and representative to apply for and exercise its easements, right of eminent domain, rights of way, statutory wayleaves, wayleave instruments and similar rights and powers given to the Lessor under or by virtue of Egyptian law. The Lessee must only exercise those rights in order to fulfill its obligations under this lease or any law relating to the provision of Services. If for any reason the appointment of the Lessee as the Lessor's agent or representative is rendered invalid or ineffective, the Lessor must, to the extend it can do so lawfully, exercise those powers at the Lessee's request in order for it to be able to fulfill its obligations under this lease or any law relating to the provision of Services.

(b) **Lessee's Indemnity:** The Lessee indemnifies the Lessor in accordance with Clause 22 against all Indemnified Losses arising from the exercise of the rights referred to in paragraph (a).

3.8 Operating Assets

(a) **Title:** Title to the Operating Assets is be retained by the Lessor. The Lessee must not sell, transfer or otherwise dispose of any Operating Assets and it must not create a Lien over any Operating Asset.

(b) **Permitted Use:** The Lessee may also use the Operating Assets for the purpose of providing the Services during the term of this lease.

(c) **Termination:** On the Expiry Date or the earlier termination of this lease, the Lessee must return, to the Lessor, in accordance with Schedule 15, each Operating Asset that exists on the Expiry Date or the earlier termination of this lease including any replacement of an Operating Asset.

3.9 Commencement Assets

The Lessor must sell and the Lessee must purchase the Commencement Assets in accordance with Schedule 13.

3.10 The Lessor System Contracts

(a) **Assignment:** The Lessor assigns and the Lessee accepts an assignment of the benefit and assumes the burden of the Lessor System Contracts with effect from the commencement date.

(b) **The Lessor Obligations:** The Lessor must use its reasonable endeavors to obtain all necessary agreements to the assignment of the benefit and the assumption of the burden of each Lessor system contract to the Lessee.

(c) **The Lessee's Obligations during the Operating Period**

The Lessee:

(i) Must assume, perform and observe the covenants and obligations of the Lessor under each Lessor system contract during the operating period.
(ii) Indemnifies the Lessor against any liability arising as a result of its breach, non-performance or non-observance of any terms and conditions of any Lessor system contract during the operating period.

(d) **The Lessor Indemnifies the Lessee:** The Lessor indemnifies the Lessee against all Liabilities incurred by the Lessee as a result of any breach or default by the Lessor under any Lessor System Contract occurring on or before the commencement date.

(e) **Assignment Unavailable:** If the Lessor is unable to procure any necessary agreement to the assignment of the benefit of a Lessor System Contract to the Lessee, the Lessor must:

(i) Hold the benefit of that Lessor System Contract for the Lessee.
(ii) Fully co-operate with the Lessee in relation to any reasonable requests if makes in order to provide the Lessee with the benefit and burden of that Lessor System Contract including enforcement of any rights the Lessor has against the other parties to that Lessor System Contract.

(f) **Cost:** The Lessee will be responsible for all reasonable costs (including legal fees) incurred by the Lessor to effect the assignment of the Lessor System Contracts.

3.11 New Works

The Lessor must not give any person a right to design, develop, construct or operate any new water procurement, treatment or supply system or related facilities in urban locations in Egypt that the Lessor is responsible for unless the Lessee is given an opportunity to bid for the right to undertake that work.

4. General Representations and Warranties

4.1 The Lessor

The Lessor represents and warranties that:

(a) It is *[insert Government agency name, or]* a company duly incorporated and validly existing under the laws of Egypt with power and authority to execute this lease and exercise its rights and perform its obligations.

(b) To the best of its knowledge and belief, there are no actions, suits or proceedings pending or threatened against or affecting it before any court or administrative body or arbitral

tribunal that would materially adversely affect its ability to exercise its ability to exercise its rights and perform its obligations.

(c) The execution of this lease by it has been duly authorized and will not contravene any provision of or constitute a default under any other agreement or instrument to which it is a party in a manner that would materially adversely affect its ability to perform its obligations under this lease.

(d) Its obligations are legally binding and are enforceable against it.

4.2 The Lessee

The Lessee represents and warranties that:

(a) It is a company duly incorporated and validly existing under the laws of Egypt with power and authority to execute this lease and exercise its rights and perform its obligations.

(b) To the best of its knowledge and belief, there are no actions, suits or proceedings pending or threatened against or affecting it before any court or administrative body or arbitral tribunal that would materially adversely affect its ability to exercise its ability to exercise its rights and perform its obligations.

(c) The execution of this lease by it has been duly authorized and will not contravene any provision of or constitute a default under any other agreement or instrument to which it is a party in a manner that would adversely affect its ability to perform its obligations under this lease.

(d) Its obligations are legally binding and are enforceable against it.

4.3 Exclusions

(a) **General:** Except for the representations and warranties referred to in this Clause 4 and Schedule 13, neither the Lessor nor any person acting on its behalf makes any representation or warranty, expressed or implied, in relation to the execution of this lease or the transactions contemplated by this lease. The Lessor disclaims any such representation or warranty made by delivery or disclosure of any documentation or other information to the Lessee, any of the Lessee's officers, directors, employees, agents, advisors or representatives or to any other person by the Lessor or any of its officers, directors, employees, agents, advisors or representatives or any other person. The disclaimer by the Lessor does not apply to any Non-excludable Warranties or in the case of fraud, fraudulent misrepresentation, willful default or gross negligence.

(b) **Exclusion of Implied Covenants and Warranties:** Any covenants and powers implied by any statute do not apply and will not be implied in this lease except to the extent that those covenants and powers constitute Non-excludable Warranties or otherwise may not be excluded or limited by operation of law.

5. Transitional Arrangements

5.1 Operation of the business unit

From the date of this lease up to and including the commencement date, unless the Lessee otherwise consents (which consent must not be unreasonably withheld), the Lessor must operate the business unit in the ordinary and usual course in a manner consistent with its normal practices including:

(a) Use its reasonable efforts to preserve and maintain the business unit.

(b) Continue to maintain all documents, agreements, contracts and other corporate records relating to the business unit.

(c) Give notice to the Lessee of:

  (i) The commencement of any material dispute or proceeding between the Lessor and any third party relating to the business unit.
  (ii) The occurrence of any material event of default in any agreements relating to the business unit or any event which it reasonably believes will become a material event of default under any of those agreements.

(d) Give the Lessee and its duly authorized agents and representatives access to the business unit, the Lessor's employees engaged in operating the business unit, the transferring employees and the records referred to in paragraph (b) above at all reasonable times and on reasonable notice to enable the Lessee to become familiar with the operation, maintenance and administration of the business unit including the Lessor's billing and collection procedures.

5.2 Lessor Receivables

For the first *[twelve (12)]* months of the operating period, the collection of all Lessor receivables are the responsibility of the Lessee. Each contract month the Lessee must pay to the Lessor all amounts it collects in respect of those Lessor receivables less a collection fee of:

(a) For Lessor receivables outstanding for *[sixty (60)]* days or less as at the commencement date, *[three (3)]* percent of the amount collected.
(b) For Lessor receivables outstanding for more than *[sixty (60)]* days as at the commencement date, *[six (6) percent]* of the amount collected.

5.3 Notice to Consumers

From the commencement date, the Lessee must, at its own cost, publish advertisements advising Consumers that the Lessee has assumed operational control of the Services. The size and content of those advertisements, the publications in which they appear and the frequency and period over which they appear must be approved by the Lessor.

5.4 Agent of the Lessor

Before the commencement date and without the Lessor's consent the Lessee must not:

(a) Do or propose to do anything on behalf of the Lessor.
(b) Contact any consumers or suppliers of the Lessor.

6. Material Documents

6.1 Approval

The Lessee must not enter into, accept, finalize or submit with any governmental instrumentality any of the following ('Material Documents') without the Lessor's approval of their terms and any other parties to them:

(a) The Performance Targets
(b) Any Lessee System Contract
(c) Its Consumer Charter
(d) Any Environmental Assessment
(e) The Insurance
(f) Any Condition Survey
(g) Any designs, plans or agreement relating to Lessee Works
(h) Any report or other submission to a governmental instrumentality
(i) All service contracts with consumers exceeding ***[a monetary value or quantity of delivered water]***
(j) All operating consents that are granted for a period greater than twelve (12) months or where the period of the grant will extend beyond the expiry date.
(k) Any other material agreement, arrangement, license, understanding, permit, or order.

6.2 Required Term

All material documents entered into by the Lessee must, where appropriate, provide for its assignment to the Lessor, or any person nominated by it, on terms, which are acceptable to the Lessor, on the termination of this lease.

6.3 Approval Process

The Lessee must give the Lessor a copy of each proposed material document, inform the Lessor of the identify of any other parties to the proposed material document and give the Lessor any additional information concerning the material document or any proposed parties to it that the Lessor reasonably requests. Within twenty one (21) days of receiving a proposed material document, or the date on which the Lessor receives any additional information it requested, the Lessor must:

(a) Give the Lessee any written comments and questions it has on the proposed material document.

(b) Indicate whether it approves of all parties to that proposed material document.

6.4 The Lessee's Response

The Lessee must give written responses to any questions raised by the Lessor within seven (7) days of receiving those questions.

6.5 Final Form

The Lessee must give the Lessor a copy of each material document in its proposed final form.

6.6 Lessor's Approval

The Lessor must notify the Lessee of its approval or rejection of the final form of a proposed material document within twenty one (21) days of receiving it. If the Lessor rejects that proposed form, it must give the Lessee its reasons for rejection.

6.7 No Change without Consent

The Lessee must not alter, amend, novate, rescind or terminate any material document or change or replace any party to a material document without the Lessor's approval in accordance with this Clause 6.

6.8 Certified Copy

The Lessee must promptly give the Lessor a certified copy of each finalized material document as approved by the Lessor.

6.9 Consumer Charter

The Lessor will not approve the Lessee's proposed consumer charter unless it is materially consistent with any consumer charter that the Lessor or any other operator of similar water facilities adopts in accordance with the ***[relevant regulations]***.

7. Lessor Transferring Employees

7.1 Offer Letters

On or before the commencement date, the Lessor and the Lessee must jointly issue to each Lessor transferring employee a letter in which the Lessee offers to employ that Lessor transferring employee from the commencement date on terms substantially similar to the terms of employment set out in Schedule 12. The offer of employment to each Lessor transferring employee may, at the Lessee's discretion, be made subject to a probationary period of six (6) months starting on the commencement date.

7.2 Lessor's Obligations

The Lessor must on the commencement date:

(a) Pay to each Lessor transferring employee all accrued wages, salary, commissions and bonuses in respect of that Lessor transferring employee's contract of employment with the Lessor.

(b) Release each Lessor transferring employee from his or her employment with the Lessor.

(c) Ensure that all employer contributions due to be paid by the Lessor on or before the commencement date in respect of each Lessor transferring employee have been paid.

(d) Pay to the Lessee the Lessor leave adjustment.

7.3 Lessee's Obligations

After the commencement date the Lessee will:

(a) Be responsible for and will indemnify the Lessor for all wages, salary, commissions and bonuses which accrue to each Lessor transferring employee.

(b) Allow each Lessor transferring employee an entitlement for sick leave which includes sick leave entitlements that had accrued to that Lessor transferring employee as an employee of Lessor but which had not been taken as at the commencement date.

(c) Treat the period of service (including any period of service deemed by award, statute or contract) which each Lessor transferring employee has had with the Lessor as service with the Lessee.

7.4 Probationary Period

(a) **Termination:** If the Lessee employs a Lessor transferring employee on a 6-month probationary period and subsequent terminates that employee's employment during that 6-month period, the Lessee must on the date of termination of employment:

(i) Pay that Lessor transferring employee all accrued wages, salary, commissions and bonuses in respect of that Lessor transferring employee's contract of employment with the Lessee.
(ii) Ensure that it has paid all employer contribution due to be paid by the Lessee to that Lessor transferring employee from the commencement date to and including the date of termination of employment.
(iii) Pay to that Lessor transferring employee's new employer an amount equal to the amounts accrued but unpaid at the date of termination of employment for:

(A) Annual Leave
(B) Long Service Leave

(b) **Severance and Redundancy Payments:** The Lessee must pay any Lessor transferring employee that it terminates during that employee's 6-month probationary period all amounts owed to that employee, as required by law or otherwise, for the termination of employment including redundancy and severance payments. The Lessee must also provide the Lessor with detailed copies of all calculations of such payments, which must be certified as true and correct copies by a duly authorized officer of the Lessee. Within thirty (30) days of receiving those calculations, the Lessor must pay to the Lessee an amount equal to the amount paid by the Lessee to the Lessor transferring employee in respect of redundancy and severance payments including and reasonable costs incurred by the Lessee in connection with that payment. If there is any dispute in relation to the

450

amount owed by the Lessor to the Lessee under this Clause 7.4, it must be referred to the Expert and resolved in accordance with Clause 24.5.

8. Use of Land and the System

8.1 Permitted Use

The Lessee must only use the land and the business unit:

(a) For the provision of the Services.
(b) In compliance with those purposes which are permitted under any relevant laws or planning schemes.

8.2 No Third Party Rights

Despite any other provisions in this lease, the Lessee must not grant any contractual or proprietary rights or interests over the land or the business unit without the Lessor's consent.

8.3 Compliance

Regardless of whether the law requires compliance by either or both parties or any other persons, the Lessee must at its expense:

(a) Comply with all laws which affect or relate to the Land or the business unit and the user or occupation of the Land including the payment of all outgoings, Rates, Taxes and any fines.
(b) Comply with all notices, orders and directions issued or given by a governmental instrumentality which affect or relate to the land or the business unit and the use or occupation of the land or the business unit.
(c) Obtain, maintain and comply with all consents which from time to time may be necessary or appropriate in connection with the use or occupation of the land or the business unit.

8.4 Notices

A party which receives a notice, order or direction from a governmental instrumentality which affects or relates to the land or the business unit or the use or occupation of the land or the business unit must promptly give a copy of that notice, order or direction to the other party.

9. Obligations

9.1 Lessor's General Obligations

The Lessor must perform all of its obligations in accordance with this lease, the Consents and all other applicable legal requirements including:

(a) Giving the Lessee reasonable assistance with its application for any license required for the first contract year after the commencement date.
(b) Undertaking the Investment Program.
(c) Undertaking the expansions for which it is responsible in accordance with Clause 10.

(d) On or before the commencement date, giving the Lessee, at the Lessee's expense, copies of any records referred to in Clause 5.1 requested by the Lessee.

9.2 Lessee's General Obligations

The Lessee must perform all of its obligations at its own expense in accordance with this lease, Prudent Water Utility Practices, the consents and all other legal requirements that apply to the provision of the Services and the operation of the business unit including:

(a) Assuming responsibility for all the obligations in relation to the business unit including, directly or indirectly:

  (i) The procurement and distribution of water for the business unit.
  (ii) Charging and collecting the Tariff from consumers.
  (iii) Providing reports, information, records or other data to any governmental instrumentality.

(b) Obtaining and maintaining the consents it requires to operate the business unit in accordance with this lease (including the payment of any fees or charges in respect of those consents);

(c) Obtaining and maintaining the Insurances.

(d) Ensure that the business unit is maintained in a condition which enables it to be use safely for its intended purpose.

(e) Its management, operation, connection, maintenance, renewal, improvement and rehabilitation obligations under this lease.

(f) Complying with all applicable laws including those relating to environmental protection, public health, fire protection, water resources, flood protection, sacred sites, historic sites, religious sites and national security.

(g) Using reasonable endeavors to reduce the number of illegal or unauthorized connections and the quantity of water lost for non-technical reasons.

(h) Ensure that the business unit is maintained in a condition which does not compromise the operation of any other water systems in Egypt.

9.3 Existing Consumers

The Lessee must offer water supply services to all Consumers in accordance with this lease on the terms prescribed by the Commission or any other Governmental Instrumentality.

9.4 New Connections and Consumer Connections

(a) **Duty To Provide:** If any person requests a Connection or a Consumer Connection, the Lessee must provide that Connection or Consumer Connection. All Connections and Consumer Connections that the Lessee is required to perform under this lease to provide

452

must be provided as soon as reasonably practicable and on reasonable terms in accordance with the relevant Regulations.

(b) **Connections Charges**

(i) For connections Points less than ***[fifty (50)]*** meters from the distribution mains, the Lessee may charge each Consumer an amount not exceeding LE ***[amount]*** for providing the connection, which amount may be adjusted on January 1 of each contract year.

(ii) For connections Points more than ***[fifty (50)]*** meters from the distribution mains, the Lessee may charge each Consumer an amount for providing the Connection equal to the costs reasonably and properly incurred by the Lessee in making that Connection, including the costs of necessarily upgrading or restoring existing connections or metering facilities to acceptable applicable standards or in accordance with the relevant regulations.

(c) **Consumer Connection Charges:** The Lessee will be entitled to charge each Consumer that requires a Consumer Connection the charge for a Consumer Connection determined from time to time by the Commission.

(d) **Consumer Meters:** The charges levied on Consumers for Connections must not include the cost of Consumer Meters.

9.5 Water for Public Purposes

The Lessee must make available an adequate supply of water for fire-fighting and other public Emergencies as the municipalities may reasonably request. The Lessee must provide this water and must not impose any charge for water provided in accordance with this clause but may charge for all other water used for public purposes.

9.6 Collection of Sewerage Charges

If requested by the Lessor, the Lessee must enter into an agreement with the District Assemblies within or connected to the business unit under which the Lessee will be required to collect, for a fee, payments due to that District Assembly for the provision of sewerage services.

9.7 Non-compliance

If the Lessor believes the Lessee is not complying with its obligations, the Lessor may serve on the Lessee a notice ("Non-compliance Notice") outlining the nature of the non-compliance and may require the Lessee to provide information and to attend meetings with Lessor in relation to the non-compliance. A non-compliance Notice may include a requirement that the Lessee submit and implement remedial plans to improve the Lessee's performance in the area or areas identified in that notice. The Lessee must promptly respond to, and comply with, any reasonable requests made by the Lessor in a Non-compliance Notice.

9.8 Liquidated Damages

(a) **Non-performance Notice:** If the Lessor believes the Lessee has failed to perform any of its obligations, it may serve a notice on the Lessee (copied to the Commission) to that effect stating the reasons for such opinion ("Non-performance Notice").

(b) **Calculation of Liquidated Damages:** If following the service of a Non-performance Notice the Lessee continues to fail to perform any obligation referred to in the Non-performance Notice for a continuous period of ***[five (5)]*** days, the Lessee must pay the Lessor, as liquidated damages for the failure to perform those obligations, the following amounts for each day during which the failure to perform continues.

(i) In respect of a failure to supply the Services, LE ***[amount]*** per day.
(ii) In respect of a failure to meet the Performance Targets, LE ***[amount]*** per day.
(iii) In respect of a failure to meet the Water Standards, LE ***[amount]*** per day.
(iv) In respect of a failure to comply with its obligations under Clause 13, LE ***[amount]*** per day.
(v) In respect of a failure to supply water for public purposes in accordance with Clause 9.5 LE ***[amount]*** per day.

(c) **Non-breach:** The Lessee will not be in breach of its obligations to the extent the breach occurs directly because of the Lessor's breach of its obligations including to undertake investments in accordance with the Investment Program.

(d) **Maximum Liability:** The Lessee's maximum aggregate liability under this Clause 9.8 in any Contract Year is LE ***[amount]***.

(e) **Claim on Performance Bond:** If the Lessee does not pay the Lessor any liquidated damages due under this Clause 9.8 within seven (7) days of the date upon which the obligation to pay them arose, the Lessor is entitled to claim on the Performance Bond in satisfaction of the unpaid amount.

(f) **The Lessor's Other Rights:** The Lessee's payment of any liquidated damages due under this Clause 9.8 is in addition to and not in substitution for any other rights of the Lessor's arising in respect of the Lessee's non-performance of its obligations.

9.9 Termination of Service

Any Directive of the Commission and the Termination Regulations, the Lessee may terminate the provision of Services to any Consumer if any Tariff Bill remains unpaid for a period of ***[sixty (60)]*** days after its due date. The Lessee must give that Consumer at least seven (7) days' notice of its intention to terminate Service. Upon the payment in full of all outstanding Tariff Bills (including late payment penalties and reconnection charges), the Lessee must use reasonable endeavors to establish a new Connection for any Consumer whose Service was terminated within two (2) business days of receipt of all outstanding Tariff Bills and charges.

459

10. Works

10.1 Coordination of Works

(a) **Notification by the Lessee:** Except in the case of an Emergency, the Lessee must not commence any Works unless they are carried out in accordance with this lease and it has given the Lessor at least thirty (30) days' notice of its intention to carry out those Works. That notice must set out details of:

(i) The nature of the works to be carried out.
(ii) These reasons for carrying out the works.
(iii) The effect the works will have on the operation of the business unit and the provision of the services while the works are being carried out.
(iv) The effect the works will have on the operation of the business unit and the provision of the services once they have been completed.
(v) The expected dates during which the works will be carried out.
(vi) Any other information relating to the works that the Lessor reasonably requests.

(b) **Notification by the Lessor:** Except in the case of an Emergency, the Lessor, or any person authorized by it, must not commence any works on the Land or the business unit unless the are carried out in accordance with this lease and it has given the Lessee at least thirty (30) days' notice of its intention to carry out those works. That notice must set out details of:

(i) The nature of the works to be carried out;
(ii) The expected dates during which the works will be carried out.
(iii) Any other information relating to the works that the Lessee reasonably requires in order for it to be able to continue to provide the Services.

(c) **The Lessor's Approval of Works:** Within twenty (20) days of receiving a notice under Clause 10.1(a), the Lessor must notify the Lessee whether it approves the proposed Works. The Lessor must not withhold its approval unless the proposed Works would reasonably be expected to:

(i) Prevent the Lessee from complying with a directive of the commission, the performance targets, the water standards or the monitorable implementation plan.
(ii) Have a material adverse effect on the business unit or the provision of Services.
(iii) Have an adverse impact on the Environment.
(iv) Either have a material adverse effect on the Lessor's rights or a material increase of the Lessor's obligations or liabilities (whether actual or contingent).
(v) Have a material adverse effect on any non-water activities or other use of the land is respect of which the Lessor is entitled to reserve rights in accordance with Clause 3.
(vi) Materially prejudice the Lessee's ability to comply with its obligations.
(vii) In some other way, materially inconsistent with this lease or any law.

(d) **Consents:** The Lessor's approval of any works is conditional on the Lessee obtaining the necessary consents to undertake those works.

(e) **Disputes:** Any dispute as to whether the Lessor's approval is required or whether the Lessor's refusal to approve any works is justified under this Clause 10.1 must be referred to the Expert and resolved in accordance with Clause 24.5.

(f) **Progress Reports:** Before the 10th day of each month, a party, or any person authorized by the Lessor undertaking any works must give the other party a report setting out for the previous month:

(i) The progress of the design, procurement, construction, completion, testing and commissioning of the works.
(ii) The progress of obtaining any Consents.
(iii) Any other matter which the other party reasonably requests.

(g) **Access:** Where the Lessor, or any person authorized by it, undertakes any works, the Lessee must ensure that the Lessor, or that authorized person be, permitted full access to the land and the business unit in order to carry out those works. The Lessee will not be responsible for any loss or damage caused to the Lessor, it employees or contractors or any authorized person while carrying out those works or while on the land unless it is attributable to the Lessee's negligence or wrongful act or omission.

10.2 Connections

Subject to the Lessor's complying with its obligations in respect of expansions, the Lessee must provide connections to ensure that the maximum number of new Consumers are given the option to receive services.

10.3 Improvements

The Lessee must undertake improvements in order to improve the level of services including reliability of supply, water quality and enhanced operation of the business unit while continuing to meet the water standards and the performance targets.

10.4 Maintenance

The Lessee must undertake Maintenance in order that the business unit achieves the Performance Targets and that the Services are provided in accordance with this lease subject to the Lessor's complying with its obligations in respect of Expansions.

10.5 Expansions

The Lessor must undertake maintenance in order that the business unit achieves the performance targets and that the services are provided in accordance with this lease subject to the Lessor's complying with its obligations in respect of expansions.

10.6 Renewals and Rehabilitations

The Lessee must undertake the renewals and rehabilitations in order to ensure that the business unit complies with the performance targets and that the services are provided in accordance with this lease.

456

10.7 Supervising Engineer

(a) **Obligation:** The Lessee must, if requested by the Lessor, provide suitably qualified personnel to supervise any works undertaken by the Lessor, or any person authorized by it, to undertake those works.

(b) **Fee:** The Lessee is entitled to charge the Lessor *[amount]* percent of the capital cost of any works supervised by the Lessee.

10.8 The Lessor's Investment Program

The Lessor must undertake the works for which it is responsible in accordance with the investment program.

10.9 Monitorable Implementation Plan

The Lessee must undertake the works for which it is responsible in accordance with the Monitorable Implementation Plan.

10.10 Additional Works by the Lessee

In addition to undertaking the works it is required to under this lease, the Lessee may also at its own expense and risk, undertake any other works to enhance, modify or expand the business unit provided that:

(a) The undertaking of those Works or the use or operation of the enhancement, modification or expansion when completed will not have an adverse impact on:

  (i) the ability of the business unit to provide the Services; or
  (ii) the Lessor's ability to exercise its rights under this lease.

(b) The Lessee gives the Lessor notice of it proposal for additional works in accordance with Clause 10.1(a) and the Lessor must provide its approval of those works to the extent required by and in accordance with Clause 10.1.

10.11 Obligations in Respect of Works

The Lessee must, when undertaking any Works:

(a) Execute and complete those works in a proper and workmanlike manner.

(b) Comply with all laws which relate to the works.

(c) Obtain and comply with all Consents required to undertake the works.

(d) Ensure that the works are undertaken by people who are suitably qualified and experienced and have any accreditations required to carry out those works.

(e) Ensure that the works are undertaken with due skill, care and diligence having regard to the nature of the works.

(f) Use modern materials of a quality consistent with prudent water utility practices and which will meet, at a minimum, the design life of any comparable parts of the existing business unit.

(g) Execute and complete the works in a manner which is consistent with the works as approved by the Lessor.

(h) Ensure that the works are properly integrated with the existing business unit.

(i) Execute and complete the works so that they are, when completed, fit for the purpose for which they were intended to be undertaken and approved by the Lessor.

10.12 Ownership of Works

Upon the Expiry Date or the earlier termination of this lease, property and full legal and beneficial title in all Lessee works will vest in and remain with the Lessor in accordance with Schedule 15. The Lessee must not sell, transfer, assign or otherwise dispose of any Lessee works and must not create or allow any lien to exist over any Lessee works without the Lessor's consent.

11. Operation and Maintenance

11.1 Operating Committee

(a) **Establishing the Committee:** At least fifteen (15) days before the start of the operating period, the parties must establish a committee (the 'Operating Committee'). The Operating Committee will have four (4) members, two (2) appointed by the Lessee and two (2) by the Lessor. The chairman will be nominated by the Lessor.

(b) **Powers and Duties:** The powers and duties of the Operating Committee include:

(i) Discussion of the steps to be taken on the occurrence of a Force Majeure Event, an Egypt Political Event, an Event of Default and Unplanned Interruptions.
(ii) To determine whether any official notice relates to Pre-existing Contamination or Subsequent Contamination in accordance with Clause 13.3.
(iii) The co-ordination of works carried out by the parties or persons authorized by them including any works identified in a Condition Survey as being required.
(iv) Consultation on the insurance program to be undertaken by the Lessee during the Operating Period, including the Insurance.
(v) Any proposed changes to the Performance Targets.
(vi) Safety affecting the parties on their Contractors.
(vii) Approval of emergency plans developed by the Lessee in consultation with the Lessor.
(viii) Any other matters affecting the operation of the business unit and the provision of the services during the operating period including the operation of other water treatment or delivery systems and sewerage systems.

(c) **Compulsory Compliance:** Unless the decision is inconsistent with this lease, the parties must comply with unanimous decisions of the Operating Committee on matters within its competence.

(d) **Procedures for Meetings:** The Operating Committee may agree upon procedures for the holding of meetings, however:

(i) The quorum for each meeting must include at least one (1) person appointed by each party.
(ii) Decisions of the Operating Committee must be by unanimous agreement of all members present.

(e) **Deadlocks:** If the Operating Committee is unable to reach unanimous agreement, the Operating Committee or either party may refer the matter to the chief executives of each party for resolution. Any matters not resolved by the chief executives must be referred to the Expert and resolved in accordance with Clause 24.5.

(f) **Additional Members:** The Operating Committee may co-opt any other member(s) from relevant bodies. These additional members will act as advisors and will not be entitled to vote and will not form part of a quorum.

11.2 Planned Interruptions

(a) **Proposed Interruptions:** By 31 December in each Contract Year (or any other date nominated by the Lessor), the Lessee must notify the Lessor of its firm proposals for Panned Interruptions in the next Contract Year and its provisional proposals for Planned Interruptions in each of the two (2) Contract Years after the next Contract Year.

(b) **Factors to be Considered:**

(i) Demand: The Lessee must not propose Planned Interruptions during periods of high demand for services and must use all reasonable endeavors to plan to take Planned Interruptions during periods of low demand for services.
(ii) Investment Program: When proposing its Planned Interruptions, the Lessee must also take into account the Investment Program notified to it by the Lessor.

(c) **The Lessor Objections:** Within thirty (30) days of receiving the Lessee's proposed Planned Interruptions, the Lessor must notify the Lessee whether they are acceptable. If the proposals are not acceptable, the Lessor must give the Lessee its required timing of those Planned Interruptions that must be:

(i) consistent with the factors referred to in Clause 11.2(b)
(ii) of the same durations as the periods requested by the Lessee
(iii) within the time limits required by any legal requirement and consistent with Prudent Water Utility Practices
(iv) within the time limits required or recommended by the manufacturer or supplier of any plant which is to undergo maintenance

(d) **Confirmed and Provisional Interruptions:** The Planned Interruptions accepted by the Lessor will be confirmed to the extent that they relate to the next Contract Year and are provisional to the extent that they relate to subsequent Contract Years. Provisional Planned Interruptions may be changed by either party for good cause before they become confirmed Planned Interruptions. A party must promptly notify the other party if it wishes to amend a confirmed Planned Interruption. Confirmed Planned Interruptions may only

be amended if both parties agree. If the parties are unable to agree on the amendments, the dispute must be referred to the Expert and resolved in accordance with Clause 24.5. Amendments agreed by the parties or resolved by the Expert must be consistent with Clause 11.2(c) to (iv) inclusive.

(e) **Emergency Re-scheduling:** In an Emergency, the Lessor may require the Lessee to use its best efforts to re-schedule a confirmed Planned Interruption (including one which has already begun) to a more convenient time provided that the re-scheduling can be done in a way which is consistent with Clause 11.2(c)(iii). The Lessor must compensate the Lessee for all additional costs which it reasonable and directly incurs because the Planned Interruption is re-scheduled other than costs incurred by the Lessee because it is required to operate at a time when it would otherwise have been undergoing a Planned Interruption.

(f) **Time Required:** The Lessee must use its reasonable endeavors consistent with Prudent Water Utility Practices to take the business unit out of service for the shortest period of time necessary to complete Planned Interruptions.

(g) **Notice to Consumers:** The Lessee must give at least seven (7) days' notice to Consumer's whose service will or may be affected by any Planned Interruption.

(h) **Alternative Supplies:** The Lessee must use reasonable endeavors to make alternative potable water supplies available:

(i) During any Planned Interruption to any schools, hospitals, fire departments and key public buildings affected by a Planned Interruption.
(ii) Where the Planned Interruption is for more than twenty four (24) continuous hours or where the water in the business unit has or may be subject to any form of contamination, to any Consumer.

11.3 Unplanned Interruptions

(a) **Notice of Interruption:** If the Lessee needs or is suffering an Unplanned Interruption, it must promptly give the Lessor notice of:

(i) The nature of the interruption and the work to be carried out (including details of the specific component on which the work will be carried out).
(ii) The estimated start time of the work.
(iii) The estimated time required to complete it.
(iv) The latest time by which, in the Lessee's opinion, the work should begin consistent with Prudent Water Utility Practices.

(b) **Time Required:** The Lessee must use its reasonable endeavors consistent with Prudent Water Utility Practices to take any part of the business unit out of service for the shortest period of time necessary to complete Unplanned Interruptions.

11.4 Maintenance and Renewals

(a) **Lessee's Obligations:** The Lessee must undertake the works it is required to undertake in accordance with Clause 10.

(b) **Compliance:** The Lessee's compliance with its obligations referred to in paragraph (a) will be determined by Condition Surveys carried out in accordance with Clause 11.5.

(c) **Rectification:** The Lessee must use its reasonable endeavors to rectify all deficiencies and carry out all works identified in a Condition Survey which are not identified as being rehabilitations for which the Lessor is responsible. These Works must be carried out in the time frame and using the methods approved by the Operating Committee. The Operating Committee must consider any recommendations made in the Condition Survey when considering the appropriate time frames and methods to be adopted.

11.5 Condition Surveys

(a) **Methodology:** A survey of the condition of the business unit ("Condition Survey") must be undertaken in accordance with this Clause 11.5 by ***[methodology]***.

(b) **Lessee's Obligations:** The Lessee must at its own expense, commission a Condition Survey within thirty (30) days of the second and seventh anniversaries of the commencement date. Each Condition Survey must be undertaken by an independent expert agreed by the parties, or if the parties cannot agree within thirty (30) days of the Condition Survey being required to be commissioned in accordance with this Clause 11.5(b), the independent expert must be appointed on the application of either party by the president or other senior office bearer for the time being of the ***[Egyptian engineer professional association]***.

(c) **Additional Condition Surveys:** Either party may, at its own expense, commission an independent expert to undertake a Condition Survey at any time during the Operating Period. If a Condition Survey has not been undertaken during the previous twelve (12) months period (excluding any survey undertaken to determine the business unit's condition on the Expiry Date or earlier termination of this lease). Any additional Condition Surveys must be undertaken in the same manner and by an independent expert appointed in accordance with this Clause 11.5.

(d) **Content:** The independent expert undertaking a Condition Survey must be instructed to:

(i) ***[describe the methodology to be used]***
(ii) ***[describe how the results are to be set out – including recommendation as to the measures that should be taken to rectify any deficiencies that the Lessee is required to rectify]***
(iii) Prepare the Condition Survey in a similar form and layout to the first Condition Survey undertaken under this lease.
(iv) Complete and deliver a copy of the Condition Survey to both parties within sixty (60) days (or such longer period as the parties may be agreed) of being commissioned to undertake the Condition Survey.

(d) **Assistance:** The parties must expeditiously give the independent expert undertaking the Condition Survey in accordance with this Clause 11.5 all information (including performance data and maintenance records) relating to the business unit and any other assistance the expert reasonably requests for the purpose of undertaking the Condition Survey.

(e) **Binding:** The findings contained in each Condition Survey, will, in the absence of manifest error, be conclusive and binding on both parties.

12. Record Keeping

12.1 Records

In accordance with Prudent Water Utility Practices, this lease and any applicable laws and any Directives of the Commission, the Lessee must keep complete and accurate records of all data required for the proper administration of this lease and the business unit ("Records") including:

(a) A detail operating log for the business unit including:

- (i) The meter records for all Bulk Water Meters.
- (ii) The meter records for all Consumer Meters.
- (iii) The results of any tests.
- (iv) All records relating to the works.
- (v) Any changes in the operating status of the business unit including any interruptions and any other restrictions or limitations affecting the business unit.
- (vi) Any unusual conditions found during inspections.

(b) All operations and works plans, technical information and data, specifications, manuals, drawings, tracings, calculations, computer programs, computer disks and reports.

(c) The following documents:

- (i) As-built drawings for any Works undertaken by it, including civil and architectural works.
- (ii) The specifications, operating manuals and manufacturer's warranties for major items of plant.
- (iii) All Condition Surveys
- (iv) Any other technical documents relating to the design, engineering and construction of the business unit.

(d) Any financial accounts for the business unit required by the Commission or any other governmental instrumentality including:

- (i) All information reasonably required by the Lessor to assess the financial affairs of the Lessee.
- (ii) Details of all tariff bills and the amounts collected and overdue in relation to each of them.
- (iii) Details of any cross – subsidies between categories of Consumers.
- (iv) All audited profit and loss accounts, statements of assets and liabilities and statements of source and application of funds which must be prepared annually.
- (v) A statement of principal accounting policies used to prepare the accounts and statements referred to in paragraph (d)(iii).
- (vi) Details of the operating, repair and maintenance costs for the production and distribution of water in the business unit.

(e) Any other reports, records, designs, manuals, registers, employment records, maps, plans computer software owned or used and any other items associated with the business unit, its operation, the provision of the services and any works.

12.2 Retention and Disposal

All records kept in accordance with this lease must be maintained until the last to occur of:

(a) The date falling ten (10) years after the creation of the record.
(b) The date falling three (3) years after the expiry date.
(c) The date specified by any applicable law.

A party must not dispose of or destroy any records without giving the other party at least thirty (30) days notice or if there is any continuing dispute relating to any matter to which those records relate.

13. Environmental Compliance

13.1 The Lessee's Obligations

During the Operating Period the Lessee must:

(a) Not use the business unit or allow the business unit to be used so that any industrial waste or potentially hazardous substance:

    (i) Is abandoned or dumped on the land or the business unit.
    (ii) Is handled in a manner which is likely to cause an environmental hazard.

(b) Comply with all Environment Laws and to obtain and maintain in full force and effect and to comply with the terms of all permits and licenses required in order to release or emit anything from the business unit into the air or water or on the ground or otherwise into the environment or to emit any substantial noise.

13.2 Environmental Management System

The Lessee must, in respect of its environmental obligations under this lease, maintain a quality system which, at a minimum, complies with ***[appropriate ISO standard]***.

13.3 Contamination

(a) **EPA Notice:** If an official notice relating to the business unit is served during the operating Period then:

    (i) The party which receives the notice must promptly provide the other party and the Operating Committee with a copy of that notice.
    (ii) The Operating Committee must meet within fourteen (14) days of receiving the notice to determine, to the extent possible, whether and to what extent notice relates to Pre-existing Contamination and to what extent to Subsequent Contamination.

(iii) To the extent that the notice relates solely to Pre-existing Contamination, Lessor must, at its expense, comply with the notice to the extent necessary to enable the business unit to be used for the provision of the Services.

(iv) To the extent that the notice relates solely to Subsequent Contamination, the Lessee must at its expense, comply with the notice to the extent necessary to enable the business unit to be used for the provision of the Services.

(v) If the notice relates to both Pre-existing Contamination and subsequent contamination, Lessor will be responsible for complying with the notice to the extent that it relates to Pre-existing Contamination in accordance with the Lessor's obligations under paragraph (iii) above and the lessee will be responsible for complying with the notice to the extent that it relates to Subsequent Contamination in accordance with its obligations under paragraph (iv) above.

(vi) If the Operating Committee cannot come to a unanimous decision within fourteen (14) days of its first meeting as to what extent the notice relates to Pre-existing Contamination and to Subsequent Contamination, either party may refer the matter to the Expert to be resolved in accordance with Clause 24.5.

(b) **Indemnity:** Each party indemnifies and will keep the other party indemnified from and against all losses, damages, liabilities, actions, suits, claims, demands, costs and expenses of every kind arising from the failure by it to comply with its obligations under Clause 13.3(a) except to the extent that the failure was caused or contributed to by any negligent act or admission of the other party or, in the case of the lessee only, its contractors, agents and affiliates.

13.4 Environmental Audit

(a) **Independent Audit:** The Lessor may from time to time at its own cost obtain an independent audit in respect of all or any part of the business unit to determine the extent of any contamination existing in, on or under or emanating from the business unit. If the Lessor wishes to rely on the audit for the purposes of this Clause 13.4, the audit must be undertaken by or conducted under the supervision of an environmental auditor certified by the ***[appropriate Egyptian authority]***.

(b) **Access for Auditor:** The Lessee must provide any person appointed by the Lessor to undertake an environmental audit in accordance with Clause 13.4(a) with access to the business unit necessary to undertake that audit.

(c) **Contamination Disclosed by Audit:** If an audit undertaken in accordance with Clause 13.4(a) discloses subsequent contamination then, except to the extent that the subsequent contamination has been caused or contributed to by a negligent act or omission of the Lessor, the Lessor may require the Lessee at the Lessee's expense to undertake all steps necessary to remedy that subsequent contamination to the extent necessary to enable the business unit to the used for the provision of the services in accordance with this lease.

(d) **Costs of Independent Audit:** If an environmental audit undertaken in accordance with Clause 13.4(a) discloses Subsequent Contamination, the Lessee must pay the costs and expenses of the environmental audit.

14. Monitoring

14.1 Reporting

(a) **Requirements:** The Lessee must give the Lessor copies of all:

(i) Records and reports requested by ***[relevant Egyptian agency(ies)].***
(ii) Records requested by the Lessor.
(iii) Reports prepared in accordance with Schedule 16.

(c) **Compatibility of Information System:** Any information, data or Records provided to the Lessor in connection with this lease must be provided, if so requested by the Lessor, in a form which is compatible with the Lessor's electronic data and records system. The Lessor must inform the Lessee of any changes to its electronic data and records system which are necessary in order for the Lessee to fulfill its obligations under this Clause 14.1(b).

(d) **Reimbursement of Costs:** If an inspection by the Lessor of any Records reveals that the Lessee is in material breach of its obligations, the Lessee must reimburse the Lessor for all reasonable costs incurred by it in performing that inspection.

14.2 Inspections

(a) **Purpose:** The Lessor may carry out inspections of the Records, the Land and the business unit to:

(i) Determine whether the Lessee has breached any of its obligations.
(ii) Inspect any Works undertaken by the Lessee.
(iii) Inspect any Works undertaken by third parties on behalf of the Lessor, or any other party.
(iv) For any other reasonable cause including in order to become familiar with the operation, maintenance and administration of the business unit in preparation for the expiry or termination of this lease.

(b) **Records Held by Third Parties:** The Lessee must, where so requested by the Lessor, use reasonable endeavors to give the Lessor direct access to any Records that are maintained or held by any third party. The Lessee must ensure that the provisions to the Lessor of any Intellectual Property do not infringe the Intellectual Property rights of any third party.

(c) **Cooperation:** The Lessee must give the Lessor, or any person authorized by it, access to the Records, the Land and business unit and any assistance that it reasonably requests.

15. Billing, Collection, and Payment

15.1 Tariff Billing

(a) **Preparation:** The Lessee must prepare bills for payment of the tariff ("Tariff bills").

465

(b) **Format of Tariff Bills:** The Tariff bills must be prepared in the agreed form by the Lessee, at its own expense, and provide the information required by the ***[relevant]*** Regulations and the Lessee's Consumer Charter.

(c) **Calculation of Amount Due:** The Lessee must prepare all Tariff bills on the basis of meter readings obtained from Consumer Meters or, in the circumstances referred to by the ***[relevant]*** Regulations, on the basis of estimates of water usage.

(d) **Frequency:** The Lessee must issue Tariff bills to Consumers at least as often as the minimum required by the ***[relevant]*** Regulations during the operating period.

(e) **Payment Terms:** The terms of payment for all Tariff bills must be in accordance with the ***[relevant]*** Regulations and the Lessee's Consumer Charter including in relation to partial payments, payment agreements and plans. The Lessee must use reasonable endeavors to encourage Consumer to pay Tariff bills by direct deposits through the banking system into the Tariff account.

(f) **Collection:** The Lessee must, at its own expense, collect payments of the Tariff bills and deposits all proceeds to the Tariff account in accordance with the Tariff Account Agreement.

15.2 Delivery of Invoices

(a) **The Lessee's Invoices:** No later than 17:00 hours on the ***[2nd]*** day of each contract month starting in second contract month in the operating period, the Lessee must give the Lessor an invoice in the agreed form setting out the Lessee's calculation of:

(i) The Lessee Fee for the previous contract month which must be calculated in accordance with Schedule 7 (the "Lessee Fee Invoice:)
(ii) Any amount other than the Lessee Fee which is payable to it for the previous contract month (the "Supplementary Invoice").

(b) **The Lessor's Invoices:** No later than 17:00 hours on the 5th day of each contract month the Lessor must give the Lessee an invoice in the agreed form setting out the Lessor's calculation of any amount which is payable to it for the previous contract month including under Clause 9.8 (the "Lessor Invoice").

(c) **Supporting Documentation:** Each invoice must include reasonably detailed calculations of the amounts payable under it and any supporting documentation reasonably requested by the party receiving the invoice. Unless stated otherwise, any documentation requested by the party receiving the invoice is deemed to be a request to produce that documentation with all subsequent such invoices.

(d) **Business Day:** If any day on which an invoice must be delivered is not a business day, that invoice must be delivered on the next succeeding business day.

15.3 Payment of Invoices

(a) **Payment:**

(i) Lessee's invoices: Lessee Fee Invoices and Supplementary Invoices must be paid in accordance with the Tariff Account Agreement.
(ii) The Lessor's invoices: Lessor Invoices must be paid at the Lessor's option:

(A) By set-off against the Lease Payment for the same contract month.
(B) As cleared funds by the due date in any other manner reasonably required by the Lessor including to the Lessor account.

(b) **Invoice Conclusive:** If a party does not dispute an invoice within *[sixty (60)]* days of receiving it, that invoice is conclusive except where a party could not reasonably have identified an error or omission in the invoice on the basis of the information available to it during that *[sixty (60)]* day period.

(c) **Invoice Dispute Notice:** If either party disputes the amount payable under an invoice, it may give a notice (an "Invoice Dispute Notice") to the other party setting out details of the disputed amount, including its estimate of what that amount should be.

(d) **Interim Payment:** The party that issues an Invoice Dispute Notice must pay in accordance with the Tariff Account Agreement by the Due Date:

(i) All amounts under the invoice, which are not in dispute.
(ii) Its estimate, as set out in the Invoice Dispute Notice, of what the disputed amount should be.

(e) **Determination by Parties:** If the other party agrees with the Invoice Dispute Notice it must adjust the invoice accordingly and re-issue it within *[seven (7)]* days of receiving the Invoice Dispute Notice.

(f) **Determination by Expert:** If the parties do not resolve the dispute within *[seven (7)]* days of receipt of an Invoice Dispute Notice, either party may refer the dispute to be resolved by the Expert in accordance with Clause 24.5.

(g) **Payment after Determination:** Within *[seven (7)]* days of the Expert's determination referred to in paragraph (f), any amount due must be paid together with interest at the higher of:

(i) *[Two (2)]* percent above the Default Rate
(ii) The average monthly interest rate charged by the prevailing party's bank for working capital loan facilities.

Interest is calculated from the due date of the invoice until the date on which the payee receives the amount due.

467

15.4 Lessee Fee

The Lessee fee will be calculated and adjusted in accordance with Schedule 7 and any applicable law.

16. Insurance

16.1 Operating Period

During the operating period the Lessee must effect and maintain the insurance required by Schedule 14 and any insurance required:

(a) By the Operating Committee
(b) By the laws of Egypt
(c) By Prudent Water Utility Practices
(d) To meet its obligations

16.2 Failure to Insure

The Lessee is not in breach of Clause 16.1 or 16.4:

(a) If any insurance is not available to it or is not available to it on reasonable economic terms in the international and Egyptian insurance markets for reasons other than any negligence of, default by, or condition (financial or otherwise) of the Lessee.

(b) During that period, it effects and maintains complementary insurance cover having regard to the capacity of the international and Egyptian insurance markets.

16.3 Changes to Insurance Terms

With the Lessor's consent, the Lessee may effect and maintain insurance on different terms to those required by this Clause 16 and Schedule 14.

16.4 Non-payment of Premiums

Each policy of insurance must contain an endorsement providing that it may not be cancelled (except for non-payment of premiums) or reduced unless the insurer gives the Lessor at least thirty (30) days' written notice of its intention to cancel the policy. That endorsement must also provide that the insurer may not cancel the coverage for non-payment of premiums unless it gives the Lessor twenty (20) days' written notice of its intention to cancel (including details of the premiums owing).

16.5 Evidence of Insurance Cover

The Lessee must give the Lessor:

(a) A copy of the certificates and policies for each policy of insurance as soon as they are in effect and renewed.
(b) Evidence that all relevant premiums have been paid as soon as they have been paid.
(c) Evidence that each policy of insurance is current.

16.6 Effects of Not Obtaining Insurance

If the Lessee does not effect and maintain the required Insurance:

(a) That failure does not relieve the Lessee from its obligations or limit its liability under this clause or this lease.
(b) The Lessor may effect that insurance for the period during which the Lessee does not and the Lessee must pay the Lessor, within thirty (30) days of receiving a Lessor Invoice, the full amount reasonably incurred by the Lessor to effect that insurance.

16.7 Disputes over Availability

If there is a dispute as to the capacity of any insurance or reinsurance market for the purposes of this Clause 16, the dispute must be referred to a leading independent insurance adviser which is acceptable to the parties or, if the parties cannot agree, an adviser nominated on the application of either party by the Chairman of Lloyds of London. An adviser nominated by the Chairman of Lloyds of London is deemed to be an Expert acting in accordance with Clause 24.5.

16.8 Application of Insurance Proceeds

(a) **Loss or damage:** Except as otherwise provided in this lease or any policy of Insurance, the proceeds from insurance claims made because of loss or damage to the business unit must be used to reinstate, replace or renew that loss or damage.

(b) **Total Loss:** If a *Force Majeure* Event or a similar natural event or circumstance renders the business unit no longer economically or technically viable and the insurers make payment on a 'total loss' basis, all of those insurance proceeds must paid to the Lessor.

(c) **Lessor Liability:** Despite any obligation that arises under this lease, apart from that arising from an Egyptian Political Event, the Lessor is not liable for any loss, damage, liability, payment, obligation or expense for which compensation is payable to the Lessee under any policy of Insurance and the Lessee must procure that each policy of Insurance provides so.

17. *Force Majeure*

17.1 Relief for *Force Majeure* Events

A party:

(a) Is not in breach of this lease to the extent that the performance of its obligations is prevented, hindered or delayed by a *Force Majeure* Event for which it has claimed relief.

(b) Cannot claim relief for a *Force Majeure* Event to the extent that it could have reasonably foreseen or controlled the event or circumstance using Prudent Water Utility Practices and mitigated its effects.

17.2 *Force Majeure* Events Defined

A '*Force Majeure* Event' means any of the following, or a combination of them, occurring in Egypt:

(a) Cyclone, whirlwind, flood, tempest, storm, drought or other exceptionally adverse weather conditions.

(b) An act of God, epidemic, lightning, earthquake, volcanic, eruptions or landslide that originates from a source external to the Land, meteorites, air crash, objects falling from aircraft, pressure waves caused by aircraft or aerial devices traveling at supersonic speed, fire or explosion.

(c) To the extent it originated from a source external to Egypt, act of war (whether declared or undeclared) invasion, armed conflict or action of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage, chemical, biological or radioactive contamination or ionizing radiation.

(d) Strikes or industrial action that interrupt supplies and services required for the operation of the business unit for at least seven (7) continuous days and which:

   (i) are not Egyptian Political Events
   (ii) do not primarily involve the Lessee or its employees, agents or representatives
   (iii) are not attributable to any unfair policy or practice of the Lessee or its employees, agents or representatives or

(e) Any similar event or circumstance.

17.3 Insufficiency of Funds

Insufficiency of funds is not a *Force Majeure* Event.

17.4 Notice of *Force Majeure* Events

(a) **Duty To Report:** A party wishing to claim relief for a *Force Majeure* event must notify the other party of the claim as soon as reasonably practicable and in any case within seven (7) days of the date on which the affected party knew, or ought reasonably to have known, that the *Force Majeure* event may have a material impact on the performance of its obligations.

(b) **Contents of Notice:** A notice given under Clause 17.4(a) must include full details of:

   (i) the nature of the *Force Majeure* event
   (ii) the impact the *Force Majeure* event has on the affected party's performance of its obligations
   (iii) the measures which the affected party is taking, or proposes to take, to mitigate the impact
   (iv) any other information relevant to the claim for relief.

(c) **Status Reports:** While the affected party continues to claim relief it must give the other party reports, at least weekly, containing:

(i) the information required by Clause 17.4(b)
(ii) if the Lessee is the affected party, details of any material change in its impact on the Lessee's performance of its obligations
(iii) any other information that the other party reasonably requests.

(d) **Cessation:** The party affected must promptly notify the other party if the *Force Majeure* Event ceases to have any impact on it.

17.5 Duty to Mitigate and Assist

A party affected by a *Force Majeure* event must use all reasonable endeavors to mitigate the impact of a *Force Majeure* event on the performance of its obligations. The non-affected party must provide reasonable assistance to the affected party as it endeavors to mitigate the impact on the performance of its obligations.

17.6 Breakdown of Communications

If a *Force Majeure* event prevents a party giving a notice under this lease, any period in which that notice must be given is extended until the *Force Majeure* event no longer prevents the giving of that notice.

17.7 Set-off against Insurance Proceeds

Any amount payable by the Lessor on the Lessee under this lease while the Lessee is affected by a *Force Majeure* Event must be reduced by the aggregate amounts of any payments the Lessee receives, or is entitled to receive, under any Insurance.

17.8 Termination on Total Loss

If a *Force Majeure* event renders the business unit no longer economically and technically viable and the insurers make payment on a 'total loss' basis, then subject to Clause 16.8(c) and provided the Lessor has received the insurance proceeds in accordance with Clause 16.8(b), the Lessor must terminate this lease by notice (a 'Total Loss Termination Notice') to the Lessee. This Lease terminates immediately on the Lessee's receipt of the total Loss Termination Notice.

18. Egyptian Political Events

18.1 Relief for Egyptian Political Events

The Lessee:

(a) Is not in breach of this lease to the extent that the performance of its obligations is prevented, hindered or delayed by an Egyptian Political Event.

(b) May request the Commission to adjust the Lessee Fee to provide the Lessee with financial relief for the following Egyptian Political Events:

(i) **Increased Costs:** The Lessee may request the Commission to adjust the Lessee Fee to entitle it to recover all direct costs it reasonably incurs in seeking to mitigate the effects of a Direct Egyptian Political in accordance with Clause 18.5.

(ii) **Reduction in Capacity:** If the capacity of the business unit to serve Consumers is reduced by more than twenty five (25) percent as a result of a Direct Egyptian Political Event, the Lessee may request in a notice to the Lessor and the Commission to calculate the Lease Payment on the basis that the business unit is deemed to have the ability to serve that number of Consumers it would have been able to serve but for the Direct Egyptian Political Event while that Direct Egyptian Political Event continues or until the Lessee elects to discontinue the application of this Clause 18.1(b)(ii).

(iii) **Change in Law:** The Lessee may claim relief under Clause 19 for any increased costs or reductions in revenue due to a Change in Law.

18.2 Egyptian Political Events Defined

(a) **Egyptian Political Events:** An 'Egyptian Political Event' means any of the following or any combination of them, occurring in or directly involving Egypt and which directly or indirectly result in the Lessee's performance of its obligations being materially prevented, hindered or delayed and the capacity of the business unit to serve Consumers being reduced by more than twenty five (25) percent but only to the extent that the following are not an unlawful and unreasonable response to the default, neglect or other wrongful act of the Lessee or its employees and their consequences are beyond the Lessee's reasonable control using Prudent Water Utility Practices

(i) To the extent it originated from a source in Egypt, an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage, chemical, biological or radioactive contamination or ionizing radiation.

(ii) Politically motivated strikes or industrial action (other than those primarily involving the Lessee's employees) that have a duration of at least twenty (20) consecutive days.

(iii) Change in Law

(iv) Expropriation or compulsory acquisition by any Governmental Instrumentality of any material assets or rights of the Lessee.

(v) The unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consent required by the Lessee to perform its obligations.

(vi) The unlawful, unreasonable or discriminatory refusal to grant any of the Consents required by the Lessee to perform its obligations.

(vii) Any other unlawful, unreasonable or discriminatory action by a governmental instrumentality (other than action taken in connection with or pursuant to a commercial contract between the relevant governmental instrumentality and the Lessee) which occurs during the operating period and which is directed against the Lessee or the business unit.

(b) Indirect and Direct Egyptian Political Events: *The events and circumstances described in:*

(i) Clauses 18.2(a)(i) and (ii) are 'Indirect Egyptian Political Events'
(ii) Clauses 18.2(a)(iv) to (vii) inclusive are 'Direct Egyptian Political Events'
(iii) Clause 18.2(a)(iii) is dealt with in accordance with Clause 19.

18.3 Notice of Egyptian Political Events

(a) **Duty To Report:** If the Lessee wishes to claim relief for an Egyptian Political Event it must notify the Lessor and the Commission of the claim as soon as reasonably practicable and in any case within seven (7) days of the date on which it knew, or ought reasonably to have known, that the Egyptian Political Event may have a material impact on the Lessee's performance of its obligations or the operation of the business unit.

(b) **Contents of Notice:** A notice under Clause 18.3(a) must include full details of:

(i) The nature of the Egyptian Political Event.
(ii) The impact of the Egyptian Political Event on the Lessee's performance of its obligations or the operation of the business unit.
(iii) The measures which the Lessee is taking, or proposes to take, to mitigate the impact.
(iv) Any other information relevant to the Lessee's claim for relief.

(c) **Status Reports:** While the Lessee continues to claim relief it must give the Lessor and the Commission reports, at least weekly, containing:

(i) The information required by Clause 18.3(b).
(ii) Details of any material change in the impact of the Egyptian Political Event has on the Lessee's performance of its obligations or the operation of the business unit.
(iii) Any other information reasonably requested by the Lessor.

(d) **Effect on Capacity:** It is a condition to any claim under Clauses 18.1(b) and 18.7 that the Lessee provides evidence substantiating the reduced capacity of the business unit to serve Consumers as a result of the Egyptian Political Event.

(e) **Cessation:** The Lessee must promptly notify the Lessor if the Egyptian Political Event ceases to have any impact on it.

18.4 Inspection by the Lessor

While the Lessee is claiming relief for an Egyptian Political Event, the Lessor may from time to time on one (1) day's notice inspect the Land and the business unit and carry out any tests reasonably required by the Lessor to determine whether it could operate at its full capacity but for the Egyptian Political Event. The Lessee must give the Lessor's personnel access to the Land and the business unit to carry out those inspections or tests subject to the Lessor's personnel complying with all reasonable safety precautions and standards.

18.5 Duty To Mitigate

The Lessee must use all reasonable endeavors to mitigate the impact of an Egyptian Political Event on the performance of its obligations and the operation of the business unit.

18.6 Additional Compensation and Lessor Subrogation

If the Lessee is actually or contingently entitled to be compensated by any person as a result of an Egyptian Political Event for which it has received compensation from the Lessor, the Lessor is fully subrogated to the Lessee's rights against that person to the extent of the compensation paid by the Lessor to the Lessee.

18.7 Termination for Egyptian Political Events

(a) **Termination:** If the Lessee's performance of its obligations is materially prevented, hindered or delayed and the capacity of the business unit to serve Consumers has been reduced by 50 percent for more than 365 continuous days and the Lessee losses exceed LE ***[amount]*** due to an Egyptian Political Event, either party may give a notice to the other party (an 'EPE Termination Notice') to terminate this lease.

(b) **The Lessor's Purchase:** Subject to Clause 18.7(c), after giving or receiving an EPE Termination Notice, the Lessor or its nominee must purchase the Termination Assets from the Lessee in accordance with Schedule 15 and this lease is terminated on the Completion Date.

(c) **Election Not To Terminate:** Before the Completion Date, the party that gave an EPE Termination Notice may by a further notice to the other party elect not to terminate this lease.

(d) **Consequences of Electing Not To Terminate:** if a party elects under Clause 18.7(c) not to terminate this lease it:

   (i) must pay the costs of the other party incurred as a result of the issue of the EPE Termination Notice, within sixty (60) days of giving that notice; and
   (ii) may not give another EPE Termination Notice for a period of three (3) months from the date on which it gave that EPE Termination Notice.

18.8 Breakdown of Communications

If an Egyptian Political Event prevents a party giving a notice under this lease, any period in which that notice must be given is extended until the Egyptian Political Event no longer prevents the giving of that notice.

19. Change in Law

19.1 Application

This Clause 19 applies if due to one or more Changes in Law:

(a) a party's revenue or costs directly attributable to the operation of the business unit increase or decrease;

(b) a party's liability to a Tax (other than Taxes on Income) increases or decreases; or

(c) the Taxes on Income increase or decrease due to the introduction, removal or modification to a Tax Holiday, separately or in aggregate more than LE ***[amount]*** in a Contract Year.

19.2 Notification of Change in Law

(a) **Duty To Notify:** If a party that is affected by a Change in Law wishes to claim a Change in Law under this Clause 19 it must give notice (a 'Change in Law Notice') to the other party as soon as reasonably practicable after it became or ought reasonably to have become aware of the Change in Law.

(b) **Benefits from Change in Law:** The Lessee must give a Change in Law Notice to the Lessor if it benefits from a Change in Law. Either party may give a Change in Law Notice to the other party if it believes the other party benefits from a Change in Law.

(c) **Contents of Change in Law Notice:** Any Change in Law Notice given under this Clause 19 must give, amongst other things, precise details of:

(i) the Change in Law; and
(ii) the estimated impact on that party and the other party of the Change in Law.

19.3 Procedure

(a) **Further Information:** Within sixty (60) days of issuing a Change in Law Notice, the party affected or claimed to be affected by the Change in Law must give the other party precise details of:

(i) any change to the revenue, costs, Taxes or Taxes on Income of the affected party by reference to the Financial Model;
(ii) its preferred means of putting the parties in the same financial position as they would have been but for the Change in Law which must be by (each a 'Change in Law Option'):

(A) with the Commission's approval, an amendment to the Lessee Fee or the Tariff;
(B) an extension of the Expiry Date;
(C) a combination of paragraphs (A) and (B) above; or
(D) any other amendment to this lease; and

(iii) any other matter the other party reasonably requires in relation to the Change in Law and its effect

(b) **Supporting Documentation:** Within thirty (30) days of providing the details referred to in Clause 19.3(a), the party affected or claimed to be affected by the Change in Law must provide evidence supporting the details referred to in Clause 19.3(a). If the Lessee is the

475

party affected or claimed to be affected by the Change in Law, that evidence must, at the request of the Lessor, include supporting evidence from the Lessee's Contractors, if any.

(c) **Lessor Option:** The Lessor will determine, in conjunction with the Commission, and notify the Lessee which Change in Law Option is to be adopted in response to the Change in Law.

(d) **Parties To Meet:** Within ninety (90) days of issuing a Change in Law Notice, the parties must meet and try to agree on how the Change in Law Option is to be implement and how this lease is to be amended to effect that Change in Law Option so that the parties are to be put in the same financial position as they would have been but for the Change in Law.

(e) **Amending Agreement:** If the parties agree on the amendments required to this lease in accordance with Clause 19.3(d) they must execute an amending agreement to give effect to those amendments within thirty (30) days of reaching agreement.

(f) **Disputes and Failure To Execute Amending Agreement:** If sixty (60) days after the commencement of the meetings referred to in Clause 19.3(d):

(i) the parties have not agreed on the amendments required, or
(ii) no amending agreement has been executed in accordance with Clause 19.3(e),

the matter must be referred to the Expert and resolved in accordance with Clause24.5. The parties must execute the amending agreement determined in accordance with Clause 24.5 as soon as reasonably practicable after that determination.

20. Events of Default

20.1 Lessee Events of Default

(a) Subject to Clause 20.1(b), the Lessor may give the Lessee a notice of its intention to terminate for the occurrence and continuation of any of the following events (each a 'Lessee Event of Default'):

(i) the unexcused, willful or reckless breach by the Lessee of any of its obligations;
(ii) the Lessee is in breach of any of its obligations under the Tariff Account Agreement;
(iii) if, in a manner inconsistent with Clause 23, the Lessee assigns, mortgages or charges or purports to assign, mortgage or change any part of the business unit, its assets or its rights under this lease;
(iv) if, in a manner inconsistent with Clause 23, the Lessee transfers or novates any of its obligations;
(v) if the Initial Shareholders cease together to directly hold at least ***[fifty-one (51) percent]*** of the issued share capital of the Lessee without the Lessor's consent;
(vi) if there is a change in effective control of an Initial Shareholders which at the date of this lease held more than ***[ten (10) percent]***of the issued share capital of the Lessee without the Lessor's consent;
(vii) the transfer, pursuant to law, of the rights or obligations of the Lessee under this lease;

(viii) the transfer, pursuant to law, of all or a substantial portion of the assets or undertakings of the Lessee except where:

(A) the transferee has the financial and technical capability to perform the Lessee's obligations under this lease;
(B) the transferee is of at least equivalent financial and technical standing to the Lessee;
(C) the transferee expressly assumes the Lessee's obligations under this lease and those obligations remain effective against the transferee; and
(D) the Lessor gives its approval to the transfer;

(ix) the dissolution, pursuant to law, of the Lessee except for the purpose of a merger, consolidation or reorganization that does not affect the financial and technical ability of the resulting entity to perform the Lessee's obligations under this lease and the resulting entity expressly assumes those obligations; or;
(x) the Lessee is in material breach of any of its obligations.

(b) **Lessor Not Entitled To Terminate:** The Lessor may not terminate if any lessee Event of Default occurs because of:

(i) a breach by the Lessor of its obligations;
(ii) a Lessor Event of Default;
(iii) a *Force Majeure* Event; or
(iv) an Egyptian Political Event

20.2 Lessor Events of Default

(a) Subject to Clause 20.2(b), the Lessee may give the Lessor a notice of its intention to terminate for the occurrence and continuation of any of the following events (each a 'Lessor Event of Default'):

(i) the dissolution, pursuant to law, of the Lessor except for the purposes of a merger, consolidation or reorganization that does not affect the ability of the resulting entity to perform the Lessor's obligations under this lease and the resulting entity expressly assumes those obligations;
(ii) The Lessor is in material breach of any of its obligations under this lease; or
(iii) The Lessor in breach of any of its material obligations under the Tariff Account Agreement.

(b) **The Lessee Not Entitled To Terminate:** The Lessee may not give the Lessor a notice of its intention to terminate if any Lessor Event of Default occurs because of:

(i) a breach by the Lessee of its obligations;
(ii) a Lessee Event of Default;
(iii) a Force Majeure Event; or
(iv) an Egyptian Political Event

20.3 Preliminary Termination Notice

A notice of termination given under Clause 20.1 or 20.2 (a 'Preliminary Termination Notice') must specify in reasonable detail the circumstances giving rise to the issue of that notice.

20.4 Suspension Period

(a) **Length of Suspension Period:** After a Preliminary Termination Notice has been given, the Operating Committee must meet over a period of up to thirty (30) days (or such longer period as it may agree) (the 'Suspension Period') to determine what steps must be taken to mitigate the consequences of the relevant Event of Default. If the Operating Committee is unable to agree, the matter must be resolved in accordance with Clause 11.1.

(b) **Waiver of Suspension Period:** Either party may waive the Suspension Period in respect of a Preliminary Termination Notice given by the other party.

(c) **Performing Obligations during Suspension Period:** Subject to Clause 20.5 and 20.6, during a Suspension Period the parties must continue to perform their respective obligations unless this lease provides otherwise.

20.5 Lessor's Right To Operate

(a) **Step-in Notice:** If the Lessor serves a Preliminary Termination Notice as a result of any Lessee Event of Default and the Lessee does not dispute that notice within seven (7) days, the Lessor may serve a notice ('Step-in Notice') on the Lessee electing to either operate the business unit itself or request another person to operate the business unit on its behalf during the Suspension Period.

(b) **No Liability:** The Lessor's will have no liability to the Lessee for any loss or damage caused while it operates the business unit under a Step-in Notice

(c) **Right To Operate Ceases:** The Lessor's right to operate the business unit under a Step-in Notice will cease on the earlier of:

   (i) the Lessee remedying the breach to which the Preliminary Termination Notice related; or
   (ii) this lease is novated to a new operator.

20.6 Termination for Events of Default

The party that gave the Preliminary Termination Notice may terminate this lease by giving notice to the other party (a 'Default Termination Notice') within five (5) days after the expiry of the Suspension Period unless:

(a) the Lessee has paid all sums which are due and payable to the Lessor and it has performed or caused to be performed any unperformed non-payment obligations;
(b) the parties agree otherwise; or

(c) the circumstances giving rise to the issue of the Preliminary Termination Notice have ceased to exist or have been remedied.

This lease terminates on the date the Default Termination Notice is given to the other party.

21. Term and Termination

21.1 Term

This lease is effective when it is executed and delivered by the parties and, subject to Clause 21.2, terminates on the Expiry Date.

21.2 Early Termination

This lease is terminated before the Expiry Date if:

(a) the conditions precedent in Clause 2 are not satisfied or waived and the Lessor serves a CP Termination Notice under Clause 2.8;
(b) The serves a Total Loss Termination Notice under Clause 17.9;
(c) a EPE Termination Notice is served under Clause 18.7(a); or
(d) a Default Termination Notice is served under Clause 20.6 following an Event of Default.

21.3 Liability after Termination

If this lease is terminated:

(a) due to a CP Termination Notice, the parties will have no further rights, liabilities or obligations to each other; or

(b) on the Expiry Date or due to a notice referred to in Clause 21.2(b) to (d) then, subject to Clauses 1, 9.8, 13.3, 21.4, 21.5, 24, 25, 26, Schedule 9 and Schedule 15, the parties will have no further rights, liabilities or obligations to each other.

21.4 Survival

The termination of this lease does not affect:

(a) rights and obligations that exist at the time of termination; or
(b) any rights and obligations which expressly or by implication survive the termination.

21.5 Obligations on Termination

On the termination of this lease in accordance with Clause 21.1 or 21.2:

(a) all the rights granted to the Lessee under this lease automatically revert to the Lessor;
(b) the Lessee must give the Lessor procession on the business unit, all Records, the Customer Database and any Consumer Deposits held by it;
(c) the Lessee must sell and the Lessor must purchase the Termination Assets in accordance with Schedule 15; and

(d) the Lessee must do all other things that the Lessor reasonably requests to effect the matters referred to in this Clause 21.5.

22. Liability and Indemnity

22.1 Indemnified Losses

'Indemnified Losses' means:

(a) any loss of or damage to property;
(b) any death or injury to person;
(c) any claim, action, suit or proceedings relating to the matters referred to in paragraphs (a) and (b); and
(d) all expenses relating to the matters referred to above (including reasonable legal fees).

22.2 Indemnity

Without recourse to the other party or its Contractors, each party fully indemnifies and holds harmless the other party and its Contractors against any Indemnified Losses suffered by that other party and its Contractors arising in connection with the business unit to the extent that the Indemnified Losses result from a negligent act or omission of the party, its Contractors or their respective employees.

22.3 Limitation on Indemnity

The indemnity under Clause 22.2 does not apply to any Indemnified Loss to the extent that:

(a) it arises from a claim made outside Egypt;
(b) it is caused by any act or omission of the other party or its Contractors;
(c) it is caused by the failure of the other party or its Contractors to take reasonable steps to mitigate the Indemnified Loss; or
(d) the other party or its Contractors is compensated for that Indemnified Loss under another agreement or an insurance policy (including any Insurance).

22.4 Contractors Taking Benefit Indemnity

If the Contractors seek the benefit of the indemnity under this Clause 22, they must notify the parties that in consideration of receiving that indemnity they will be bound by this Clause 22.

22.5 Intention To Claim

Each party must promptly notify the other of its intention to make a claim under this Clause 22.

22.6 Right To Contest Proceedings

A party may contest, defend and litigate a claim, action, suit or proceeding ('Proceedings') for which it is entitled to be indemnified under this Clause 22. However, that party must not settle or compromise those Proceedings without first getting the consent of the other party (that consent must not be unreasonably withheld or delayed).

22.7 Assuming Control of the Defense

(a) **Conditions of Assuming Defense:** A party may, at its own expense, assume control of the defense of any Proceedings bought against the other party if it:

(i) acknowledges its obligation to indemnity the other party;
(ii) gives the other party prompt notice of its intention to assume control of the defense and it reimburses the other party for the reasonable costs and expenses it incurred before the party assumed control; and
(iii) employs an independent counsel that is reasonable satisfactory to the other party.

(b) **Participation by the Indemnified Party's Counsel:** If the party obliged to indemnify the other against any proceedings assumes control of the defense, the other party may employ its own counsel to participate in the defense. The fees and expense of that counsel must be borne by that party unless:

(i) the employment of that counsel has been approved by the party indemnifying;
(ii) the party indemnified reasonably believes there may be a conflict of interest between it an the other party in the conduct of the defense of those Proceedings and it has notified the other party of that conflict;
(iii) the party indemnified is no longer reasonably satisfied with the independent counsel employed by the other party and it has notified the other party of that dissatisfaction; or
(iv) the party indemnified reasonably believes and notifies the other party that there may be specific defenses available to it which are different from or additional to those available to the other party or that the Proceedings could have a material adverse effect on it beyond the scope of this lease.

(c) **Resuming Control of Defense:** If causes 22.7(b)(ii), (iii) or (iv) apply, the party indemnified may notify the other party that it will resume control of the defense. The other party must promptly give all reasonable assistance necessary to pass control of the defense to the party resuming control.

22.8 Consequence and Indirect Losses

(a) **No Liability Except under This Lease:** Subject to Clause 22, a party is only liable to the other under or for a breach of this lease and not other wise liable to the other party in contract, tort, warranty, strict liability or any other legal theory for consequential, punitive or exemplary damages.

(b) **Consequential Damage:** In this clause, 'consequential damages' include business interruption, loss of contract, production, profit, revenue or use or any similar economic loss suffered by a party.

(c) **Not a Waiver:** This clause is not a waiver of any rights a party has against the other for matters that are unrelated to this lease.

22.9 Lessor's Review or Approval

The Lessor is not liable to the Lessee by reason of its review, approval, observation, inspection or provision of any Consent, agreement (including the material documents), document, drawing, specification, design, instrument, plant and equipment, construction, operation of or maintenance of the business unit. The Lessor's failure to make any comments or raise any questions during its review, approval, observation or inspection does not indicate its approval. The Lessee is not relieved of its obligations by reason of any such review, approval, observation, inspection or provision.

22.10 Liability Relating to the business unit

The Lessor is not liable to the Lessee because of the business unit's condition (including the Land's geological condition, any toxic contamination, archaeological remains, the adequacy of any transport links to the business unit and the availability of adequate supplies of any services), the unsuitability of the Land, its surrounds or for the accuracy or reliability of data relating to the business unit that it gives to the Lessee except for Pre-existing Contamination as provided under business unit that it gives to the Lessee except for Pre-existing Contamination as provided under Clause 13.

22.11 Exclusion of Consequence Damages

The Lessee will not be entitled to make any claim against the Lessor, whether in contract, tort, strict liability or any other legal theory, for any consequential (including business interruption, loss of contract, production, profit, revenue or use or any similar economic loss suffered by the Lessee), punitive or exemplary damages and any right to such a claim is expressly waived by the Lessee.

22.12 Equitable Relief

The Lessee acknowledges that damages may not be an adequate remedy for any breach by it of this lease or any failure by it to comply with its obligations. Without limiting any other right, remedy or action open to the Lessor in connection with any actual or threatened breach of this lease or failure to comply with its obligations, the Lessor is entitled to seek equitable relief (including specific performance or injunctive or declaratory relief) to restrain any actual or threatened breach or failure to comply and that the Lessee must not oppose the granting of such relief on the basis that no actual loss or damage has been or will be sustained by the Lessor.

23. Assignments and Charges

23.1 Assignments

Subject to Clause 23.2, a party may not assign its rights or obligations without the other party's consent.

Transfer of the Lessor's functions:

(a) The Lessee acknowledges that the Lessor may be reconstituted, renamed or replaced and that some or all of the powers, functions or responsibilities of the Lessor may be transferred to or vested in another entity.

(b) If the Lessor is reconstituted, renamed or replaced or if some or all of the Lessor's powers functions or responsibilities are transferred to or vested in another entity, references in this Lease to the Lessor must be deemed to refer to that reconstituted, renamed or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those powers functions or responsibilities.

(c) For the purposes of this Clause 23.2, another entity includes a Governmental Instrumentality.

23.2 Delegation

(a) **The Lessor:** The Lessor may delegate any power, function or responsibility that it has under this lease. Any persons to whom a power, function or responsibility is delegated by the Lessor has, to the extent of that delegation and subject to compliance with the terms and conditions of that delegation, full power and authority to act for and on behalf of an to bind the Lessor under this lease.

(b) **The Lessee:** The Lessee must not delegate any power, function or responsibility that it has under this lease without the Lessor's consent which the Lessor may grant subject to any terms or conditions.

23.3 Permitted Liens

In the ordinary course of operating the business unit, the Lessee may not create or allow any Liens over all or any of its rights under this lease without the Lessor's consent except for:

(a) Liens arising by operation of law;
(b) pledges of goods, the related documents of title and/or any other related documents arising or created by that pledge; or
(c) security arising out of retention of title provisions in relation to goods acquired.

24. Dispute Resolution

24.1 Dispute Resolution

Subject to Clause 24.6, disputes must be referred to the procedures set out in this Clause 24.

24.2 Mediation

(a) Each party:

(i) must appoint as soon as reasonably practicable before the commencement date, one (1) or two (2) high-level representative(s) not concerned with their appointor's day-to-day performance of obligations under this lease to sit on a panel (the 'Panel");
(ii) must notify the other party of the name and relevant qualifications of the Panel member(s) it has appointed within ten (10) days of their appointment; and

(iii) may appoint substitute or replacement Panel members from time to time and must notify the other party of the name and relevant qualifications of substitute or replacement Panel members within ten (10) days of their appointment.

(b) The Panel must conduct the mediation in English, in Cairo, as it thinks fit, guided by the principles of equity and justice.

(c) The parties to the dispute must exchange, within fourteen (14) days of the dispute being referred to the Panel, mediation briefs in English with principal supporting documentation summarizing their respective cases and deliver copies of the briefs to the Panel.

(d) The Panel may at any time during the mediation process request a party to the dispute to submit to it any additional information as it deems necessary.

(e) The Panel must fix a date for the mediation hearing as soon as reasonably practicable and in any event within sixty (60) days of the dispute being referred to the Panel.

(f) The parties must ensure that at each meeting of the Panel it has representatives with full settlement authority.

(g) At the mediation hearing, the parties must first give a brief presentation of their position. The Panel will then proceed to mediate the dispute in accordance with the provisions of Clause 24.2(b).

(h) The Panel will (unless a settlement is reached) produce a non-binding recommendation.

(i) If a settlement is reached, the parties will prepare a settlement agreement. The Panel may assist with preparation of the settlement agreement.

(j) No settlement is legally binding until the authorized representative of each party signs a settlement agreement.

(k) Any party may at any time give notice on the other that it is withdrawing from the mediation process in which case the Panel will stop hearing the dispute and will cease to have any authority or responsibility in relation to the dispute.

(l) The Panel's deliberation and its recommendation will be confidential and without prejudice to any subsequent judicial or arbitration proceedings. Unless the parties agree otherwise, the members of the Panel must not act or appear in any related judicial or arbitration proceedings, whether as an arbitrator, representative of a party or as a witness.

(m) Except where a settlement provides otherwise, the costs of the Panel and the costs of the mediation process will be borne equally by the parties and each party will bear its own costs.

(n) If:

(i) any dispute is not settled through the mediation process;
(ii) a party does not accept the Panel's recommendation (in whole, or in part); or
(iii) a party gives a notice of withdrawal under Clause 24.2(k),

then either party may refer the dispute (or the relevant part of the dispute) to arbitration in accordance with Clause 24.3.

(o) The parties must not, in any judicial proceedings:

(i) introduce concessions or admissions made by the other party regarding any proposed settlement;
(ii) introduce the fact that the other party had indicated a willingness to adopt a proposal put forward by the Panel; or
(iii) refer to any settlement proposals as having been made or recommended by the Panel.

24.3 Arbitration

Where any dispute is not resolved in accordance with Clause 24.2, then the following provisions apply:

(a) the dispute may be submitted to arbitration at the request of either party by giving notice to the other party (a 'Notice of Reference') and will be finally determined under the Arbitration Rules;

(b) the arbitration will take place in Cairo;

(c) the arbitration will be in English;

(d) the arbitration will take place before a panel of three (3) arbitrators agreed to by the parties; and

(e) the parties must agree on the identity of the arbitrator(s) within fifteen (15) days of the receipt of the Notice of Reference by the relevant party. If the parties do not appoint the arbitrator(s) within this period, the arbitrator(s) must be appointed in accordance with the Arbitration Rules.

24.4 Arbitration Award To Be Binding

These parties must carry out any award of the arbitrators without delay. Awards are final and binding as from the date they are made or the date specified in the award.

24.5 Expert

The following provisions apply to any disputes or matter, difference or dispute that this lease provides is to be referred to the Expert:

(a) within fourteen (14) days of the date of this lease, the parties must appoint:

(i) an independent engineer with international experience (including in Egypt) in the design and operation of water production treatment and distribution facilities to act as the expert for technical matters; and
(ii) an independent financial consultant with international experience (including in Egypt) in the development, financing and sale and acquisition of water production

treatment and distribution facilities to act as the expert for financial matters, (each an 'Expert');

(b) the Experts will be appointed for a term agreed to by the parties and the relevant Expert. If the parties cannot agree on the appointment of the Experts, the President from time to time of the International Chamber of Commerce's International Center for Expertise (the 'President') will, on the application of either party, appoint the Experts;

(c) the parties must refer disputes to whichever Expert they agree (or, if they cannot agree, the President must decide);

(d) the Expert must resolve or settle disputes in a manner as he, in his absolute discretion, sees fit and the decision of the Expert is final and binding on the parties;

(e) the Expert must make his determination within thirty (30) days of the dispute being referred to him. If the Expert does not make any determination within that thirty (30) day period either party may, by not less than seven (7) days notice to the other, require the appointment of a substitute Expert who must determine the dispute in accordance with this Clause 24.5. The substitute Expert must be appointed in accordance with this Clause 24.5;

(f) the Expert must, subject to paragraph (g) and (h) below, determine which party bears the costs (or a portion of the costs) of settling or determining the dispute;

(g) if the Expert settles or determines a dispute in a manner which he in his absolute discretion determine is entirely consistent with a party's initial position on the dispute, the Expert must determine that the other party bears the costs of settling or determining the dispute;

(h) the Expert must determine that any party which does not comply with his determination must bear the costs of settling or determining the dispute; and

(i) except as otherwise agreed by the parties, no person appointed as an Expert may be of Egyptian or ***[nationality of the majority of the Initial Shareholder's of the Lessee]*** nationality.

25. Confidentiality

25.1 Non-disclosure

During the term of this lease, the parties must not:

(a) disclose to any third person any data or information acquired in connection with this lease; and
(b) use any document or other information obtained in connection with this lease which relates to the other party's undertakings except for the purpose of performing its obligations and exercising its rights under this lease.

25.2 Public Information

Clause 25.1 does not apply to:

(a) this lease;
(b) any information in the public domain otherwise than by breach of this lease;
(c) information already in the possession of a third person before it was disclosed to it by a party to this lease and which was not obtained by that third person under any obligation of confidentiality; and
(d) information obtained from a third person who is free to disclose that information and which is not obtained under any obligation of confidentiality.

25.3 Permitted Disclosure

Subject to Clause 25.4, a party may disclose any data or information acquired in connection with this lease without the consent of the other party:

(a) having made them aware of the requirements of this Clause 25.3, to:

  (i) any affiliate of that party;
  (ii) any outside consultants or advisers engaged by or on behalf of that party which are acting in that capacity;
  (iii) prospective lenders and investors in the Lessee or any bank or other financial institution and its advisers from which that party is seeking, or has obtained, fiancé or equity; and

(b) to any Governmental Instrumentality or other appropriate regulatory or statutory authority;

(c) as required by the rules of a relevant and recognized stock exchange in Egypt;

(d) as required by any applicable law of Egypt or in accordance with an order of any court of competent jurisdiction; or

(e) to any insurer under a policy of Insurance.

25.4 Conditions of Permitted Disclosure

A party may only make the disclosure permitted by Clause 25.3, if that disclosure is:

(a) made in good faith; and
(b) necessary to allow that party to:

  (i) perform or enforce its rights under this lease;
  (ii) comply with the requirements referred to in Clauses 25.3(b), (c) and (d); or
  (iii) carry on its ordinary business.

26. Miscellaneous Provisions

26.1 Amendments

This lease may only be amended in writing.

26.2 Third Parties

This lease is solely for the benefit of the parties and their respective successors and permitted assigns. This lease does not create any duty, standard of care or any liability towards any third person.

26.3 Waiver

(a) A waiver by a party:

(i) does not waive any other default or condition whether of a similar or different character; and
(ii) must be in writing and executed by an authorized representative of that party.

(b) Any failure, delay or other indulgence by a party to insist on the performance by the other party of an obligation is not a waiver or variation of any right or obligation.

26.4 Relationship of the Parties

Subject to Clause 3.10 and paragraph 8.2 of Schedule 15, this lease does not create an association, joint venture, agency, partnership or similar relationship between the parties. Neither party has the authority to act on behalf of or otherwise bind the other party.

26.5 Change of Index

(c) **Substitute Index:** If any index referred to in this lease ceases to be published or is not published during any period relevant to the application of any formula set out in this lease, then an alternative index which the parties agree produces as nearly as possible the same result, must be substituted.

(d) **Alternative Method:** If it becomes impossible to compile an index or to calculate the amount by which the sums payable should be adjusted by using any index or alternative index, the parties must agree an alternative method of adjusting the relevant sum that most closely reflects the intent of this lease.

(e) **Disputes:** If the parties have not reached agreements as to the construction or effect of this clause or as to the calculation of the sums payable within thirty (30) days of the occurrence of the event referred to in Clause 26.5(a) or 26.5(b), the dispute must be referred to the Expert and resolved in accordance with Clause 24.5.

(f) **Pending Dispute Resolution:** Pending resolution or determination of any dispute by an Expert, either party may prepare and submit to the other party accounts in respect of any payment due to it on the basis of adjustments to the last available payment as that party, in good faith, considers to be appropriate having regard to the intent of this lease. The

amount calculated in this way is, subject to Clause 26.5(e), deemed to be payable by the other party.

(g) **Replacement Index or Methodology:** If a dispute is resolved or determined by an Expert, the index in dispute must be replaced by a substitute index or replaced by another method to adjust payments as the parties agree or the Expert determines and the necessary payments and repayments (together with interest at **two *[2]* percent** above the Default Rate) must be made with effect from the date the parties agree or the Expert determines until the date such agreement is reached or decision is made.

26.6 Language

All written communication between the parties must be in English unless otherwise agreed.

26.7 Entirety

This lease and the Tariff Account Agreement:

(a) constitutes the entire agreement between the parties as to their subject matter; and

(b) in relation to that subject matter, supersedes any prior understanding or agreement and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

26.8 Successors and Assigns

This lease is binding on the parties and their respective successors and permitted assigns.

26.9 Affirmation

Neither party nor its directors, employees or agents have paid not have they undertaken to pay and will not pay any unlawful commission, bride, pay-off or kick-back and they have not in any other way paid any sums or given or offered to give any gifts or any presents to any person or company to procure this lease and they will not engage in those or any similar acts in connection with this lease or the business unit.

26.10 Notices

(a) **Delivery:** All Notices must be delivered personally by registered or certified mail or facsimile to the addressees below:

For the **Lessor:**

Address
Attention

Facsimile No.
Telephone No.

For the **Lessee:**

Address
Attention

Facsimile No.
Telephone No.

(b) **Confirmation of Facsimiles:** All Notices given by facsimile must be confirmed by registered or certified mail. All Notices are deemed delivered on receipt by the intended recipient.

(c) **Written Notices:** Unless stated otherwise, all Notices must be given in writing.

(d) **Changing Addresses:** Any party may, by notice of at least fifteen (15) days to the other party, change the address or details to which Notices must be delivered, mailed or facsimiled to it.

26.11 Egyptian Participation

(a) **Goods and Services:** The Lessee must:

(i) give preference to the use of construction equipment and other equipment, materials and products produced and manufactured in Egypt.
(ii) give preference to the use of Egyptian personnel in the performance of its obligations;
(iii) use Egyptian insurance companies, brokers and agents for the Insurance, and
(iv) use Egyptian importers, agents and freight forwarders.

(b) **Minimum Quality:** The Lessee will not be breach of paragraph (a) above if the Egyptian alternative is not at least at favorable to it as others available taking into account price, quality, reliability and schedules.

(c) **Equity Participation:** The Lessee must, for a period of ***[twelve (12)]*** months from the commencement date, make available to Egyptian investors ***[amount]*** percent of its total issued share capital. The offer of that equity must be on terms no less favorable than the terms on which the initial investors subscribed for equity stock in the Lessee.

26.12 No Other Business

Without the Lessor's consent, at no time during the term of this lease may the Lessee engage in any business other than the operation of the business unit. This prohibition includes any investment by the Lessee, or any affiliate of the Lessee, acquiring, directly or indirectly, any legal or beneficial interest in the capital of any entity operating water production, treatment, transportation, or distribution activities.

26.13 Governing Law

The laws of Egypt govern this lease.

26.14 Counterparts

This lease may be executed in counterparts.

EXECUTED

[Insert name of Lessor]

By: _____

Name: _____

Title: _____

[Insert name of Lessee]

By: _____

Name: _____

Title: _____

BOT/BOOT Concept

A. What is BOT? What is BOOT?

BOT and BOOT are not contracts or other legal documents. They are structures – concepts – which use private finance to build infrastructure facilities like power plants, toll roads, airports, and water treatment plants. Historically, such facilities were financed by public (Government) money. BOT and BOOT provide ways to use *private* finance for *public* purposes. BOT and BOOT projects are designed and implemented as partnerships between the host Government and the private sponsor. As such, they are called private-sector-participation projects (PSP).

In a BOT project the host Government grants to a private company (project company) a concession to *BUILD* and *OPERATE* the project. The project company also designs and finances the project. The concession's term (length) is determined by the length of time required for the project's revenue stream to pay off the debt of the project's sponsors and provide it a reasonable rate of return for their risk and effort. At the end of the project's term, the project company will *TRANSFER* the project to the host Government.

A BOOT project differs from a BOT project in an important way. In a BOT project, the project company does not own the project's assets; the Government owns them. The project company only "operates" the assets during the term of the concession to achieve the project's objectives. When the project company transfers the project to the Government at the end of the concession, it transfers the right to use (operate) the project's assets. It does not transfer ownership of the assets because the Government has owned the assets from the start of the concession.

In a BOOT project, the project company actually *BUILDS, OWNS, AND OPERATES* the project's assets during the term of the concession and, at the end of the concession, *TRANSFERS* to the Government both the ownership of the assets and the right to use (operate) them.

Because the project company on a BOOT project actually owns the project's assets during the term of the concession, it can offer (alienate) these assets to financial institutions (lenders) as security for loans that the lenders make to the project company. The forms that this security takes are assignments, pledges, mortgages, and deeds of trust. They give the lenders the legal right to seize and sell the project company's assets if the project company defaults on the repayment of the loans.

The terms BOT and BOOT are frequently used interchangeably. However, where the ability of a project company to borrow money is crucial, it will need to be able, under the terms of the concession agreement, to alienate project assets as security. In such cases, the project should be a BOOT.

In a well-structured BOT/BOOT project, the host Government will decide on the need for – and scope of – the project. It will require that the project's design, performance, and maintenance be consistent with the country's objectives and will select private sponsors

through a transparent tendering process, to achieve a price that is fair to both the Government and the sponsors. Such a project will both yield a reasonable rate of return to the private sponsors and ensure that the project serves the host country's national interest.

BOT/BOOT projects also have significant potential for the *transfer of technology* to local companies and to promote *local capital markets* (bourses).

B. Legal Documents and Project Finance

The BOT/BOOT concept is *structured* by well-tested legal documents: concession agreements; loan agreements; escrow agreements, off-take agreements, construction agreements, O&M agreements, guaranty agreements, insurance agreements, supply agreements, and other agreements.

A BOT/BOOT project is theoretically financed through a mechanism called *project finance* or *non-recourse* financing. Project finance means that if the project's lenders and other creditors are not paid on time, they can resort (have "recourse") to only the assets of the project itself for security; they cannot resort to other (non-project) assets of the project's sponsors. In reality, most BOT/BOOT projects are financed on a *limited-recourse* basis, which is discussed below.

C. Advantages and Complexities of BOT/BOOT

The BOT/BOOT approach is attractive because it taps sources of private-sector financing that would otherwise be unavailable to the Government. BOT/BOOT funding obligations do not appear as direct liabilities on the host Government's accounts. This may be politically important to the Government and improve its credit rating.

The project sponsors' commitment of substantial equity and their need to make a profit provides it a strong incentive to design, build, and operate the project as efficiently as possible over the term of the concession. In addition, the fact that commercial lenders will be committing substantial funds on a limited-recourse basis provides an additional assurance that the project's economic viability will have been thoroughly analyzed at the outset by knowledgeable financial experts.

In short, the mobilization of private-sector capital, initiative, know-how, and discipline in the development and implementation of the infrastructure project are very positive features of the BOT/BOOT approach.

The BOT/BOOT approach is legally and financially complex. It requires:

- Time to develop and negotiate
- The support of a committed host Government
- A supportive political and economic climate
- A defined and stable legal and regulatory environment
- Freely convertible currency
- A reliable network of roads and source of electricity

A critical task of the host Government is to identify the factors that make the project "financeable" or "bankable" to the private sector.

D. Characteristics of a BOT/BOOT Project

D1. Project Company

Two or more private-sector companies will organize a *consortium* of sponsors, which will review the host Government's request for proposal (RFP) for an infrastructure project, conduct any required feasibility study, and submit a bid.

The sponsors will usually organize in the host country a limited liability company called the *project company* (or *joint venture company* or *special-purpose vehicle (SPV))*. Each sponsor in the consortium will contribute a defined, limited amount of equity to the project company. The project company will be the legal entity that (i) borrows the funds that are required in addition to the sponsors' capital contributions and (ii) implements the project by contracting with the host Government, lenders, construction contractors, equipment suppliers, and others.

The sponsor consortium may include companies that are interested in each one of these contracts. Such interested companies might include a major international engineering and construction firm, an equipment supplier, and a firm skilled in operating and maintaining the particular type of contract. These companies might contribute equity, manpower, or other benefits to the project company in order to have the opportunity to be the project's principal contractor, supplier, or operator.

The consortium might also include other equity investors, such as an investment bank (or merchant bank) that acts as a financial advisor to the project; an international lending institution such as the International Finance Corporation (IFC), a branch of the World Bank; or even the host Government.

There are potential conflicts of interest between the sponsors as owners of the project company, on the one hand, and as suppliers of goods and services to the project company, on the other. However, in practice these conflicts can be mitigated by the presence of other sponsors. The other shareholders in the project company will not want to see a particular shareholder get unduly good terms that would cause disadvantage to the overall project.

The bid-selection (tender) process also serves as a check on the project company's agreeing to pay inflated prices under contracts with its shareholders.

Finally, the loan-underwriting process of the commercial lending institutions provides further assurance that the project's economics have been thoroughly analyzed and that costs have been identified and will be controlled.

D2. Project Financing

Private financing for projects is the hallmark of the BOT/BOOT approach to infrastructure development. Such financing will be unavailable if the project's projected rate of return is insufficient to (i) repay the lenders and (ii) reward the sponsors for committing their equity and know-how and assuming the considerable risk involved in such projects.

The project company will raise the necessary financing for the project from private-sector lenders, export credit agencies (ECAs) (e.g., U.S. Export-Import Bank), and multilateral lending institutions (e.g., the IFC).

As noted above, the financing is sometimes said to be on a *non-recourse* basis, because the lenders will not have any direct financial recourse to the sponsors that own the project company, or to a host-Government guaranty of the entire debt. It would be more accurate, however, to speak of BOT/BOOT project financing as being on a *limited-recourse* basis because recourse is available against the project company and its assets, including its land, plant, and equipment, and whatever contractual rights, performance bonds, insurance, government guaranties, and other commitments it has been able to obtain.

The project company's most important asset – the asset upon which the project's financing will be principally based – is its contractual right to a revenue stream calculated to be sufficient to pay for the financing. This right may be in the form of an off-take ("take-or-pay") water-purchase agreement under which a public utility binds itself to purchase water from the project company. If the revenue to the project company under the off-take agreement cannot be independently verified as sufficient to repay the lenders, the lenders will require the project company to produce additional commitments and guaranties from credit-worthy groups, such as the sponsors themselves or the host Government.

D3. Host-Government Support

The BOT/BOOT approach requires varying degrees of host-Government support, depending on the project and the host country. Theoretically, the major attraction of a BOT/BOOT project is that it will be privately financed, without any financial commitment from the host Government, and that host-Government involvement will be minimal. In practice, however, host-Government direction and support – legislative, regulatory, administrative, and sometimes even financial – will be essential in most developing countries.

First, the extent to which the host country's laws encourage foreign investment must be examined. The host Government may need to provide various kinds of support to the project, including special legislation or exemptions in the areas of taxation, labor law, immigration, customs, currency convertibility, profit repatriation, and foreign-investment protection. Thus, the first subject for Government review is the general legal and regulatory framework that will govern the BOT/BOOT project from start to finish.

Next, the host Government will have to authorize the project, a process that often requires special legislation and approvals.

Then, the host Government must select and implement a fair and efficient ("transparent") procurement process. The Government may also have to conduct a preliminary feasibility study to demonstrate the project's economic viability to prospective bidders. Once a project is selected, the host Government will begin negotiations with the project's sponsors, leading to the award of the concession to the project company and the signing of a concession agreement. This agreement will detail both the host country's and project company's respective expectations, rights, and obligations.

Private-sector sponsors are entitled to a fair return on their investment and risk and to negotiate in their best interest. Similarly, the host Government is entitled to a project that is properly designed, constructed, and maintained, all on fair conditions. Both parties must be flexible.

D4. Complexity of the BOT/BOOT Process

The process of developing a BOT/BOOT project can be complicated, time-consuming, and expensive for the sponsors. Large projects can easily take several years before the concession agreement is signed or the financing obtained ("closed"). During that period, the sponsors may expend considerable amounts of money in feasibility studies, professional fees to legal and financial advisors, consultants, and out-of-pocket expenses, to say nothing of the cost of their own management time. Therefore, it is critical that the host Government do everything possible to ensure an orderly, fair, and efficient process from bid-solicitation, selection of the winning bidder, contract-negotiation, and permitting through to project-implementation.

D5. Financial Requirements of a BOT/BOOT Project

The financial viability of a BOT/BOOT project must be clearly demonstrated to potential equity investors and lenders. This verification usually comes in the form of independent feasibility studies, demographic projections, and so forth.

The project must have a demonstrated source of revenue sufficient to (i) service principal and interest payments on the project debt over the term of the various loans and (ii) provide a return on the project sponsors' investment. The source of the revenue is the off-take contract, described above.

Since the lenders will be relying on the project to service their loans, they will insist that the total cost of the project be determined at the outset. Lenders and investors must have confidence that the project can actually be built and operated with the funds being committed. Therefore, BOT/BOOT contracts will be designed and built on a fixed-cost, turnkey basis. Proven technology will normally be required.

The less predictable the total costs, the more the lenders will insist on stand-by commitments from the sponsors and host Government. Experimental or state-of-the-art technology would increase project risks, making limited-recourse financing more difficult to obtain. The riskier the project is perceived to be by the lenders, the more they will demand recourse to other parties.

D6. Local Partners

It is normally advisable to include among the sponsors or initial equity investors a strong, well-connected, and well-respected private-sector participant from the host country. Such a participant might be a civil works contractor or an industrial, commercial, or financial group. A local partner can help the sponsors understand the local environment and better deal with the host Government and resolve local issues as they arise.

A local partner can provide needed logistical support during the project's development stage and play an important role in raising local equity or loans, if the local economy is developed enough for this purpose. The local partner may also serve as at least one of the conduits for the transfer of technology and training from the project sponsors to the local economy.

D7. Equity Investment

Most BOT/BOOT projects have involved a combination of equity provided by the sponsors and debt provided by commercial banks, international financial institutions, and donor

governments. The percentage of equity often falls within the range of 20 percent to 30 percent of the total project cost, although the equity component in some projects has been outside this range.

The actual returns earned by equity investors in BOT/BOOT projects are difficult to estimate. The reasonableness of the return obviously depends upon the degree of risk taken by the investor and the additional benefits the project brings to the host Government (such as timeliness, efficiencies, and new technologies). The projected rate of return for *"base case"* assumptions is often set forth in Government requests for proposals (RFP) and projections disclosed in offering memoranda circulated by investment banks.

When the project performs better than *"base case,"* the rate of return to the equity investors can improve substantially. This is an area in which the host Government needs to be particularly careful not to *"pay"* too much for the project. On the other hand, incentives can be structured to reward results and performance that exceed the *"base case"* on a basis that shares the benefit between the project company and the host Government without allowing the equity investors to earn unduly exorbitant (*"windfall"*) profits. A successfully structured BOT/BOOT project that achieves such benefit sharing will produce a *"win-win"* result for both the host country and the sponsors.

D8. Security to Lenders

Lenders to a BOT/BOOT project will insist on a variety of security measures. These are collectively referred to as the *"security package."* These measures go far beyond a simple mortgage or deed of trust covering the project's assets. The lenders recognize that if the project company defaults, there will be no ready market for a water treatment plant that does not work. Therefore, various security devices to protect the lenders are usually found in BOT/BOOT projects. To the degree that these measures are designed to ensure that the project remains financially viable and performs as intended, they are also in the overall interest of the host Government. (See discussion above, page 1, regarding the crucial distinction between BOT and BOOT.)

D9. Inflation Risk

Both lenders and equity investors will normally insist on some mechanism to protect themselves against inflation risk. This protection may be provided by price-escalation clauses in the off-take agreement. Such clauses are intended to take account of increased costs of the project due to inflation. They may also be drafted with the intent of maintaining the purchasing power of the project's net income and equity in general.

D10. Currency Risk

A typical BOT/BOOT project that sells its output (e.g., water) to the local economy will receive its earnings in local currency. Yet the source of portion of the financing, both debt and equity, will frequently be foreign. Both foreign currency lenders and equity investors will want assurance that they will be able to recoup their original investment, together with interest or dividends in foreign currency. Therefore, the host-Government must be prepared to provide some mechanism to assure foreign investors and lenders that (i) they will be authorized to convert local-currency earnings into foreign currency; (ii) there will be enough foreign currency available when the time comes for the host country to make the conversion; and (iii) they will be permitted to remit the foreign currency abroad.

D11. Host-Government Guaranties

Although the host Government will not normally provide a direct sovereign guaranty of loans made to a BOT/BOOT project company, it will be asked to provide sovereign guaranties (or similar assurances) for some aspects of the project. For instance, if a Government-owned corporation has contracted with the project company – as when a Government utility enters into a long-term, off-take agreement to purchase water from the project company – the host Government may be required to guaranty the utility's performance.

The basic project (concession) agreement will normally contain several other obligations to be undertaken by the host Government or agency involved.

D12. Role of Outside Advisors

Depending on their experience, host Governments will generally find it invaluable to hire technical, financial, and legal advisors who are familiar with project-finance structuring and the types of private-sector arrangements involved in BOT/BOOT projects. The project sponsors will themselves have substantial technical expertise, experienced investment bankers, and international legal counsel on their side of the negotiating table.

The addition of comparable advisors and counsel to the host-Government team can help the host Government structure the initial BOT/BOOT proposal in the most favorable way; lend considerable credibility and creativity to the host Government's negotiating position as the proposal evolves; and help ensure that the negotiations and the drafting of the complex documents proceeds as efficiently as possible to the signing of final agreements.

The complexity of both the negotiations and the documentation required to advance a BOT/BOOT project to closure should not be underestimated. Few Government offices are sufficiently staffed to deal with the work required under the time pressures imposed without temporary support that outside advisors and legal counsel – brought on specifically to implement the particular project – can provide. Although the cost of hiring such advisors may be high, the resulting benefits in bringing the project to successful completion, allocating risks and responsibilities appropriately, and otherwise ensuring that the host Government's interests are fully protected, will more than offset the additional costs.

Performance Target Index

A. Performance-Based Contracting

Performance-based contracting has been used in many forms in the water and wastewater sector, from service and management contracts, to leases, concessions, and BOTs. One of the more common ways to incorporate performance incentives into a PSP arrangement is through the use of a Performance Matrix in the Contract. Such a matrix outlines yearly targets for several performance criteria, and assigns weights to those criteria that reflect the contracting authority's goals or priorities. Typically, the private operator is scored according to its actual performance in meeting the criteria outlined in the Performance Matrix, and this score is used to calculate a bonus payment (commonly referred to as "Incentive Compensation").

There is a built-in incentive for the private operator to try to achieve the best possible performance each year. Excellent performance, as defined by the level of targets included under column one of the Performance Matrix, is expected from the private operator. Consequently, if the private operator does not meet the targets for Excellent performance for any performance criteria, for any year, the unmet target will be added to the succeeding year's target for Excellent performance thus raising the Excellent target for the succeeding year. Put simply, if the private operator does not achieve Excellent performance in any given year, it becomes much more difficult for him to catch up in the next year.

The following pages contain an example of a Performance Matrix for a five-year, performance-based management contract for water supply and wastewater services. Note that the weightings for each performance criterion change from year to year to reflect the evolving priorities and goals of the contracting authority.

Performance Obligations of the Operator for the Duration of the Five-Year Management Contract

Performance Criterion	Units	Yearly Targets					Total Target for 5 Years
		Year 1	Year 2	Year 3	Year 4	Year 5	
Non-Revenue Water	% (volume of water billed MLD / volume of water produced MLD)	60%	40%	35%	28%	20%	20%
Continuity of Service *(1)*	Hours (No. of hours when the water supply system is pressurized during the year / 24 / 365 x 100)		18	24	24		24
Collection Efficiency	% (total collections in local currency divided by total billing in local currency)	70%	78%	85%	93%	98%	98%
Metering Coverage	% (customers billed on metered basis divided by total customers)	29%	50%	60%	75%	85%	85%

Performance Criterion	Units	Yearly Targets					Total Target for 5 Years
		Year 1	Year 2	Year 3	Year 4	Year 5	
Disposal Efficiency	% (hours of pumping station downtime attributable to mechanical failure / total hours of pumping station downtime)	10%	7%	5%			5%
Response Time to Customer Complaints:							
Billing	Hours (No. of hours between the time the complaint is logged in and the time complaint is addressed)	16	12	8	4		4
Leakage		24	24	24			24
Sewage		24	24	24			24
Staff Development	Hours (Number of training hours completed)	25,000	25,000	25,000	25,000	25,000	

(1) Interruptions due to unplanned system failures or to ongoing repair or rehabilitation works shall not be accounted for by this indicator. When there are subsystems supplied in different periods, the indicator has to be assessed individually for each subsystem and the result is the weighted average using the number of service connections of each subsystem as a weighting factor.

Performance Obligations of the Operator for the First Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Non-Revenue Water	25%	60%	63%	66%	69%	72%
Collection Efficiency	25%	70%	68%	66%	64%	62%
Metering Coverage	20%	29%	27%	25%	23%	21%
Disposal Efficiency	5%	10%	12%	14%	16%	18%
Response Time to Customer Complaints:						
Billing	10%	16	17	18	19	20
Leakage	10%	24	32	38	44	50
Sewage	10%	24	32	38	44	50
Staff Development	5%	25,000	24,000	23,000	22,000	21,000

Performance Obligations of the Operator for the Second Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Non-Revenue Water	25%	40%	45%	50%	55%	60%
Continuity of Service	5%	18	17	16	15	14
Collection Efficiency	25%	78%	76%	74%	72%	70%
Metering Coverage	10%	50%	45%	40%	35%	30%
Disposal Efficiency	9%	7%	8%	9%	10%	11%
Response Time to Customer Complaints:						
Billing	7%	12	13	14	15	16
Leakage	7%	24	26	28	30	32
Sewage	7%	24	26	28	30	32
Staff Development	5%	25,000	24,000	23,000	22,000	21,000

500

Performance Obligations of the Operator for the Third Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Non-Revenue Water	20%	35%	36%	37%	38%	39%
Continuity of Service	15%	24	22	20	18	16
Collection Efficiency	20%	85%	83%	82%	80%	78%
Metering Coverage	10%	60%	57%	55%	53%	50%
Disposal Efficiency	5%	5%	5.5%	6%	6.5%	7%
Response Time to Customer Complaints:						
Billing	5%	8	9	10	11	12
Leakage	5%	24	25	26	27	28
Sewage	5%	24	25	26	27	28
Staff Development	15%	25,000	24,000	23,000	22,000	21,000

Performance Obligations of the Operator for the Fourth Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Non-Revenue Water	15%	28%	30%	32%	34%	36%
Continuity of Service	15%	24	23	22	21	20
Collection Efficiency	15%	93%	91%	89%	87%	85%
Metering Coverage	15%	75%	71%	67%	64%	60%
Response Time to Customer Complaints:						
Billing	15%	4	5	6	7	8
Staff Development	25%	25,000	24,000	23,000	22,000	21,000

Performance Obligations of the Operator for the Fifth Year

Performance Criterion	Criteria Weights	Criterion Values				
		Excellent 1	Very Good 2	Good 3	Fair 4	Poor 5
Non-Revenue Water	15%	20%	22%	24%	26%	28%
Collection Efficiency	15%	98%	97%	95%	94%	93%
Metering Coverage	30%	85%	83%	80%	77%	75%
Staff Development	40%	25,000	24,000	23,000	22,000	21,000

B. Sample Calculation Procedure for Incentive Compensation

Typical performance evaluation systems for performance-based contracts (such as management contracts) consist of the following four stages:

- Stage 1: Selection of Performance Targets
- Stage 2: Target Weight Selection
- Stage 3: Criterion Value Selection
- Stage 4: Performance Evaluation, Calculation of Composite Score and Calculation of Incentive Payment

The purpose of this document is to provide an example of how the performance-evaluation system is used to calculate a private operator's Incentive Compensation. In order to accomplish this, we will work through an illustrative example of the performance evaluation process for Year 3 of a five-year performance-based management contract for water supply and wastewater services. Under this type of contracting mechanism, the private operator (or "Management Contractor") bids a fixed fee for the five-year period, plus Incentive Compensation, which is then paid on an annual basis according to the Management Contractor's performance against certain pre-specified criteria. This is a *hypothetical exercise* and is not meant to reflect how the weightings or targets in an actual contract should be structured.

For the purposes of this exercise, we will assume that the Management Contractor's bid was for a Fixed Fee of US$5,000,000 and Incentive Compensation of US$2,500,000 over the five years of the contract (meaning that the yearly fixed fee would be US$1,000,000 and the Maximum Annual Incentive Compensation would be US$500,000).

B1. Stage 1 — Selection of Performance Targets

For the purposes of this example, and to keep things simple, we will focus on only two performance targets, non-revenue water and collection efficiency.

B2. Stage 2 — Target Weight Selection

Whenever there is more than one target, the contract must assign each target a weighting (with the total weighting equal to 100 percent) that reflects the priorities of the Government (or contracting authority). These weightings will provide the Management Contractor with appropriate incentives such that he allocates his time and resources most effectively in order to achieve the stated priorities.

For this exercise, we will assume that the Government has placed a higher priority on reduction in non-revenue water and therefore the weightings in Year 3 are:

- Non-revenue water = 75%
- Collection efficiency = 25%

B3. Stage 3 — Criterion Value Selection

The third part in the performance-evaluation system relates to criterion value-selection; i.e., the level of performance expected with respect to different criteria. In this case, the management contract uses a five-point scale, where:

1 = Excellent
2 = Very Good
3 = Good
4 = Fair
5 = Poor

Performance of the Management Contractor will be measured against the specific performance targets and a weighted average score of achievement called the "Composite Score" is calculated each year. A Composite Score of 2.5 or greater will place the

Management Contractor on notice of possible termination. Performance of 3.5 or greater will be cause for termination of the Contract.

B4. Stage 4 — End-of-Year Performance Evaluation

The fourth and final step is taken at the end of the year (in this example, Year 3), when we look at the achievements of the Management Contractor, compare them with the criteria values, and determine the composite score (which indicates overall performance of the Management Contractor). This is how the procedure functions: the Management Contractor completes an annual self-assessment in which it scores itself against the targets. Once this is done, an Independent Auditor carries out its own assessment of the Management Contractor's performance and calculates the performance score, making adjustments to the Management Contractor's self-scoring where necessary. Once the scores have been verified (or adjusted) by the Independent Auditor, the Composite Score is calculated and the amount of Incentive Compensation determined.

A hypothetical example of the above system, including the calculation of the composite score, is given below:

Sample Management Contract Targets for Year 3

Criterion	Units	Weight	Criterion Values				
			1 Excellent	2 Very Good	3 Good	4 Fair	5 Poor
Non-Revenue Water	%	.75	35	38	40	43	45
Collection Efficiency	%	.25	90	88	86	84	82

The following tables demonstrate the procedure for the calculation of the "Composite Performance Score" under a variety of performance scenarios.

B5. Possible Outcomes

B5a. Scenario 1

Under Scenario 1, the Management Contractor achieves excellent performance in both categories, such that:

Criterion	Units	Weight	Achievement	Raw Score	Weighted Score
Non-revenue water	%	.75	35	1	.75
Collection efficiency	%	.25	90	1	.25
				Composite Performance Score	1

When the formula for calculating annual incentive compensation is applied, the following result occurs:

$$\text{Annual IC} = (3.5 - 1) / 2.5 \times 500{,}000 = 500{,}000$$

B5b. Scenario 2

Under Scenario 2, the Management Contractor achieves excellent performance for non-revenue water, but only good performance for collection efficiency, such that:

Criterion	Units	Weight	Achievement	Raw Score	Weighted Score
Non-Revenue Water	%	.75	35	1	.75
Collection Efficiency	%	.25	86	3	.75
				Composite Performance Score	**1.5**

When the formula for calculating annual incentive compensation is applied, the following result occurs:

$$\text{Annual IC} = (3.5 - 1.5) / 2.5 \times 500{,}000 = 400{,}000$$

B5c. Scenario 3

Under Scenario 3, the Management Contractor achieves good performance for non-revenue water, but excellent performance for collection efficiency, such that:

Criterion	Units	Weight	Achievement	Raw Score	Weighted Score
Non-Revenue Water	%	.75	40	3	2.25
Collection Efficiency	%	.25	90	1	.25
				Composite Performance Score	**2.5**

When the formula for calculating annual incentive compensation is applied, the following result occurs:

$$\text{Annual IC} = (3.5 - 2.5) / 2.5 \times 500{,}000 = 200{,}000$$

In this example, it is important to point out that the Management Contractor would be put on notice for poor performance under the contract (this occurs when the Composite Score is 2.5 or greater).

VOLUME III (3)

Guidance on Contract Monitoring and Compliance

505

TABLE OF CONTENTS

Volume III (3): Guidance on Contract Monitoring and Compliance

SECTION I INTRODUCTION TO GUIDANCE ON CONTRACT MONITORING AND COMPLIANCE

A. Implementing Performance Monitoring: Strategies for Measuring the Quality of Operations and Attainment of Project Goals I-2
B. Strategy and Philosophy of Performance Monitoring I-3
C. The Contract Monitoring Program Often Requires an Annual Work Plan I-3
D. Monitoring Best Practices I-4
E. Key Performance Indicators I-4
F. Summary and Conclusion I-5

SECTION II CONTRACT MONITORING CASE STUDY: BUENOS AIRES WATER CONCESSION

A. Background II-1
B. Performance Targets in the Contract II-1
C. Regulatory Body Established II-2
D. Performance Monitoring Objectives II-2

SECTION I

Introduction to Guidance on Contract Monitoring and Compliance

Private-sector participation (PSP) contracts must contain proper provisions for monitoring the performance of the service provider (the contractor). They should include well-designed, clear monitoring programs that identify contract elements pertaining to levels of performance throughout the term of the contract.

The monitoring function is the principal way of ensuring that the contractor is in full and timely compliance with the contract's technical, financial, legal, and administrative provisions. It also (i) creates a public record documenting the results of the contractor's performance, and (ii) permits post-evaluation to be conducted to determine whether the contractor has consistently delivered high-quality service at reasonable and affordable prices (tariffs).

The contractor's ability to perform as agreed avoids excessive tariffs (possibly indicating excessive transaction costs) or too-low tariffs (possibly jeopardizing the contractor's cost-recovery requirement and/or indicating that tariffs were set with insufficient attention being paid to market data or input from the contractor or public).

The monitoring program should include assessments of customer treatment and satisfaction. This is the best way to ensure protection of state assets such as the facilities, plant, equipment, and systems that are being leased or otherwise used by the contractor and must be returned to the Government in satisfactory working order at the end of the contract.

Monitoring costs should be borne by the end-users. This can be done by earmarking a fixed percentage of the tariff as a set-aside or establishing an escrow fund to finance such costs.

Currently most PEAs and other utilities in Egypt have little or no experience in PSP contracting and are likely to be unaware of both its risks and benefits. In addition, some stakeholders are uncertain about, or strongly oppose, using private-sector service providers. For these reasons, it is especially important to develop performance-monitoring capacity in the PEA or utility staff dealing with private firms. It is most important that a single person (contract-compliance officer) or small group be given the full responsibility for contract monitoring and enforcement.

An effective contract-monitoring program will:

- Ensure that both the utility and the contractor comply with both the intent as well as the specific language of the contract
- Ensure smooth and regular performance throughout the term of the contract
- Ensure that timely action is taken to correct improper measures or unsatisfactory performance

- Permit changes or modifications in procedures or work schedule and provide an orderly mechanism in which both parties can agree to such changes, in order to deal with unexpected events

- Establish within the monitoring and compliance procedures a way to monitor and record performance and, if necessary, invoke the contract's dispute-settlement provisions, so that any serious disagreements can be promptly and fairly settled

The activities being monitored and assessed should cover all major aspects of the project, such as:

- Technical performance
- Financial matters
- Legal compliance and administrative effectiveness
- Any other Key Performance Indicators (KPIs) that are unique or particular to the project, and need to be separately addressed in specific contract clauses

There are at least three ways to perform this monitoring and – depending on the situation and circumstances – one, two, or all three methods may be used, either simultaneously or at different stages of the contractor's activities.

Performance monitoring can be conducted by:

- The staff of the PEA or utility which is the Government contracting authority
- The Egyptian Water/Wastewater Regulatory Authority (EWRA), especially with regard to tariff and other financial-performance issues
- An outside team can be given a contract to provide monitoring

Following is a suggested approach for designing and conducting a comprehensive and effective monitoring regime.

A. Implementing Performance Monitoring: Strategies for Measuring the Quality of Operations and Attainment of Project Goals

A well-conceived and carefully documented management plan should be prepared and approved and then updated and revised at least annually.

The best way to design and easily carry out a monitoring program is to start with designating a contract-compliance officer or a small monitoring committee. The person or committee members should have been involved in the entire project life-cycle, starting with project identification, bid-document preparation, tendering, bid-evaluation and -ranking, selection of the winning bidder, and award of contract. In short, the person or persons should be very familiar with the project issues and know the project's background and history.

A key element of the plan should be a description of the objectives and reporting requirements related to accomplishing them, noting exactly who in the contractor's management team is responsible.

B. Strategy and Philosophy of Performance Monitoring

The contract monitor or committee should consider themselves team members and partners rather than merely "policemen" or enforcement agents. The monitor should understand that his job is to help the contractor perform his job well and to deal effectively with legal, contractual, and business matters.

Therefore, the contractor and the contract-compliance officer should agree on a plan for conducting the monitoring so that surprises are minimized and no undue burden is placed on the contractor. This can happen only if the concept and basic approach of the monitoring is clearly included in the contract itself, with the day-to-day implementation to be worked out between the contractor and compliance officer.

The compliance officer does not have the authority to interfere with the contractor's daily operations or pay him for performance or reimburse costs that are not clearly set forth in the contract.

C. The Contract Monitoring Program Often Requires an Annual Work Plan

The contract-monitoring plan should be drafted and agreed to by both parties and list the tasks that the contractor is expected to perform during the term of the contract. Preparation for monitoring has a number of steps, which include as a minimum the following:

- Planning and organizing implementation of performance-monitoring
- Coordinating and reviewing performance-monitoring
- Inspecting contractor's activities, reporting requirements, and measures to confirm acceptance of services provided
- Linking monitoring to the end-users' receiving invoices and making payments to the contractor, or as part of payments such as concession fees or lease payments periodically made by the contractor to the utility
- Planning renewal options or "exit strategies" at the end of the contract

A checklist of the monitoring plan might include the following:

- List of all deliverables, including periodic reports, financial statements, *et cetera*;
- Description of the tasks to be performed
- Description of the data the contractor is responsible for generating
- List of information that both parties are responsible for collecting
- Clear indication of where the contract duties will be performed
- List of where and when performance inspections will be done
- Sequence and schedule of contract activities, with benchmarks for completion

C1. Components of Annual Work Plan

- The Annual Work Plan provides the initial definition of tasks to be performed during the budget year. These appear as "milestones," "benchmarks," or targets to be achieved, along with a timeline or schedule for the phasing of the tasks. The contractor has the responsibility to draft this Plan; the monitor is interested in outcomes and results.

- Approval of the Annual Work Plan can be merged with the annual budget review, when resource needs are projected, scheduled, and matched with tasks to be done, along with estimates of expenditures to perform those tasks.

- The Annual Work Plan can be an important tool to measure progress, describing the desired scope of the project (for example, how many new connections, or how many kilometers of drains to be cleaned and/or rehabilitated, or meters to be installed, *et cetera*).

- The ruling concept is that the contract is performance-based and monitoring is the process by which the owner (the utility) gauges attainment of goals.

D. Monitoring Best Practices

The ideal monitor should be:

- Assertive
- Objective
- Transparent and totally open in all his dealings
- Predictable
- Fully accountable
- Professional in demeanor
- Basically concerned with overall long-term goals and objectives, not the day-to-day minutia of events

E. Key Performance Indicators

Technical Operation and Maintenance Function (or Performance Outline or Framework of Annual Plan) includes:

- A well-documented program
- Description of project-control systems and/or copy of operations manual
- List of maintenance program, with activities and objectives
- Organization of operating procedures and assigned organization elements
- Target objectives for upcoming period
- Resources being employed: facilities, staff, vehicles, stores of consumables such as types and quantities of chemicals

E1. Examples of Key Performance Indicators for Operations and Maintenance

- Water quality (chemical purity, clarity, turbidity, pH level)
- Response times for customer complaints of service disruptions, low pressure, *et cetera*
- Frequency of main bursts/repairs (numbers per kilometers of installed system)
- Water loss measurements (unaccounted-for water, balance in system, seasonal or night flows)
- Scheduled maintenance performed, penalties prescribed, and adjudicated outcome

E2. Examples of Key Performance Indicators for Financial Performance

- Financial statements and reports, such as revenue collected per month
- Percentage of overdue or delinquent accounts
- New connections by customer category
- Financial mobilization and disbursement for construction activities
- Labor force maintained, percentage of absenteeism, manning of key stations and posts, and ratio of personnel to number of connections

E3. Examples of Key Performance Indicators for Customer Relations and Satisfaction

- Numbers of recorded complaints and disposition (remediation action taken)
- Numbers and percentages of total of customers cut off for non-payment
- Numbers of new connections made and meters installed, by customer category

F. Summary and Conclusion

The purpose of performance monitoring is to ensure compliance by both parties with the contract's provisions. The monitoring regime should cover all phases of project activity, including new construction and operation and maintenance, in technical, financial, legal, and administrative aspects. It should include tracking and assessment of outcomes for both scheduled and unplanned events.

An important dimension of performance monitoring is to ascertain levels of customer satisfaction, looking at numbers, frequency and types of recorded complaints, and actions taken by the contractor to respond.

To ensure adequate protection of state assets, all maintenance and repair activities should be scrutinized to ensure that they are appropriate, necessary, and within the total scale of the system.

SECTION II

Contract Monitoring Case Study: Buenos Aires Water Concession

A. Background

Private-sector participation (PSP) in the water and wastewater sector in Argentina is part of an extensive privatization program intended to help stabilize the economy after the crisis of the 1980's. Service provided by the public company *Obras Sanitarias de la Nacion* (OSN) in the capital, Buenos Aires, was badly deficient. OSN suffered from weaknesses typical of many public water utilities in the developing world: inefficient operation, weak commercial and financial management, poor maintenance, lax billing procedures, and excessive political interference.

In May 1993, the federal government of Argentina, with World Bank support and following an international bidding process, awarded a 30-year concession agreement to *Aguas Argentinas*, a consortium in the form of a special-purpose company established to carry out the water and wastewater project (the project) in Buenos Aires.

The consortium was led by the French firm *Lyonnaise des Eaux-Dumez* (which would operate the water and wastewater system under the contract) and included two local firms, *Sociedad Comercial del Plata* and *Meller y Banco de Galicia* (Argentina). Also associated in the project were *Aguas de Barcelona* (Spain), *Compagnie Generale des Eaux* (France), and *Anglian Water* (UK).

The special-purpose company, *Aguas Argentinas*, was established with capital of US$120 million. To ensure stability of the concession and proper incentives for good operation, the lead firm is obligated under the contract to retain at least 25 percent of the consortium's capital ownership shares over the life of the contract. In November 1994, the IFC (a member of the World Bank Group) became a partner in the consortium with an equity share of 5 percent.

B. Performance Targets in the Contract

The concessionaire is responsible for providing all water supply and wastewater for the federal capital itself and 14 districts of the Province of Buenos Aires. Its responsibilities include commercial and technical operations, repairs and maintenance, billing and collection, and provision of investment financing necessary to achieve certain performance targets designated in the contract (see table below).

The contract does not specify in US dollar amounts how much capital investment will be needed. Instead, *quality standards* and *performance targets* are established for each of six consecutive five-year periods. It is projected, however, that meeting these targets will require an investment of some US$ four billion. Some of the personnel and all of the fixed assets of the former public company were transferred to the concessionaire. At the end of the concession period, all fixed assets are to be transferred back to the government in good working order.

C. Regulatory Body Established

A new regulatory agency, *Ente Tripartito de Obras y Servicios Sanitarios* (ETOSS) was created by the government as an autonomous entity to control and maintain service quality, protect consumers, and approve and supervise the execution of expansion plans and investments according to contract specifications. A major responsibility of the regulatory agency is to review the tariff structure and oversee its compliance with the contract.

Performance Targets (in percentages)

Year of Concession	Water Coverage	Wastewater Coverage	Wastewater Treatment		Unaccounted-for Water
			Primary	Secondary	
0	70	58	4	4	45
5	82	66	64	9	37
10	90	75	75	16	34
20	97	90	90	90	28
30	100	95	95	95	25

D. Performance Monitoring Objectives

For political, economic, and social reasons, it is extremely important that the concessionaire actually performs as promised and that there be a dramatic improvement in water supply and wastewater treatment to the approximately ten million people who live in Buenos Aires and the 14 districts that comprise the Province of Buenos Aires.

Since the utility functions had been taken over by the concessionaire, a major feature of the Request for Proposal (RFP) was that actual enforcement of the terms and conditions of the contract on behalf of the government would be carried out by the new tripartite regulatory body. This will be accomplished by enforcement of the provisions of the agreement.

For years, Buenos Aires has suffered frequent interruptions in water service, poor quality, bad-tasting water, with the worst failures usually coming during the hot summers. Many people are getting sick because most of the wastewater is untreated and is dumped raw into streams and rivers or leaches from overloaded septic tanks into the ground water, contaminating shallow wells that many customers have been forced to dig because the city water is so unreliable.

Despite the fact that the raw water supply to Buenos Aires is plentiful (the city is on the bank of the Rio del Plata River, which has many millions of cubic meters of water flow daily throughout the year), everyone knows the main problem of the water and wastewater system has been the very inefficient operations of the government water utility.

For example, there has been almost a total lack of maintenance and no new investment to serve the expanding population. For many years, the city water company, had spent only about ten percent of the amount needed just to maintain the system. Although about 70 percent of the population of the city are connected to the system, most of the time the water quality is so poor (dark in color and bad smelling) that water from the faucet is not considered drinkable.

About one half of the population had sewerage connections, but in nearly every case the drainage pipes were blocked and raw wastewater would back up into homes and businesses. Most people who could afford it were obliged to have septic tanks dug, and directed their wastewater there, or else just dumped their sewerage onto the street or into streams and gutters which flowed back into the river.

In addition, every day there are many districts where pressure is low or non-existent. When water-main breaks occur, which are frequent and widespread, streets are flooded and usually weeks pass before any effort is made to repair them. For many years, water pressure in the system has not been provided 24 hours per day, nor every day in the year.

For at least the previous ten years before preparing and awarding the concession agreement, the state water company, instead of setting a reasonable budget and conducting necessary maintenance, responded to political pressures and interference. The political pressures had forced the water company to hire about twice as many employees as required, for a total of about 8,000 employees. Politicians were always unhappy about approving any requests by the utility for routine maintenance for the water and wastewater system, since this spending was "invisible" – either inside the treatment plants or underground.

Prior to the award of the new concession contract, arrangements were made to reduce the large numbers of surplus employees. This was done in a very humanitarian but costly way: offering a very generous severance pay package to those employees that voluntarily accepted the offer.

Historically, very few employees ever left their jobs. Many of them were political appointees who came in to collect their pay every month but did no work. The severance package was very generous, based upon total length of service, and nearly one-half of the entire work force of nearly 4,000 workers accepted it and quit their jobs before the start of the concession.

The table above, which was made part of the concession contract, sets up a very clear schedule of target accomplishments, which if carried out properly, will dramatically reduce unaccounted-for water, and will provide thousands of new connections to many of the poor and low-income neighborhoods, improving public health in the entire region.

To reach these targets, a large sum of money must be invested in meters as well as in a continuing annual program of spending on both rehabilitating the existing system and on new construction and upgrading. All customers are expected to pay a fair tariff for services received.

Some of the consultants working on the project calculated that the amount of new investment required to reach the agreed goals by the end of the 30-year period would be in excess of US$4 billion. The need for attaining these goals was made very clear in the RFP, and all bidders indicated that they understood these requirements.

The performance schedule sets very clear numerical goals for each of the five-year periods of the concession. Tariffs were not supposed to be increased for five years, and then only once every five years after the company had been able to demonstrate a strong case for increases.

VOLUME III (4)

Model Terms of Reference for Advisors

TABLE OF CONTENTS

Volume III (4): Model Terms of Reference for Advisors

SECTION I	INTRODUCTION TO MODEL TERMS OF REFERENCE FOR ADVISORS	
	A. Types of Advisors	I-1
	B. Drafting Terms of Reference (TOR)	I-3
SECTION II	MODEL TERMS OF REFERENCE FOR PRIVATE-SECTOR PARTICIPATION OPTIONS STUDIES	
	A. Background	II-1
	B. Objectives	II-1
	C. Scope of Services	II-1
	D. Reporting and Time Schedule	II-3
	E. Data, Personnel, and Facilities	II-3
SECTION III	MODEL TERMS OF REFERENCE FOR FEASIBILITY STUDIES	
	A. Background	III-1
	B. Study Area	III-1
	C. Objectives and Scope of Study	III-1
	D. Report Structure and Preparation Schedule	III-1
	E. Key Tasks in the Proposed Work Program	III-1
	F. Study Format	III-4
	G. Duties of the Cooperating Government	III-4
	H. Information for Consultants	III-4
	I. Reporting Requirements and Publications	III-4
	J. Submission of Proposals	III-5
SECTION IV	MODEL TERMS OF REFERENCE FOR TRANSACTION ADVISORS	
	A. General	IV-1
	B. Implementation Phase	IV-3
SECTION V	NEGOTIATIONS FOR CONSULTING SERVICES	
	A. Introduction	V-1
	B. Guidelines in Conducting Negotiations	V-1
	C. Scenario for Negotiations	V-6

SECTION I

Introduction to Model Terms of Reference for Advisors

A. Types of Advisors

As a general rule, advisors should be retained at the beginning of the policy-formulation stage. Decisions taken at an early stage can affect the success of a program, and can be costly if they are not based on correct advice. There are many types of advisory services available, including:

- Lead
- Economic
- Financial
- Legal
- Technical

These and other types of advisory services are described in more detail below.

A1. Lead Advisors

Management consultancy companies and the large financial service companies may be called upon to serve as lead advisors. These companies put together multi-disciplinary teams to undertake a number of the tasks within the private-sector-participation (PSP) process. In this role, they oversee the process and try to ensure consistency between its various components. The main characteristic of lead advisors is that they usually have experience in all of the broad issues associated with the different stages of the PSP process and are fully experienced in PSP and the sector in question. Typical tasks include:

- Advising on the form of PSP
- Undertaking preliminary feasibility studies
- Helping design the implementation process and timetable
- Advising on the selection of consultants for subsequent stages
- Managing the implementation of the technical assistance program

A2. Economic Advisors

Economic advisors understand the impact of differing choices on the incentives of the stakeholders (including consumers, private-sector participants, and the Government). In particular, they can advise on industry and market structures, design of the regulatory framework, and appropriate transition arrangements. Their greatest involvement is most likely to be contributing to the design of the reform process, including industry structure, form of PSP, and regulation.

A3. Financial Advisors

Financial advisors have the skills and experience to ensure that the final transaction (whether it is an asset sale, concession, or other form of PSP) represents value-for-money and an affordable and deliverable deal for the host government. Their input will vary considerably,

depending on the form of PSP. It is likely to be minimal for a management contract but substantial for a large concession or asset sale. Along with the Government itself, they will be the primary contact for potential investors.

A4. Legal Advisors

Legal advisors will need to be involved throughout the PSP process and will have an important role from the very beginning of the program. They can help to develop policy objectives by outlining the possibilities for PSP within the existing legal framework. Legal advisors will remain involved during the term of the concession by assisting in contract management and advising on any variation to the contract or disputes that arise during the term of the contract. Legal advisors specializing in commercial law will be useful for advising on the commercial structure of a new entity. Local lawyers will also be needed for some tasks, such as interpreting and amending local laws, regulations, and decrees.

A5. Technical Advisors

Technical advisors include those with engineering and related specializations who understand the physical aspects of the water and wastewater sector. They should be knowledgeable about the water and wastewater sector and be able to advise on operational and investment needs as well as the technical aspects of regulation, legislation, and evaluation. It is important that technical advisors have specific and geographically wide-ranging experience in the water and wastewater sector. Technical advice, by its very nature, relates to the specifics of the proposed infrastructure facility, drawing on experience from previous projects and problems encountered.

Depending on the government's role in the proposed project, the technical advisors may be required to:

- Undertake preliminary analysis to establish the approximate capital costs plus the technical specifications or operating standards needed to achieve the government or public-sector sponsor's objectives
- Analyze the possibility of breaking up various elements of the industry (e.g., dividing distribution networks, separating water supply from wastewater collection and treatment)
- Prepare a draw-down schedule covering the construction period, estimated annual operating and maintenance costs, and estimated project life-cycle costs
- Review any cost estimates contributed in a preliminary feasibility study

The estimates need to be prepared to the detail and level required to allow bidders to decide whether to bid on the project. The bidders would then be solely responsible for undertaking their own due diligence relating to these estimates (and other matters).

A6. Other Support Advisors

Public Relations: Public relations specialists play an important role throughout the process. The introduction of PSP requires change on the part of many stakeholders. This is inevitably

difficult and the reasons for the changes, the costs, and the benefits, must be carefully explained to government officials, employees, the public, and, possibly, the international investment community. Effective public relations experts can save a lot of time, effort, and money by bringing the various groups into the process and ensuring that they support, rather than oppose, the process.

Human Resources: Human resource advisors should be specialists in the internal processes and organization of institutions. In addition they should know how to design training programs, and must be adept at skills transfer and the appointment and dismissal of personnel. More generally, there may be a need for detailed restructuring of the existing workforce, pension funds, and, in some cases, negotiations with trade unions. This type of advisor is essential given that there are multiple labor and human resource issues that will confront the government and investors throughout the PSP process.

Environmental: Many infrastructure projects have negative effects on the environment and are therefore likely to require some form of environmental assessment. While the winning bidder will undertake much of this, environmental advisors may be needed in the initial stages to establish minimum environmental standards for bidders to include in their bids. These standards will depend on the structure of the transaction, but may, for example, relate to the use of chemicals or other raw materials, raw-water abstraction, and effluent or sludge disposal.

Procurement Strategy: Procurement specialists may design a procurement strategy to reflect the overall goals of procurement, time-scales, budgets, financing rules, local legislation, and institutional capacity.

B. Drafting Terms of Reference (TOR)

A clear set of Terms of Reference (TOR) is crucial to ensure that the potential advisors fully appreciate the aims and objectives of the Government and how their support would fit into the overall process of reform. However, an overly prescriptive TOR risks stifling innovative ideas that advisors might be able to bring to the work plan.

While the level of detail in the TOR may vary according to the needs and status of the PSP initiative, the following information should be provided in the document:

- Background information (including information about the origins of the funds for technical assistance; the political environment; state of the economy and sector in question and major indicators; sectoral reform process and major indicators; existing legal and regulatory framework; and condition of the enterprise undergoing PSP)

- Indicative work plan (including description of the tasks to be undertaken; expected milestones related to deliverables and government decisions; and Gantt charts providing an indicative schedule)

- Deliverables/outputs required (including presentations; models; reports; training; and availability for negotiation)

- Level of effort (by key personnel and the major task) and/or the maximum budget available
- Evaluation criteria (including weights for technical and financial proposals; level of technical threshold to advance, if relevant; and the sub-criteria for technical evaluation)
- Conditions for submission (including the number of copies; separation of envelopes; and date and time of delivery deadline)

SECTION II

Model Terms of Reference for Private-Sector Participation Options Studies

A. Background

This section will contain a background of the water and wastewater sector and the agencies that will be involved in and affected by the project. Background may include historical information, mandate (functions and responsibilities), structure, and reasons that private-sector participation (PSP) is being considered for the sector.

B. Objectives

General and specific objectives are stated in this section. For instance:

"The main objective of this study is to identify the specific function(s) and service(s) of _ _____ *[the agency]*, which could be privatized and the possible form(s) of privatization, and to assess the feasibility of such actions."

Similarly, objectives can be to:

- Make recommendations for changes in public contracting and in water laws, thus facilitating PSP
- Prepare model contracts for various types of services
- Develop a strategy for implementation of a program to promote PSP

C. Scope of Services

The section outlines the work to be done under the project. To provide room for flexibility and creativity in undertaking tasks, it can be mentioned that "the scope of work will include, but not necessarily be limited to:"

Common tasks under a PSP options study would be to:

- Review in general the main pros and cons of PSP
- Review present public contracting and water laws and identify restrictions and needs regarding PSP
- Review existing private-sector contracts and indicate strong and weak points of existing arrangements
- Make a preliminary analysis and identification of specific situations or municipalities where PSP might be advantageous

- Prepare model contracting documents for various types of services and levels of responsibility – this may involve (a) investments, operations, and maintenance; (b) management; and/or (c) service contracts in water supply and wastewater services (levels of responsibilities should range from full profit responsibilities and risks to cost plus contracted services)

- Develop a strategy and action program to promote PSP – this might include making changes to contract laws, undertaking seminars, and drafting model contracts, *et cetera*

- Identify stakeholders who can be involved in the evaluation of different options (stakeholders may help determine what constraints and problems face public providers and what private operators can do to help improve the situation; stakeholder consultations should inform them of the findings to date, recommend options and next steps, and solicit support for the process to obtain feedback, which would help refine the recommendations)

- Assess the feasibility of decentralizing or disaggregating certain activities and involving private investors/operators in each of these activities

- Evaluate the pros and cons for various transaction models and accompanying structures, including risk identification, allocation, and mitigation

Based on the above and input received from potential creditors and private-sector investors/operators, a draft PSP Options Report proposing a PSP strategy will be prepared. This will cover, *inter alia*, the following:

- Ownership, financial, and management structure(s) of the entity(ies) in which the private sector would be interested to participate

- Structure of transaction(s)

- Terms and conditions of PSP including, *inter alia*:

  - scope of business and responsibilities
  - performance targets (including the reduction of unaccounted-for water) and service standards and enforcement provisions
  - efficiency-incentive schemes (both for operating and capital costs);
  - remuneration mechanisms
  - length of contract and provisions on termination
  - investment commitments, if any,
  - labor plan

- Required and available level of Government/International Financial Institution support and guaranties

- Possible decrees and legislative changes likely to be required by the private sector and project lenders, including drafts of same

- Bidding, selection, and award process and timetable/critical-path analysis

522

D. Reporting and Time Schedule

This section need not be a detailed work plan. A general idea of how long the services are required and what the deliverables are may be sufficient. For instance:

"To prepare the draft final report on the proposed study is estimated to take about _____ month(s). _____ month(s) after the start up of the study an inception report should be prepared that would briefly outline the initial findings, particular difficulties, and proposed course of action."

Presentation of PSP options may include ranking alternatives; discussing possible consequences of each method; recommending an approach and sequencing of activities; and discussing labor impact, potential investment requirements, effect on tariffs, and required legal and regulatory changes.

E. Data, Personnel, and Facilities

A clear understanding of who provides what is necessary for the project to go forward smoothly. This section may contain information on what the client/executing agency is responsible for with regard to data, personnel, and facilities. More importantly though, this section must state the consultant's contribution. For instance:

"The proposed study would be undertaken by _____ *[Consultant]* with assistance of expatriate specialists who are familiar with private-sector participation in the provision of water and wastewater services. _____'s team would include at least one water/wastewater engineer, a PSP specialist or economist, and a lawyer."

SECTION III

Model Terms of Reference for Feasibility Studies

Feasibility studies (commonly called prefeasibility studies) depend on local needs and circumstances. By using rapid survey and assessment methods and business-planning methodology, key actors are identified and immediately involved, data assembled, markets, policies, and perceptions documented and discussed, and options explored.

Terms of Reference (TOR) for prefeasibility studies usually contain: (1) background; (2) study area; (3) objective and scope of study; (4) report structure and preparation schedule; (5) key tasks in the proposed work program; (6) study format; (7) duties of the cooperating governments; (8) information for consultants; (9) reporting requirements and publications; and (10) submission of proposals.

A. Background

Background information is outlined in this section.

B. Study Area

Study Area information is outlined in this section.

C. Objectives and Scope of Study

General and specific objectives are outlined in this section, as well as a list of principal activities to be undertaken.

D. Report Structure and Preparation Schedule

In this section, the TOR may specify how prefeasibility reports could be presented. Normally, this would involve preparing the following two types of reports:

- *Synthesis Report*, a concise, integrated report which provides a strategy for the whole study; and
- *Technical Report*, a comprehensive report which provides a technical analysis of the study area.

The section may also include instructions on preparing a proposed outline for the study, as well as a Study Preparation Schedule, which may include when deliverables are due and when study-review meetings are to take place. In addition, the TOR may mention any conditions for adjusting the study-preparation schedule.

E. Key Tasks in the Proposed Work Program

This section outlines the activities to be undertaken in key tasks. The Consultants are expected to review these tasks and provide a proposed work plan. If Consultants wish to

propose modifications to the key tasks or dates as part of their proposal to the Client, they may do so, but should also submit for the base case in any event.

A sample of key tasks for water/wastewater pre-feasibility studies are as follows:

E1. Data Collection and Analysis

- Existing population and demand
- Existing users (commercial, industrial, government, and special users)
- Existing irrigation
- Unaccounted-for water/infiltration/inflow
- Site characteristics, soils, and topography
- Local utilities
- Local tariff
- Socioeconomic data on community
- Financial data from utility
- Environmental regulations and standards
- Institutional impact analysis
- Identification of
    - Key infrastructure schemes, and their key implementation/operational indicators
    - Key priorities for the successful private-sector bidders
    - Perceived key priorities for the regulators
    - Perceived key priorities for customer representatives and customer surveys

This information will enable the Consultant to compile quantitative service targets and performance indicators. Some of the possibilities are:

- Coverage (percentage of population with access to service)
- Reliability of water supply
- Drinking water quality (compliance with standards)
- Physical water losses
- Sewerage (percent collection)
- Sewage treatment (percent treated, compliance with effluent standards)
- Management ratios (staff per connection, *et cetera*)
- Customer relations (response to emergencies, complaints, *et cetera*)
- Billing-to-collection ratio
- Financial (debt position, cash position)
- Infrastructure implementation and operational milestones

E2. Market/Demand Analysis

- Population projections
- Projected commercial and industrial development/usage
- Projected government and special users
- Projected irrigation/reuse

E3. Overall Legal and Regulatory Review

- The overall sector structure, ownership of assets, authority to provide service, and oversight arrangements
- The major sector institutions
- The legal basis for or barriers to PSP in water and wastewater and the rules governing the award of contracts with private firms
- Tariff and subsidy policies
- The existence and applicability of legally mandated service quality standards
- Water resources management
- Environmental and health regulations
- Relevant labor laws and regulations
- Conversion of local currency to foreign exchange ad repatriation of profits

E4. Capital and Operating Cost Estimates

- Develop basic costing assumptions:
  - Capital cost database
  - Operating cost database
  - Asset life
  - Discount rates

E5. Engineering Options/Least-Cost Analysis

- Develop alternatives:
  - Treatment
  - Transmission and collection
  - Wastewater reuse
- Develop project phasing:
  - Prepare alternative capital and operating cost estimates
  - Prepare life-cycle cost estimates for alternatives

E6. Preliminary Environmental Assessment

- Prepare environmental assessment of alternatives:
  - Short-term construction impacts
  - Long-term impacts

E7. Financial and Economic Analyses

- Prepare current utility balance sheet and income statement
- Develop financial evaluation model
- Prepare financing parameters and preliminary structure
- Prepare financial forecasts for recommended alternative
- Economic analysis

E8. Tariff and Willingness-to-Pay Analysis

- Conduct socioeconomic survey of customers on willingness to pay
- Develop a recommended tariff structure

This structure will account for, the following factors:

- Service differentials across regions and/or customer classes
- Imposition of a connection charge
- Imposition of a customer charge (for costs of metering, billing, *et cetera*)
- Minimum volume requirements
- Increasing versus declining block structure
- Requirements for subsidizing low-income customers

F. Study Format

This section of the TOR provides instructions on issues such as the style to be used in the study, preparation of text and graphic materials, reproduction of the study, and formal clearance of changes.

G. Duties of the Cooperating Government

For the feasibility study to be carried out in a clear and systematic manner, the TOR may state the roles and responsibilities of the Government (or its designee or other contracting authority) in supporting the Consultants. For instance, it can be proposed that a Study Coordinator be assigned to the project. This position can be filled by a technical specialist holding a formal Government appointment.

When necessary, support should be given by national and local governments and other relevant enterprises to Consultants. It can take the form of providing background information on the issues in the study area; access to the places and facilities within the study area, including authorization to conduct observations and collect needed data; and assistance in the import and export of needed equipment.

H. Information for Consultants

In connection with the previous section, this part may state the conditions and/or restrictions for conducting site visits, the use of equipment, office facilities and transportation, and studies previously prepared.

I. Reporting Requirements and Publications

Deliverables should include reports to be submitted at the end of each major task. For clarity, the TOR may contain more specific instructions (e.g., format, number of pages, number of copies, *et cetera*) with regard to submission. For instance:

Management Reports: The Consultants will be required to submit the following reports:

- *Monthly Progress Report*: This report would provide a brief summary of work accomplished, problems encountered, and expenditures made in local and foreign currencies during the reporting period. These reports should be no more than

three-five pages in length. The reports should be submitted to the Client by the _____ of the month in _____ copies.

- *Summary Report*: This report would provide a summary of work accomplished, problems encountered, and expenditures made in local and foreign currency during the course of the contract. It should be submitted to the Client at the close of the contract period in _____ copies.

Technical Reports: The Consultants will provide the client technical reports concerning diagnostic and detailed reviews to the Client as follows:

- *Review Report*: The Consultants will provide the Client with a review report. The client will have a _____-day review period from receipt of the report during which time comments should be directed to the Consultants. The report should be submitted in ____ copies in a _____ ***[format and presentation]***.

- *First Progress Report*: The Consultants will provide the Client with the First Progress Report. The Client will have a _____-day review period from receipt of the report during which comments should be directed to the Consultants. The report should be submitted in ___ copies in a _____ ***[format and presentation]***.

- *Second Progress Report*: similar requirements.

- *Preliminary Draft Synthesis Report*: similar requirements.

- *Preliminary Draft Technical Report*: similar requirements.

- *Final Synthesis Report and Technical Reports*: The Consultant will provide the Client with the Final Synthesis and Technical Reports. The Client will have a ___ -day review period from receipt of the final draft reports to be provided on ___ during which final comments would be directed to the Consultants. The final printed reports should be submitted as follows: _ _____ _____ ***[specific instructions may be mentioned here]***.

Language of Reports: All reports should be prepared in English, unless otherwise agreed with the Client in writing. The Draft and Final Synthesis and Technical Reports should include additional title pages, tables of contents, and executive summaries prepared in Arabic as part of the text.

J. Submission of Proposals

In this last section of the TOR, instructions on the submission of proposals are given. For instance:

Consultants' Services: The Consultants would provide an interdisciplinary team of foreign and local specialists to prepare a study as described in Section ____ and on the basis of the tasks outlined in Section ____ and consistent with the format provided in Section _____. All services provided by the Consultants are anticipated to occur over a period of

approximately _____ months from the signing of the contract. Services will be provided within the _____ ***[study area]***.

Local Cooperation and Participation: The study would be prepared with the cooperation of personnel from the national government, local government, and _____. To facilitate the preparation of the study each cooperating government will appoint a Study Coordinator who will serve as contact person for the Consultants. In planning and conducting the study the Consultants are to emphasize the participation of local personnel in order to maximize the transfer of experience and to benefit from a local perspective concerning administrative, financial, and technical issues.

Scope of Proposal: The Consultants should provide in the proposal the following information:

- Statement of Capabilities of the Consulting Firm
- Proposed Work Plan
- Proposed Implementation Schedule
- Team Leader and Deputy Team Leader(s)
- Interdisciplinary Team
- Proposed Budget
- Address for Submission of Proposals

SECTION IV

Model Terms of Reference for Transaction Advisors

A. General

The transaction advisor shall:

- Coordinate, supervise, and integrate all tasks under these Terms of Reference (TOR)
- Be responsible for the outputs of its subcontractors
- Assist and provide support to the government-approval process, as required to effect the work program
- Prepare periodic progress reports

A1. Initial Review Work

The transaction advisor shall:

- Review any background studies, organization audits, existing technical assistance studies (terms of reference), investment and financial models and projections, and other relevant information
- Review existing and targeted service obligations (water and effluent quality standards, water and wastewater coverage, water supply continuity, network pressure, *et cetera*)
- Review status of existing major civil works

A2. Pre-Marketing

The transaction advisor shall:

- Through appropriate means (e.g., international advertising, providing information to foreign embassies, *et cetera*), solicit Letters of Interest from potential private-sector investors/operators; and pre-market the investment opportunity by preparing and providing a Preliminary Information Memorandum to each interested party
- Actively test the interest of private-sector investors/operators

Indicative deliverables:

- Letters of Interest from potential private-sector investors/operators

- Preliminary information memorandum for interested private-sector investors/operators

A3. PSP Options

The PSP strategy will be prepared with due regard for the government's political, financial, labor, technical/operational, legal, and timing objectives, concerns, and constraints.

The transaction advisor shall:

- Assess the feasibility of decentralizing or disaggregating certain activities and of involving private investors/operators in each of these activities;

- Evaluate the pros and cons for various transaction models and accompanying structures, including risk-identification, -allocation, and –mitigation;

- Based on the above and input received from potential creditors and private-sector investors/operators, prepare a draft PSP Options Report proposing a PSP strategy. This will cover, *inter alia*, the following: and

  - ownership, financial, and management structure(s) of the entity(ies) in which the private sector would be interested to participate

  - structure of transaction(s)

  - terms and conditions of private participation including, *inter alia*

    - scope of business and responsibilities
    - performance targets (including the reduction of unaccounted-for water), service standards, and enforcement provisions
    - efficiency-incentive schemes (both for operating and capital costs)
    - remuneration mechanisms
    - length of contract and provisions on termination
    - investment commitments, if any
    - labor plan

  - Required and available level of government/International Financial Institution support and guarantees

  - Possible decrees/legislative changes likely to be required by private sector and project lenders, including the drafts of same; and

  - Bidding, selection, and award process and timetable/critical-path analysis.

- Present the draft PSP options report to the government. Clarify any queries. Incorporate the government's comments into a final version of the report containing agreed next steps.

Indicative deliverables:

- Draft PSP Options Report
- Final PSP Options Report including government's comments

A4. Pre-qualification

The transaction advisor shall:

- Agree with the government on criteria for prequalification of potential private investors/operators and propose timetable, bidding procedures, and principal elements of the bid package

- Conduct a process of prequalification, based on agreed criteria

Indicative deliverables:

- Prequalification criteria
- Short list of prequalified bidders

B. Implementation Phase

B1. Marketing

The transaction advisor shall:

- Prepare an Information Memorandum and any related documentation
- Market opportunity, including visits to potential bidders

Indicative deliverables:

- Information Memorandum and any related documentation required for marketing

B2. Public Awareness and Stakeholder Consultation

Involving relevant stakeholders and informing the general public about ongoing transactions shows that there is transparency and the need to gain support for the PSP initiative.

The transaction advisor shall:

- Identify stakeholders (such as opinion leaders, journalists, consumers, water utility employees, *et cetera*)

- Form a stakeholder advisory committee and conduct regular meetings

- Form a plan for public awareness or a communications program with the following objectives:

  - Build political consensus among reformers, in both the public and private sectors

  - Gain support from the management and employees for PSP

- Increase public understanding among the general population about PSP and build the necessary public support to ensure the sustainability of PSP and the overall reform process

- Assist in strengthening the institutional ability of the public utility to define, develop, and communicate the privatization message in support of the broader program of economic reform

- Generate domestic and international interest in the water sector's privatization program

- Design an information campaign explaining the ground rules of the privatization program to prospective participants

Indicative deliverables:

- Conduct of regular meetings with stakeholders
- An information and education campaign for public awareness

B3. Investor Due Diligence

The transaction advisor shall:

- Establish procedures to prepare and operate a Data Room for due diligence efforts of potential bidders. The Data Room shall be a secure area where all relevant documents shall be stored for the exclusive use of potential bidders. The users of the Data Room shall be provided a CD-ROM containing those documents that may reasonably be scanned into PDF format. Photocopying facilities shall be provided. Users of the Data Room may request to interview particular personnel of the incumbent water and wastewater utility. On request, guided tours of the incumbent water and wastewater utility facilities may likewise be conducted. Bidders shall pay a fee for the use of the Data Room

- Assist the process of investors/operators due diligence

Indicative deliverables:

- Operational Data Room

B4. Drafting of Documents

The transaction advisor shall:

- Produce, through the legal and other experts, the draft of the contract and other agreements underpinning the proposed transaction(s)

- Prepare, through the legal and other experts, the bid documents, which will include, among others, instruction to bidders, criteria for evaluation, format of bid submission, performance guarantees, and contract terms

- Solicit comments from the potential bidders on the form and content of the above-mentioned documents and incorporate those comments that it deems to be reasonable

- Submit all documentation to the government for its approval, following which the final drafts shall be prepared

Indicative deliverables:

- Draft contract and other agreements
- Draft bid documents
- Final contract and other agreements/bid documents

B5. Bidding and Evaluation

The transaction advisor shall:

- Assist the government in reviewing and incorporating as appropriate the observations and comments of pre-qualified bidders into the draft legal agreements

- As required, hold a pre-bid bidders conference

- In coordination with the government, provide clarifications to bidders during the bidding process

- Assist in the evaluation of bids against agreed criteria. Note: The final selection of the winning bidder and the decision to award the contract will rest solely with the government

- If necessary, assist the government in final contract negotiations

Indicative deliverables:

- Prebid conference
- Award of contract
- Negotiated contract

B6. Closing

The transaction advisor shall:

- Assist in finalizing contracts for signing
- Assist in finalizing nature and form of any regulatory arrangements
- Assist in arrangements for closing as necessary

Indicative deliverables:

- Commencement of PSP

SECTION V

Negotiations for Consulting Services

A. Introduction

Negotiations do not have to produce one "winner" and one "loser." Negotiations require preparation. It is said that "knowledge is power." This is especially true in negotiations. Studies show that the negotiator with superior knowledge will often get the best results. Negotiations require considerable preparation. A negotiator should always enter negotiations having answered the key questions, below. Successful negotiations often result in a "win-win" result in which each party achieves a fair result. Fair results also tend to motivate each party to honor the agreement resulting from the negotiations and encourage long-term relationships between the parties. In short, negotiation is an important technique by which persons with different, or even adverse goals and objectives, resolve such conflicts in a mutually acceptable way.

A1. Key Questions

What are my goals in the negotiation? How do I achieve them? Negotiators with higher expectations of what they can achieve often get better results. Also, setting goals helps measure a final result's success or failure. Therefore, it is important to write down your goals and refer to them during negotiations. This helps you maintain your focus on your goals.

What do I know about the other party? The more you know about the needs and goals of the other party, the better you will understand how to get the best results for yourself. For example, in negotiating for a feasibility study, your knowing that the other party is just completing an earlier assignment and is anxious to continue working in Egypt will give it a strong motivation to get a new contract, allowing you to hold firm for a lower price.

What are the bargaining positions of each party? Before negotiations begin, list the strengths and weaknesses of your side and the opposing side. Evaluate this list carefully to understand what you can *realistically* expect to get in the negotiations. But set your goals high. *High expectations often result in favorable results.*

B. Guidelines in Conducting Negotiations

B1. Strategy Formulation

This depends on nature of contract and bargaining strength of each party. For example, negotiations with the World Bank differ from those with consultants. This also depends on preparedness of parties. Lack of preparation can be major drawback. Normally, in major contracts, eight-ten hours of preparation should be spent for each hour of expected negotiations. List your issues and positions. Prepare a draft contract as a basis for negotiations. Keep your objectives in mind. Consider alternative negotiating strategies. Your negotiating strategy may change according to whether a long-term contract is contemplated (e.g., water concession) or short-term contract planned (e.g., brief consulting assignment).

B2. Strategies for Basic and Secondary Objectives

- *Determine your "bottom line"* (final offer) on basic and secondary objectives as related to the contract terms and conditions.
- *Anticipate strategies of opposing parties* and their own points of compromise.
- *Identify issues* (questions) on which there should be little or no disagreement. Settle these first.

B3. Elements of Strategy

- *Be Patient*. Negotiations can often be drawn out. Don't lose patience. Sometimes parties will deliberately use delay as a strategy.
- *Be Flexible*. Construct alternative "acceptable" solutions on basic issues, and list these according to preference. Always have a reasonable alternative on hand.
- *Be Courteous*. If the atmosphere becomes "poisoned," agreement will be harder to reach.
- *Be Fair*. Do not take undue advantage of a weak negotiator. Any contract will have to be basically acceptable to both parties, and if the contract is one-sided, the "winning" party may be hurt in the long run because of lack of trust.
- *Recognize That You Must Give as Well as Take*. Both parties must feel that they have at least partially succeeded.
- *Use Concessions on Secondary Issues to Gain Concessions on Basic Issues*. If you yield on *secondary* the issues under pressure from the opposing party, you should be able to extract *benefits* on *basic* issues.
- *Identify Opposing Party's Basic Interests*. Try to concede on those issues that do not adversely compromise your own basic objectives.
- *Build on Agreed Issues*. Stress common interests. This will set the stage for discussion of the more difficult issues, which should be kept for later discussion.
- *Difficult Issues*. Always give reasons for disagreeing on particular issues. Asking questions can be used as a way to disagree cordially. Define a "middle ground" and work toward it.

B4. Negotiating Tactics

- *Large and Unreasonable Demands by Opposing Party*. Try to determine the extent that these may be bluffs.
- *Threats*. Avoid these as far as possible.

- *Deadlock*. These occur often and can be used as tactics in negotiations. They can take the form of a walkout, which is least desirable, or suspension of negotiations until a future time. A brief cooling-off period should be allowed and, when negotiations continue, points of agreement should be stressed and negotiation continued thereafter. It should be recognized that, beyond a certain point, agreement may be impossible because of a major difference on basic issues, and that termination of negotiations may occur.

- *Divide and Win*. If the opposing party does not constitute a united team, you can try to divide them on basic issues. But remember that they can exploit differences on your team, too ("good cop/bad cop").

- *Split the Difference*. Often applied. But it can be unwise if the original terms or figures were too high.

- *False Promises*. Avoid them. Do not promise more than you can deliver.

- *Illegal Offers*. Avoid them.

- *"Final" Offer*. Repeated usage of this phrase dilutes the desired effect.

- *Bluff*. A common tactic that requires careful handling. To immediately challenge ("call") an opposing party's bluff may cause him to lose face. Use tact. If *you* are bluffing, be careful not to get caught.

- *Last-Minute Demand*. Often used to get final concessions when other issues have been resolved.

B5. Results of Negotiations

The results should be reviewed and tested against the objectives sought. A "win-win" situation is most desirable, particularly where a long-term relationship is sought. Negotiations should end in a congenial relationship between the parties, after the "give-and-take" is over.

B6. Technical Aspects of Contract

Consultant contracts vary according to the rules and regulations, which govern them. For example, contracts negotiated under the rules of the World Bank would differ from those negotiated under Egyptian law. However, certain *basic elements* are included in all consultant contracts, and some of the most important of these are discussed below.

B7. Description of Services and Starting Date

The description of services to be performed is described in the terms of reference (TOR), which should be included as an appendix to the contract. The starting date of the contract should also be stated.

B8. Personnel

The consultant's personnel should be named and their positions described. These data are frequently contained in a separate appendix to the contract. In this section, the government should include any restrictions limiting the consultant's right to replace key personnel without the government's consent.

B9. Payments to the Consultants

Several items should be included here, such as the following:

- *Cost Estimates and Limitation*. Cost estimates in foreign currency and Egyptian currency should be stated, together with a statement that payments will not exceed these estimates unless special circumstances (such as the government's failure to provide certain agreed assistance) require it and then only if the parties agree.

- *Currencies of Payment*. The terms and conditions of foreign-currency payments to international consultants and Egyptian currency payments to Egyptian counterparts should be described. The terms and conditions of regular salary (fee) payments, *per diem* payments, and reimbursement of expenses should be included.

- *Mode of Billing*. The details of how and when the consultant submits statements for fees and expenses to the government must be included.

- *Additional Work*. If the government wishes to provide for the consultant to perform possible additional work during the term of the contract, how the government will pay for it should be covered.

B10. Duties of the Government

Here should be listed all of the assistance that the government agrees to provide to the project. Often, this includes the provision of office and equipment facilities and an undertaking to provide all necessary local assistance.

B11. Duties of the Consultant

- *Maintain Financial Books and Records Pertaining to the Assignment*. These should be available for government inspection on a reasonable basis.

- *Assignments and Subcontractors*. If the government wishes to restrict the ability of the consultant to assign part of the performance of the contract to subcontractors, such restrictions should be included here.

- *Confidentiality*. The consultant must keep confidential any information that he receives during the assignment.

- *Conflicts of Interest*. The consultant should be prohibited from engaging in any other professional activities in Egypt during the term of the assignment.

- *Government's Rights in Project Equipment and Deliverables*. The government's right to retain project equipment and have sole use and possession of deliverables such as reports and supporting materials, should be included here.

B12. General Provisions

- *Suspension of Contract*. This would include the conditions under which the government could suspend the contract. The principal reason for suspension would be the consultant's failure to perform a material part of the contract.

- *Termination of the Contract by the Government*. This would include the conditions under which the government could terminate the contract.

- *Termination of the Contract by the Consultant*. This would include the conditions under which the consultant could terminate the contract.

- *Settlement of Disputes*. This includes any arbitration procedures to be used if disputes arise.

- *Force Majeure*. This describes the conditions beyond the control of the parties ("Acts of God") which excuse delays in performance by the government or consultant.

B13. Personnel Remuneration

The methods for calculating consultant rates vary depending on which rules and regulations govern the procurement. Generally, an estimation of "man-months" required to perform the assignment is made first. Then, to determine precisely what the consultant should receive, these additional factors must be considered:

- *Base Salary*. This is the monthly salary paid to an individual by the consulting firm. It does not include items such as rent or vehicle allowances. During negotiations, the government should try to learn whether this base salary has been paid for at least one year, and, if not, why not. It is also useful to know if the employee is a permanent staff member of the consulting firm and, if not, how the base salary was calculated.

- *Social Costs*. These include items such as sick leave, holidays, vacations, and employer's contributions for pension, social security, medical insurance, and life insurance.

- *Overhead*. This includes the firm's cost of doing business, such as rent, office supplies, clerical staff, travel, communications, repairs and maintenance, data-processing costs, and miscellaneous expenses.

- *Fee*. This usually represents the firm's gross profit before taxes and is usually expressed as a percentage of the sum of the salary, social costs, and overhead, and may range from five percent to 20 percent.

- *Overseas Allowance*. This is an amount paid to the staff over and above their base salary for an overseas assignment. It will vary with the nationality of the firm and usually ranges up to a maximum of 60 percent.

- *"Multiplier."* This is the factor by which the base salary is multiplied to arrive at the total man-month rate. For example, if the consultant's base salary (e.g., US$1,000) is assigned a value of 100 percent. and the social costs are 20 percent (US$200), overhead 110 percent (US$1,100), and fee 20 percent (US$200), the total (250 percent, or a "multiplier" of 2.50) is the total man-month rate (US$2,500). International consulting firms usually use "multipliers" that have been verified by donor agencies and development banks for which they have worked in the past.

B14. Expense Items

In addition to the man-month rate, it is customary to reimburse consultants for direct costs, which are not included in the normal overhead. These costs may be divided into two broad categories:

- *Allowances*. These are *fixed amounts* (called "*per diem*") which cover recurring expenses such as hotel and living expenses. They vary from country to country. Information on rates for Egypt may be obtained from the World Bank.

- *Direct Reimbursables*. These are *varying amounts*, which are reimbursed in full, such as aerial surveys, duplication, translation services, and use of outside computer facilities.

C. Scenario for Negotiations

- *Deliver Opening Remarks*. This consists of a brief welcome to the representatives of the consulting firm and the GOE to establish *rapport* among the concerned parties.

- *Submit Written Authorization*. The consulting firm's representative presents his/her written authority from the firm to negotiate and conclude a binding contract.

- *Review Scope of Work/Terms of Reference*. The scope of work and the terms of reference will be reviewed and discussed in the context of the objectives of the assignment by the project director, manager, or team.

- *Review Work Plan and Manning Schedule*. The phasing of input and personnel to be assigned to each section of the project will be reviewed and agreed upon.

- *Discuss Reporting Requirements and Other Related Activities Under the Project*. These would include workshops, study tours, and training needed in the effective performance of the project.

- *Discuss Counterpart Staff and Facilities.* These refer to support staff, equipment, services, and facilities the GOE is willing to provide for the duration of the project.

- *Review Financial Terms.* After all other pertinent matters have been discussed and differences settled, financial terms can then be reviewed.

- *Review Contract.* The draft should be reviewed carefully to ensure that both parties fully understand the contract terms and conditions.

- *Decide on Commencement of Service.* Taking into account the need for various approvals of the contract, the date for commencement of services and other matters relating to commencement arrangements should be decided upon.

Execution of technical-assistance services and loan projects often call for specialized skills and expertise, which may not be readily available. The following are examples of when consultant assistance may be most helpful:

- *When specialized skills and expertise are needed.* Through the use of consultants, the skills, qualifications, and experience of a number of firms and individuals from outside the GOE can be drawn upon to fulfill project requirements.

- *When an independent and objective approach is required.* Consultants bring with them an independent and objective approach to projects. They are interested in applying their particular expertise, knowledge, and skills to the project, and are expected to provide the best advice.

- *To promote transfer of knowledge, skills, and techniques.* The use of consultants also results in a transfer of knowledge, skills, and techniques to GOE staff.